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New York State Department of Environmental Conservation  
50 Wolf Road, Albany, New York 12233 -3505



Thomas C. Jorling  
Commissioner

April 1, 1990

M E M O R A N D U M

TO: Regional Water Engineers, Bureau Directors, Section Chiefs

SUBJECT: Division of Water Technical and Operational Guidance Series (5.1.2)  
REALTY SUBDIVISIONS - PLANS PREPARED BY LAND SURVEYORS  
(Originator: Mr. Halton)

I. PURPOSE

To describe circumstances under which it is acceptable for plans for realty subdivisions to be submitted by land surveyors.

II. DISCUSSION

On March 24, 1978, a memorandum was issued (and subsequently rescinded) directing DEC field offices and their designated representatives not to accept for review, applications for realty subdivisions for which public sewers are planned, if the sewage facilities were not designed by a licensed professional engineer or architect.

In a legal action brought by the New York State Association of Professional Land Surveyors against DEC Commissioner Peter A. A. Berle, NYSDOH Commissioner Robert P. Whalen and Nassau County H.D. Commissioner John J. Dowling, the State Supreme Court, meeting in special term in Nassau County, ruled that DEC acted in an arbitrary and capricious manner in issuing the March 24, 1978 memorandum, and thereby exceeded the scope of its authority. The court ruled that the Association of Professional Land Surveyors were entitled to judgment directing DEC to withdraw its memorandum.

Since an appeal was not taken the decision of the court stands, and DEC must carry out the court's wishes.

An excerpt from the decision reads as follows:

"It would appear that the Legislature did not intend to limit or specify exactly in 'laundry list' fashion all items which could be designed by qualified surveyors, but rather by using the term 'of a minor nature,' left it for each design to be examined on a case-by-case basis. It is my opinion that the blanket refusal by the DEC in its Memorandum of March 24, 1978 to review any plans submitted by an exempt surveyor without the signature of a professional engineer when such plans concern public sewage facilities, is clearly beyond DEC's legislative grant of authority. There may well be certain plans which design public sewage facilities which would clearly be of a minor nature, just as there might well be public sewage facilities which are clearly not of a minor nature."

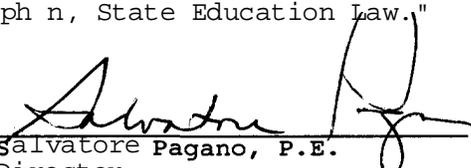
### III. GUIDANCE

1. Land surveyors who have received an exemption under State Education Law Section 7208(n) may design sanitary sewerage facilities of a minor nature including those which, in the opinion of the Department, do not require special complex design such as extreme soil conditions requiring special bedding, deep manholes, major stream or major highway crossings, or tunneling.
2. The reviewing authority (DEC or its authorized representative) must make a determination as to whether or not a sewerage project is of a minor nature. It is apparent that, in addition to the requisite stated in #1 above, the size of a project would be a prime consideration in determining whether it would belong to the minor or major category. It is considered that a sewerage project serving 100 lots would be in the "major" category.

It should be remembered that Section 7208(n) of the State Education Law specifically points out that sanitary sewerage facilities of a minor nature do not include sewage disposal or treatment plants, lift stations and pumping stations. It is judged that interceptor sewers, truck sewers and force mains are also not facilities of a minor nature.

In essence, then, the only public sewerage facilities that can be designed by the exempt land surveyor are collector sewers for a project that is considered to be of minor proportions. In order that there be no misconception about the court-granted powers of the land surveying profession, the decision favorable to the land surveyors does not permit them to design sewerage facilities of any nature for any premises that are not part of a realty subdivision. This applies to all situations for which licensing provisions of the State Education Law normally require the services of a professional engineer or architect for facilities design (i.e. shopping centers, apartment houses, restaurants, supermarkets, gasoline stations and other commercial establishments).

The decision to allow land surveyors to design public sewerage facilities applies only to those granted exemption under Section 7208(n), approximately 275 in number throughout the state. Exemption was granted to those land surveyors, licensed on or before January 1, 1971, who filed evidence satisfactory to the State Board for Engineering and Land Surveying on or before July 1, 1972, attesting that they were competent and experienced in the engineering required for design of such facilities appurtenant to subdivisions. The Board has directed that the licensee certified under this exemption shall place adjacent to his seal on all plans, specifications, plats and reports wherein this exemption is applicable, the following statement: "Signed and sealed pursuant to Section 7208, paragraph n, State Education Law."

  
 Salvatore Pagano, P.E.  
 Director  
 Division of Water

cc: Dr. Banks  
 Mr. Campbell  
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 Mr. Bruening  
 Regional Directors for Environmental Quality