

Legislative Report as Required by Act 151 - Sec. 2. Water Connection Permit Municipal
Delegation Study

House Committee on Fish, Wildlife and Water Resources
and
Senate Committee on Natural Resources and Energy

Act 151 of the 2014 Legislative session required the Agency of Natural Resources to provide recommendations on the following:

1. Improving the process for municipal delegation under 10 V.S.A. § 1976;
2. Ways of streamlining permitting and approval under 10 V.S.A. § 1973 including through partial delegation under 10 V.S.A. § 1976; and
3. A plan for outreach and education to municipalities about delegation process under 10 V.S.A. § 1976 and the provision for approval of sewer connections at the time of sewer line construction as provided under § 1-304(a)(14) of the Vermont Wastewater System and Potable Water Supply Rules.

NOTE: The language 10 V.S.A. § 1976 and § 1973 are provided in Attachment 1 of this report.

As will be seen by the following report, the Agency of Natural Resources, through the Department of Environmental Conservation's Wastewater System and Potable Water Supply (WW) program, has been taking steps in order to streamline the WW permitting process; enable the partial delegation of the WW program to municipalities; to advance professional certification strategies, and to ensure municipalities' understanding of the options available for sewer line connection approvals at the time of sewer main construction.

Improving the process for municipal delegation under 10 V.S.A. § 1976

The Department of Environmental Conservation (DEC) is currently in the process of revising the Wastewater System and Potable Water Supply Rules (WW Rules) and has taken this opportunity to review the municipal delegation process. We have found the delegation process to be reasonable, but underutilized. If a municipality submits an application containing the information needed for DEC to determine that the municipality can, and will, operate a wastewater program in accordance with the WW Rules (as required by **10 V.S.A. § 1976**), then that municipality will be delegated authority. We do not see an opportunity for streamlining the delegation process, but do see an opportunity for additional outreach to municipalities to ensure they understand they can be delegated this authority and how to obtain delegation.

We do believe that revising the part of the WW Rules that requires the delegated municipality to submit an annual report to the Department may encourage more municipalities to request program delegation. As a result, the current draft WW Rule revision reduces the number of items a delegated municipality needs to include in the annual report from 11 to 6.

Implementation of the outreach steps outlined in the last section of this legislative report (pages 3 to 5) may also help to convince more municipalities to take full or partial delegation of the WW program.

Streamlining permitting and approval under 10 V.S.A. § 1973 including through partial delegation under 10 V.S.A. § 1976.

Partial delegation

The current draft rule revision contains language that enables municipalities to request partial delegation of the Wastewater System and Potable Water Supply (WW) program. This partial delegation would enable a municipality to issue WW permits for connections to municipal sewer and water systems to new projects (i.e. buildings or structures or campgrounds) and to buildings that are undergoing a change in use. Only a rule revision is necessary to allow partial delegation of the WW program; a statutory change is not required.

In order to be granted partial delegation of the WW Program, the draft rule revision requires that the municipality own both the sanitary sewer and water main that projects in the municipality need to connect to. The benefits of this requirement are: 1) the permittee will only need to work with one permitting entity (the municipality) in order to get approvals for their project's water and sewer connections and 2) the permitting municipality will readily be able to ensure that the sanitary sewer service lines and potable water service lines have proper isolation distances from each other and that the entire project meets the design/construction standards of the WW Rules.

Current permitting issuance timeframes

The WW Program processed 2,399 permit applications between July 1, 2013 and June 30, 2014. Once a WW permit application is submitted, the average length of time it takes for a permit to be issued for a municipal connection project is 13 days. This time estimate does not count for "wait time" outside of the Department's control, which may occur when an application is incomplete and a permittee/designer needs to provide additional information. When "wait time" is included, the average number of days to issue a permit is 36. Projects involving either a change in use with an increase in the existing building's design flow or a single sewer or water service line are normally issued in less than 13 days.

Recent WW permitting improvements

1. Over the past year, DEC has utilized business process improvement strategies like Lean to gain efficiencies. The WW permitting process underwent a Kaizen/Lean process in 2006 which resulted in streamlining the permitting process (decreasing the permitting steps from 150 steps to 38 steps). This step reduction resulted in reduced permitting processing times.
2. The DEC further created the designer technical checklist to assist designers to review the completeness of the technical information needed for a complete review of the project. Although a few designers expressed they use the checklist to ensure completeness of their application, too many applications continue to lack all technical information needed to make a decision resulting in additional delays. An online permitting system will not be able to improve the lacking technical information.
3. Despite the new designer application checklist, some WW permit applications still lack information needed in order to be found administratively/technically complete. Submittal of incomplete applications is a major reason for delayed permit issuance. Ultimately, we

aim to shift to a mandatory online permitting process that will ensure only complete applications are submitted. An online permitting system has is already available but not all designers are utilizing it.

4. Administrative staff currently have the authority to issue WW permits for projects that involve a building's change in use that will result in an increase in the design flow over the existing use of the building/ structure and for projects that are constructing a sewer or a water service line. This authority is utilized based on need and ability of staff.
5. DEC no longer requires WW permits for the following types of projects:
 - The construction of water mains or new sprinkler lines into buildings when the mains or lines are not required to get a permit under Chapter 21, the Water Supply Rules.
 - The construction of sewer lines when the sewers are designed to dispose of wastes that are not defined as a wastewater, carriage water, or process wastewater. Such wastes include storm drains/floor drains for parking garages that connect to sanitary sewer mains.

Future WW permitting improvements

1. We will be providing training on what constitutes an administratively and technically complete application. Licensed Designers will receive continuing education credits for the training that they can apply to their license renewals.
2. We will be shortening the WW application form. The existing electronic application form is nine pages long; the paper application is 14 pages long. The updated online form will automatically populate data into the new electronic permitting/compliance tracking system that is currently under development (see item 3 below).
3. The current WW Rules enable technical staff to issue a permit based solely on the Designer's signed statement certifying that the information contained in the permit application package complies with the WW Rules ("professional certification permitting"). We are currently in the process of formally incorporating the professional certification permitting process into the WW permitting program. To that end, we are: creating a new WW permit and compliance tracking system that will track the quality of licensed designers' submittals; clarifying the current WW Rules through a rule revision; and increasing the quality and quantity of designer trainings in regards to filing permit applications.

A plan for outreach and education to municipalities about the delegation process and about the approval of sewer connections at the time of sewer line construction:

Past outreach and education regarding the delegation process

When the 2005 revised Wastewater System and Potable Water Supply Rules enabled municipal delegation, Regional Offices had individual discussions with certain municipalities where

development primarily were served by municipal sewer and water systems. Department staff offered to assist the municipal officials, such as in Burlington and South Burlington, in the review of soil-based wastewater systems if the municipalities decided to request delegation.

Additional outreach was provided by the WW program following the adoption of the September 29, 2007 WW Rule revision. A web page entitled “Municipal Delegation” was posted on the Division’s website that provides information to municipalities interested in receiving delegation. The link to the web page is: <http://drinkingwater.vt.gov/pomunicipaldelegation.htm>.

In 2014, the Vermont League of City and Towns offered a presentation at the Capitol Plaza Hotel in Montpelier for municipalities on the subject of delegation. The Department, along with the Towns of Colchester and Charlotte (the only two municipalities who have requested delegation of the WW program at this time), presented information about the delegation process and answered specific questions about administration of the program in those two delegated towns.

Despite this limited outreach, no other municipality has requested delegation since 2010. In order to increase delegation, the current draft of the WW Rule revision enables delegation of the part of the WW program that permits connections to municipal sewer and water systems.

With the adoption of the proposed Rule revision (estimated for fall, 2015), the program will be providing outreach to municipalities on both full and partial program delegation. Within a month after the adoption of the Rule revision, we plan to do the following outreach regarding the delegation process and the approval of sewer lines at the time of sewer line construction:

- we will seek the assistance of the Vermont League of Cities and Towns (VLCT) in preparing and distributing specific information a municipality needs to consider when deciding if they will request full or partial delegation.
- we will provide group presentations to municipal officials and licensed designers;
- a webpage on the WW program website that will describe and promote the delegation process; and
- we will send a newsletter to municipal officials and licensed designers briefing them on the full and partial delegation processes (the newsletter will focus on other changes in the revised WW Rules as well).

Outreach and education regarding the approval of sewer connections at the time of sewer line construction

Currently, when a municipality proposes to construct a sanitary sewer main, technical staff in the Regional Offices ensures that the municipality understands the options available regarding the approval/permitting of new sanitary sewer lines connecting to the new sewer main. In the majority of cases, the municipality opts not to have the sanitary sewer service lines to buildings included as part of the sanitary sewer main design; instead, the individual landowner is left responsible for obtaining the necessary permits for their connection to the sewer main after construction is complete.

The WW program has enlisted the assistance of DEC's Facilities Engineering Division (FED) in educating municipalities about the connection options. For those proposed municipal sewer projects that are being reviewed and approved by FED, FED is now asking during the early planning stages of the sewer design whether or not the municipality intends to connect existing buildings to the new sewer. This discussion provides an opportunity for either FED or the WW program to explain to the municipality what options they have on this issue.

The next quarterly newsletter from the WW Program (targeted for the first week of February 2015) will be sent to municipalities and Licensed Designers and will focus on issues involving the approval of sewer connections at the time of sewer line construction. The quarterly newsletters will continue to be a valuable outreach tool for getting information out to municipalities and Licensed Designers regarding WW program-related issues.

Finally, a webpage will be added to the WW program website which provides information to municipalities, designers and property owners regarding the various connection options that a municipality may choose from when a new sewer main is being constructed. We will request the assistance of the VLCT in this effort and to ensure municipalities are aware of this website information.

10 VSA § 1973. Permits

(a) Except as provided in this section and sections 1974 and 1978 of this title, a person shall obtain a permit from the Secretary before:

- (1) subdividing land;
- (2) creating or modifying a campground in a manner that affects a potable water supply or wastewater system or the requirements for providing potable water and wastewater disposal;
- (3) constructing, replacing, or modifying a potable water supply or wastewater system;
- (4) using or operating a failed supply or failed system;
- (5) constructing a new building or structure;
- (6) modifying an existing building or structure in a manner that increases the design flow or modifies other operational requirements of a potable water supply or wastewater system;
- (7) making a new or modified connection to a new or existing potable water supply or wastewater system; or
- (8) changing the use of a building or structure in a manner that increases the design flows or modifies other operational requirements of a potable water supply or wastewater system.

(b) Application for a permit shall be made on a form prescribed by the Secretary. The application shall be supported by such documents and information that the Secretary, by rule, deems necessary for proper application review and the issuance of a permit.

(c) When a person replaces a potable water supply or wastewater system that has been permitted, or was exempt from permitting requirements, the Secretary shall grant a variance from the technical standards if the supply or system cannot be replaced so that it is in full compliance with the rules adopted under section 1978 of this title, provided that the variance requested is the minimum necessary considering the cost of the replacement supply or system in addition to the potential impacts on human health and the environment. No variance shall be granted under this subsection if the supply or system would continue to meet the definition of a failed supply or failed system, or if the replacement supply or system allows for increases in design flows.

(d) No permit shall be issued by the Secretary unless the Secretary receives a statement from a licensed designer certifying that, in the exercise of his or her reasonable professional judgment, the design-related information submitted with the permit application is true and correct and the design included in an application for a permit complies with the rules.

(e) No permit issued by the Secretary shall be valid for a substantially completed potable water supply and wastewater system until the Secretary receives a statement from an installer or a licensed designer certifying that, in the exercise of his or her reasonable professional judgment, the installation-related information submitted is true and correct and the potable water supply and wastewater system:

(1) were installed in accordance with:

(A) the permitted design and all permit conditions; or

(B) record drawings and such record drawings are in compliance with the applicable rules, were filed with the Secretary, and are in accordance with all other permit conditions;

(2) were inspected;

(3) were properly tested; and

(4) have successfully met those performance tests.

(f)(1) The Secretary shall give deference to a certification by a licensed designer with respect to the engineering design or judgment exercised by the designer in order to minimize agency review of certified designs. Nothing in this section shall limit the responsibility of the licensed designer to comply with all standards and rules, or the authority of the Secretary to review and comment on design aspects of an application or to enforce agency rules with respect to the design or the design certification.

(2) The Secretary shall issue a permit for a new or modified connection to a water main and a sewer main or indirect discharge system from a building or structure in a designated downtown development district upon submission of an application under subsection (b) of this section that consists solely of the certification of a licensed designer, in accordance with subsection (d) of this section, and a letter from the owner of the water main and sewer main or indirect discharge system allocating the capacity needed to accommodate the new or modified connection. However, this subdivision (2) shall not apply if the Secretary finds one of the following:

(A) The Secretary has prohibited the system that submitted the allocation letter from issuing new allocation letters due to a lack of capacity.

(B) As a result of an audit of the application performed on a random basis or in response to a complaint, the system is not designed in accordance with the rules adopted under this chapter.

(g) If there is a dispute between the Secretary and a professional engineer concerning the design prepared by a professional engineer or the judgment exercised by a professional engineer, the professional engineer may request that the disputed issues be reviewed by a licensed

professional engineer employed or retained by the Secretary. The Secretary shall grant all such requests for review.

(h) All permits required under this section, all design and installation certifications required under this section, and all documents required by the rules adopted under this chapter to be filed in the town records shall be properly indexed and recorded in the land records pursuant to 24 V.S.A. §§ 1154 and 1161.

(i) Notwithstanding section 1-407 of the State Wastewater System and Potable Water Supply Rules, effective August 16, 2002, a lot that contained two single family residences, as of January 1, 1999, but did not have the State permit required at that time is eligible for a permit for the subdivision of improved lots under subdivision 1-407(a)(2) of those rules, provided that the subdivision of the lot would only create a boundary between the two single family residences and thereby place each residence on its own lot.

(j)(1) When an applicant for a permit under this section proposes a water supply or wastewater system with isolation distances that extend onto property other than the property for which the permit is sought, the permit applicant shall send by certified mail, on a form provided by the Secretary, a notice of an intent to file a permit application, including the site plan that accurately depicts all isolation distances, to any landowner affected by the proposed isolation distances at least seven calendar days prior to the date that the permit application is submitted to the Secretary.

(2) If, during the course of the Secretary's review of an application for a permit under this section, the location of a water supply or wastewater system permit is revised and the isolation distances of the revised system extend onto property other than the property for which the permit is sought, the permit applicant shall send by certified mail a copy of any revised plan to any landowner affected by the isolation distances.

(3) If, after a permit has been issued under this section, a water supply or wastewater system is not installed according to the permitted plan and the record drawings submitted under subsection (e) of this section indicate that the isolation distances of the system as constructed extend onto property other than the property on which the system is located, the permittee shall send by certified mail a notification form provided by the Secretary with a copy of the record drawings showing all isolation distances to any landowner affected by the isolation distances.

(4) A permit applicant or permittee subject to the requirements of subdivisions (1) through (3) of this subsection shall certify to the Secretary that the notices and information required by this subsection have been sent to affected landowners and shall include in the certification the name and address of all affected landowners. If the Secretary approves a permit application under this section, the permit shall not be issued to a permit applicant subject to the requirements of subdivision (2) of this subsection until seven calendar days after the permit applicant certifies to the Secretary that the notice required under this subsection has been sent to affected landowners.

10 VSA § 1976. Delegation of authority to municipalities

(a)(1) If a municipality submits a written request for delegation of this chapter, the secretary shall delegate authority to the municipality to implement and administer provisions of this chapter, the rules adopted under this chapter, and the enforcement provisions of chapter 201 of this title relating to this chapter, provided that the secretary is satisfied that the municipality:

(A) has established a process for accepting, reviewing, and processing applications and issuing permits, which shall adhere to the rules established by the secretary for potable water supplies and wastewater systems, including permits, by rule, for sewerage connections;

(B) has hired, appointed, or retained on contract, or will hire, appoint, or retain on contract, a licensed designer to perform technical work which must be done by a municipality under this section to grant permits;

(C) will take timely and appropriate enforcement actions pursuant to the authority of chapter 201 of this title;

(D) commits to reporting annually to the secretary on a form and date determined by the secretary; and

(E) will comply with all other requirements of the rules adopted under section 1978 of this title.

(2) Notwithstanding the provisions of this subsection, there shall be no delegation of this section or of section 1975 or 1978 of this title.

(b) As of July 1, 2007, those provisions of municipal ordinances and zoning bylaws that regulate potable water supplies and wastewater systems are superseded by the provisions of this chapter and the rules adopted under this chapter. However, to the extent that local ordinances and bylaws apply to potable water supplies and wastewater systems that are exempt from the permitting requirements of this chapter, and to the extent that those local ordinances and bylaws establish procedural requirements that are consistent with this chapter and the rules adopted under this chapter, those provisions of existing and any future ordinances or bylaws shall not be superseded in municipalities that receive delegation under this section.

(c) Notwithstanding 24 V.S.A. § 3633(d), municipal ordinances relating to sewage systems, which ordinances were approved before July 1984 under 18 V.S.A. § 613 by the board of health, and those approved before July 1984 by the commissioner of health, shall remain in effect unless superseded.

(d) A municipality may assess fees in an amount sufficient to support municipal services provided under this section.

(e) Notwithstanding the fact that local ordinances and bylaws may have been superseded by this chapter, a permit issued under those ordinances shall remain in effect, unless and until superseded by another permit issued pursuant to the provisions of this chapter.

(f) The secretary may review municipal implementation of this section on a random basis, or in response to a complaint, or on his or her own motion. This review may include consideration of the municipal implementation itself, as well as consideration of the practices, testing procedures employed, systems designed, system designs approved, installation procedures used, and any work associated with the performance of these tasks.