

ANR Wastewater Permit Reinstated

It is not often that the judicial system forces another arm of government to drastically change course. In one of those rare instances, the Vermont Agency of Natural Resources (ANR) was forced to reinstate a permit that it had granted, and then revoked, because “the injustice of allowing the revocation of their permit easily outweighs any effect on the public interest.” *In re Lyon*, 2005 VT 63 (June 24, 2005).

In a nutshell, this case involves a wastewater permit that was granted and subsequently revoked by ANR, even though the applicants had submitted everything the regional wastewater engineer required of them. William and Ann Lyon applied for a wastewater permit from ANR. At the time of the application, the ANR regional office did not require the submission of a plan prepared by a certified septic system designer, *even though* ANR’s own wastewater rules required it. Soon thereafter, the Commissioner of the Department of Environmental Conservation issued an “Estoppel Statement,” which stated that a number of the regional offices had not required the submission of such a plan. The statement further recognized that ANR had no authority to permit wastewater systems without the submission of the plan. Nevertheless, because so many applicants had relied on the regional offices’ representations, and it would be patently unfair to enforce against permits issued during this time, ANR would not enforce against those permittees.

Even though ANR didn’t take enforcement action on its own motion, a neighbor to the Lyons petitioned ANR to revoke the permit, because of the lacking design certification. Eventually, even though the Commissioner had issued his Estoppel Statement, the Lyons’ wastewater permit was revoked. The Lyons appealed the Commissioner’s decision, which eventually reached the Vermont Supreme Court.

The Court determined there was inherent unfairness in revoking a permit where the applicants had fully relied upon the representations made by the regional wastewater engineer in their application, only to have it later revoked for failing to comply with the rules. The Court stated, “the Lyons were misinformed by – and reasonably relied upon – a duly authorized agent of the government acting within his authority . . . Therefore, the Lyons’ reliance on the Regional Engineer in this case is precisely the kind of rare circumstance that justifies estopping the State, because the injustice of allowing the revocation of their permit easily outweighs any effect on the public interest.” The doctrine of estoppel is one of fairness: It is a remedy that can be imposed by a court where one party has wrongly dictated a course of action, and the other party has relied upon that advice, to his or her detriment.

Now, more than ever before, the lesson for municipalities to take home from *Lyon* is that your zoning officials need to be wary in operating a successful permitting program. Applicants and interested persons are entitled to rely on representations made by the zoning administrator or other officials in seeking municipal permits. Permitting officials should never be too quick to offer advice as to whether an applicant can undertake a particular project. A better course of action would be to research the question. Consult

with your colleagues. Call your municipal attorney. All of these steps will promote a fair and evenhanded permitting program.

– Brian Monaghan, Staff Attorney, VLCT Municipal Assistance Center

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