

AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Environmental Protection Rules:

Chapter 2 MUNICIPAL POLLUTION CONTROL PRIORITY SYSTEM

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Subchapter 200 PURPOSE, LEGAL AUTHORITY AND POLICY

Section 210 Purpose and Policy

The purposes of these rules are:

- (1) to obtain and maintain state water quality standards;
- (2) to make efficient use of scarce public funds by providing financial assistance, with limited exceptions, only to Publicly Owned Treatment Works (POTW) and Municipally Sponsored Privately-Owned Wastewater System (MSPOWS) projects that: abate existing public

health and/or environmental problems, and serve locally designated centers, unless there are health and/or environmental problems outside of growth centers and;

- (3) to assure there are appropriate controls on the use of the Agency of Natural Resources (ANR) funded treatment facilities in order to: minimize polluted runoff from unplanned land development, the state's fastest growing source of water contaminants; and to prevent scattered development and its negative impacts on surface and ground waters, wetlands, air quality, wildlife habitats, natural areas, threatened and endangered species, and land use patterns within the host and adjacent communities.

This rule establishes the priority system to be used by the ANR Department of Environmental Conservation (the Department) for awarding grants and loans from federal and state funds for POTW and MSPOWS projects. These rules set forth a two-tier system for determining a project's eligibility for receipt of a grant or loan from the Department.

To be eligible for a POTW or a MSPOWS project grant or loan from the Agency for the final design or construction of a new wastewater treatment facility, an increase in the treatment capacity of an existing wastewater treatment facility, and/or a sewer line extension the applicant must demonstrate that the project is designed to serve only a locally designated center, unless there are significant health and environmental problems located outside of a growth center. If a sewer line serving a growth center must be located partially outside of a designated center in order to abate an existing pollution problem or to connect a treatment plant with a growth center or to connect one or more growth centers, the municipality must demonstrate that the impacts of growth resulting from the infrastructure can be adequately managed, and will not contribute to scattered development. After an applicant has met this initial test, the rules set out a pollution-based priority system to determine the order in which POTW or MSPOWS projects will be awarded grant or loan funds.

Section 220 Legal Authorities

This rule is adopted under the authority of and in accordance with the requirements of the provisions of state law described below:

10 V.S.A. Chapter 55 and 24 V.S.A. Chapter 120 authorize grants and loans for POTW and MSPOWS projects, require the Secretary to establish priorities, authorize the Secretary to adopt rules, and require that pollution abatement projects conform with state planning requirements.

3 V.S.A. §2825(a) requires the Secretary to ensure the effective application of statutory planning policies in the administration of all ANR programs including the award of grants and loans for POTW and MSPOWS projects.

3 V.S.A. §2293 sets out policies for the state's development cabinet and all state agencies that have programs or take actions affecting land use.

3 V.S.A. Chapter 67 and 24 V.S.A. Chapter 117 require state agencies to engage in a continuing planning process to assure that programs and actions affecting land use are consistent with the State's comprehensive planning goals.

24 V.S.A. Chapter 151 sets out state policies for use and development of the State's air, water, wildlife, mineral and land resources. These policies guide Act 250 proceedings. These policies are also cross-referenced in both 10 V.S.A. Chapter 55 and 24 V.S.A. Chapter 117.

24 V.S.A. Chapter 76A sets out state policy regarding funding of infrastructure in historic and emerging downtown centers.

Subchapter 300 **TOWNS TO DEMONSTRATE THAT THE PROJECT WILL SERVE DESIGNATED CENTERS AND THAT SCATTERED DEVELOPMENT WILL NOT OCCUR**

Section 310 **Required Demonstrations**

- (a) If the applicant for a grant or loan for the final design or construction of a POTW or MSPOWS project demonstrates that: 1) the project is designed to maintain or upgrade the environmental performance of an existing wastewater treatment facility with no increase in treatment capacity; and 2) there is no planned extension of sewer lines, then no further demonstrations are required and the application will be considered in accordance with subchapter 400 of this rule.

- (b) The following requirements apply to an application for a grant or loan for the final design or construction of a MSPOWS or POTW project where the applicant proposes to: 1) establish a new wastewater treatment facility, 2) increase the treatment capacity of an existing wastewater treatment facility, and/or 3) extend sewer lines. The applicant will be required to make the following demonstrations:
 - (1) The applicant must demonstrate that the municipality has: (A) designated one or more growth centers in a duly adopted and approved municipal plan in accordance with the requirements of chapter 117 of Title 24; and (B) adopted implementing ordinances, rules, or other legally enforceable mechanisms which, except as provided in subdivision (3) below, restrict the use of any new treatment capacity to users in designated centers; and

 - (2) If the applicant proposes to run all or a portion of a sewer line outside of a designated center (for example, a line between a treatment plant and designated center or between two designated centers, or a line to abate an existing public health problem), then the applicant must demonstrate that there are no reasonable project alternatives to locating the sewer line outside

a municipally designated center and that the municipality has prepared a strategy designed to insure that the project will not contribute to scattered development and has adopted all rules, ordinances and other legally enforceable mechanisms necessary to implement the strategy; and

- (3) In the event that new sewer service is proposed for users outside of a designated center, then the applicant must also demonstrate that there are significant health and environmental problems, which are most cost-effectively addressed by providing sewer service outside the limits of a designated center. Municipalities that have been issued an order to abate pollution by the Agency pursuant to 10 V.S.A. §1277, do not have to make this demonstration.

Section 320 Department to Provide Guidance to Towns

The Secretary will issue and update, as needed, a guidance document that includes a detailed explanation of growth centers and examples of local land use planning and regulatory strategies that may be used in making the demonstrations set forth above. Such guidance will offer towns a range of options. The guidance will also take into account that there is no single approach applicable to all towns. The guidance will recognize that in order to promote compatibility with existing programs and development conditions and to account for differences in the desires of their citizenry, towns must have latitude in fashioning their approaches to designating and managing growth centers and to limiting scattered development.

Subchapter 400 PUBLIC HEALTH AND WATER QUALITY-BASED PRIORITIES

Section 410 Annual Priority List Development

Where the Secretary determines, in accordance with subsection (a) of Section 310 of these rules, that the applicant for a MSPOWS or POTW project grant or loan need not make the demonstrations required in subsection (b) of section 310 or when the Secretary determines that the applicant for a project has succeeded in making the demonstrations required in subsection (b) of section 310, then the eligibility and prioritization of the project for funding will be determined in accordance with the pollution-based priority system set out in this Subchapter.

Each year, prior to the beginning of the state fiscal year, the Department will prepare a project priority list. This document will list all projects potentially fundable from grant programs or the revolving loan program over the next five (5) year period. In addition, this list will separately identify those projects expected to be funded in the upcoming fiscal year.

The following concepts will be utilized in the list preparation:

- A. All steps of a project will be identified separately in the list, including Step I and Step II phases.
- B. Sufficient projects will be scheduled to be funded in the upcoming fiscal year to use all of the anticipated state and federal funds in the grants and the revolving loan program.
- C. Projects will be listed in priority order in groupings that reflect the funding authorizations to be used. For example CSO projects would be grouped separately since all would be funded pursuant to 10 V.S.A. section 1624a, while construction of new or upgraded sewage treatment plants, undertaken for purposes of meeting water quality standards during dry weather flow, would be grouped separately and funded pursuant to 10 V.S.A. section 1625.
- D. Projects will be scheduled to receive funds on the first year (fundable) portion of the list, either from grants or loan funds, based on their priority point rating. The projects placed on the fundable portion of the list will remain on the fundable list until the 1st day of January following the beginning of the state fiscal year for which the list is adopted. The priority list will be amended annually following January 1st to remove projects on the fundable portion of the list that have not submitted an approvable grant/loan application. Those projects may be shifted to the following fiscal year and replaced by the next highest priority-rating project that has submitted an approvable Step III funding application, together with all requisite attachments and approvals.
- E. The Step I and Step II projects necessary to support the selected Step III projects will be scheduled, as appropriate, in earlier fiscal years.
- F. The list will contain all information required by state and federal statute or regulation.

The Department will seek public comment on the proposed project list by: (a) direct mailing to municipalities, organizations and interested individuals and (b) conducting a formal public hearing. The notice of the hearing will be statewide, published in at least two newspapers having general circulation in the state, and will indicate the location(s) where copies of this priority system and the priority list may be viewed by interested persons prior to this hearing. The notice will be published at least 30 days in advance of the public hearing. At a minimum, the system and draft list will be available at the Department of Environmental Conservation's main office. In addition, a copy of this priority system and the draft list will be sent to each municipality with a proposed publicly-owned treatment works (POTW) project or a municipally sponsored privately-owned wastewater system (MSPOWS) project. The notice will solicit

comment from any interested person at any time until seven (7) days following the end of the public hearing.

The Department will respond to any comments received through the close of the comment period and, where appropriate, make changes in the proposed list. A summary of public comments and Department responses will be sent to all municipalities, organizations, and interested persons originally receiving notice of the hearing, and to any other interested persons. The Department will officially adopt the priority list at this time and any necessary documents or information will be sent to EPA.

Section 420 Annual Priority List Amendment and Revision

- A. The Department may periodically evaluate the project priority list to determine if amendments are necessary to add or delete projects from the fundable list in response to unanticipated project cost increases, project schedule delays, increased or decreased available funds or other factors. The Department may propose an amendment based upon this evaluation.
- B. Notice of proposed amendments to the priority list will be sent to all municipalities, organizations and persons on the mailing list. This notice will clearly show the proposed changes to the list, along with the reasons for the proposed changes. All parties will be given a fourteen (14) day period from the time the notice is mailed to comment on the proposed changes. If two or more municipalities request a public hearing on the proposed change, the Department will warn and hold such a hearing. This hearing will be warned in the same manner as the original public hearing, except that the warning period will be for fourteen (14) days. If no hearing is required, the Department will consider all public comment received, revise the proposal if necessary, and adopt the amendment. A copy of the adopted amendment, along with a public responsiveness summary discussing the comments received, will be sent to all parties on the mailing list.
- C. The Department may make clerical corrections to the list, remove projects that have received funding, and add Step I or Step II projects to the fundable list to use excess funds without following the public notification procedures outlined in (B) above.

Section 430 Project Rating System

- A. The project rating system shall establish the point ratings for all projects on the State project priority list. The point rating system is intended to evaluate a proposed project's impact on surface water quality, public use of the waters of the State, potential significant public health hazards, and municipalities' needs for POTW or MSPOWS improvements. The priority system establishes rating points for thirteen (13) different categories. These categories define the impacts on surface water quality and public health, and consider other

areas as required by 24 V.S.A. Chapter 120. The criteria used by the Department to assign priority points are described below.

Category I Grant Eligible Projects

All projects that qualify for State or Federal construction grants or loans, shall receive one (1) priority point.

Category II Public Health Hazards

A project, which in the department determination eliminates a significant public health hazard, shall receive five (5) points. A significant public health hazard shall be identified by the following factors:

1. The health hazard shall be declared in writing by formal action of the local health officer or the State Department of Health; and
2. The health hazard shall originate from industrial or domestic waste; and
3. The health hazard declaration must require that interim corrective measures are taken to minimize the hazard until the project is completed. Interim corrective measures might consist of, but are not limited to, pumping and hauling of sewage to remote disposal, fencing to restrict public access to school playgrounds, recreational areas and commercial areas, restriction of use or boil water orders on public/private water supplies drawn from surface waters downstream of the sewage discharge, and closing of public swimming beaches or areas.

Category IIIA Water Quality Limited Discharges – Removal of Dissolved Oxygen Consuming Pollutants or Phosphorous

A project that eliminates a substandard discharge or a CSO discharge to a segment of water designated as a water quality limited segment pursuant to Section 303(d)(1)(A) of the Clean Water Act, and where such designation is based upon the sensitivity of the receiving waters to dissolved oxygen consuming pollutants, or where the Department has determined that phosphorus removal is required to preserve water quality, shall receive six (6) points.

Category IIIB Water Quality Limited Discharges - Abatement of Existing Dissolved Oxygen or Removal of Phosphorous

A project that will eliminate a substandard or CSO discharge to a water quality limited segment as defined by Section 303(d)(1)(A) of the Clean Water Act, and where current discharges to those waters are determined by the Department to cause present violation of dissolved oxygen water quality standards at 7Q10 flow, or where the Department has

determined that phosphorus must be removed from those discharges to preserve water quality, shall receive three (3) priority points.

Category IVA Combined Sewer Overflows Lakes and Ponds

A project that will eliminate combined sewer overflows by treatment or separation of sanitary sewers where such overflows discharge directly to or just upstream of a lake or pond shall receive six (6) priority points.

Category IVB Combined Sewer Overflows – Streams

A project that will eliminate or treat existing combined sewer overflows to rivers or streams, shall receive four (4) points.

Category VA Raw Sewage Discharges - Treatment Plants

Projects that will eliminate existing raw sewage discharges to surface waters of the state through the construction of new sewage treatment plants shall receive seven (7) points.

Category VB Raw Sewage Discharges – Sewer Extensions

Sewer extension projects that eliminate raw sewage discharges, will receive three (3) points, if at least 20% of the existing units to be served are confirmed by the Department to be defined points of pollution reaching the surface waters of the state.

Category VI Primary Treated Discharges or Improvement to Meet Effluent Limits

Projects that will eliminate an existing primary treated discharge to surface waters of the State, or that provide improvements that the Department has determined are necessary to allow that plant to meet its effluent limits shall receive six (6) points.

Category VII Health and Welfare

1. Projects that eliminate pollution to defined swimming areas, shall receive two (2) priority points.
2. Projects that restore a water use not available because of existing pollution, shall receive the following points:
 - a. Restore fishing - one (1) point
 - b. Restore other use approved by the Department - one (1) point
 - c. Projects that abate existing failing septic systems that do not cause direct pollution of state waters, shall receive two (2) points.

Category VIII Population Affected

A project shall receive priority points equal to the Log (Base 10) of the population of the municipality sponsoring the project. For regional projects the total population in the participating municipalities will be used.

Category IX Cost of Comparable Credit

Projects will receive priority points equal to the total project cost divided by the population and expressed as a percentage of the median household income.

Category X Benefit - Cost Ratio

Projects will be granted priority points in this category equal to the sum of the project's priority points from Categories II through VII, divided by the estimated total cost of the proposed project (in hundreds of thousands of dollars).

- B. Computations of Rating - A project may receive points in each category of categories I through IVB but may only receive points in one category from categories VA through VI. Projects which upgrade existing treatment plants to a state or federally required higher level of treatment will not receive Category VA or VB points for the simultaneous abatement of scattered individual pollution sources. A project at an existing treatment plant, which the Department determines is necessary to allow that plant to meet its effluent limits, will receive points in Category VI. Examples of such projects would be the addition of necessary sludge storage, treatment or disposal facilities either at the sewage treatment plant or centralized at a regional sludge management facility, or the addition of necessary dechlorination equipment. CSO projects may qualify for category IIIA and B points.

The project priority rating is the total of the points from each applicable category. The point total establishes the overall priority of the project. All components of a regional project shall receive the same number of points as the highest rated component of the regional project. Each year, prior to the publication of the proposed list, the rating for each project will be re-evaluated to assure the points assigned to each project are still valid. Necessary priority point adjustments will be made at this time. All steps and segments of a project will have the same priority rating.

- C. Projects with equal priority points ratings will, from time to time, be ready to receive project funding within the same fiscal year, and a determination must be made as to which project shall be funded from limited available funds. Those determinations shall be made in the following manner:
1. Projects that have been credited with health hazard points shall be funded first.

2. Projects that are a remaining component of a regional project shall be funded second where the first component of the regional project has initiated construction. Where decisions are necessary to determine which portion of a project is ready to proceed, segmented or regional projects will be funded first, the Department will fund the treatment plant portion of these projects ahead of the sewer line construction. Where choices must be made between sewer construction portions of such projects, the Department will fund the first project that has submitted an approvable grant application.
 3. Projects that discharge to lakes or ponds will be funded third.
 4. Projects remaining after the above determinations have been made shall be funded based upon the first to submit an approvable grant or loan application with all requisite attachments and approvals.
- D. Funds available in the State Pollution Control Revolving Loan Funds will be first used to finance priority projects which are ready to proceed to construction or that are ready to initiate engineering studies. If unused monies are available in these funds after all projects that are anticipated to be ready to proceed in the current fiscal year have been placed on the priority list, the Department will use these funds for purposes enumerated in 24 V.S.A. 4757.

Subchapter 500 DEFINITIONS

- A. "Approvable Grant or Loan Application" shall mean a Federal and State grant or loan application including all requisite certifications, attachments, assurances, permits, plans and specifications approved by the Department, and evidence of a valid local bond vote authorizing adequate local funds for the project.
- B. "Designated center" shall mean a downtown development district, village center, new town center, growth center, Vermont neighborhood, or neighborhood development area designated under 24 V.S.A. chapter 76A.
- C. "Traditional Town or Village Center", as defined in 24 V.S.A. § 2791(10), means a traditional center of the community, typically comprised of a cohesive core of residential, civic, religious, and commercial buildings, arranged along a main street and intersecting streets. Industrial uses may be found within or immediately adjacent to these centers.
- D. "New or Emerging Downtown, Town or Village Center", as defined in 24 V.S.A. § 2791(11), means the area planned for or developing as a community's central business district, composed of compact, pedestrian-friendly, multistory, and mixed use development that is characteristic of a traditional downtown, supported by planned or existing urban

infrastructure, including curbed streets with sidewalks and on-street parking, stormwater treatment, sanitary sewers and public water supply.

- E. "Existing Settlement" shall mean an extant village or urban community center similar to the traditional Vermont center in that: (1) it is compact in size; (2) it contains a mix of uses, including commercial and industrial uses, and a significant residential component; (3) it is a place in which people may live and work and in which the uses largely are within walking distance of each other; and (4) it is separated from other existing settlements by rural or forested countryside. The term specifically excludes strip development.
- F. "Scattered Development" shall mean any development or subdivision that is either not physically contiguous to an existing settlement or, if contiguous to an existing settlement, is not compatible in terms of size or use. The term includes strip development.
- G. "Strip Development" shall mean commercial development oriented in a linear pattern along a highway with buildings separated by large lots each with its own parking lot and access and little, if any, pedestrian facilities between buildings.
- H. "Guidance Document": includes the *Vermont Agency of Natural Resources Growth Center and Growth Management Guidance Document*.
- I. "Substandard Discharge" shall mean any discharge of pollutants that do not meet State or Federal statutory discharge limits or which have been determined by the Department to result in violations of in-stream water quality standards.
- J. "Regional Projects" shall mean those projects where more than one municipality have agreed to jointly treat sewage, sludge, or septage from at least a portion of their respective municipalities. The project must serve a substantial portion of the municipality where only sewers are to be constructed and the interconnection must be an identified alternative to construction of an additional treatment facility. All components of the regional project must be eligible for State water pollution abatement funds. Before the Department can accept projects as a regional system, an acceptable inter-municipal agreement must be signed by the municipalities involved, or the project applicant must be a multi-municipal Fire District, Consolidated Sewer District, or Solid Waste District created under authority of Vermont Statutes.
- K. "Ready to Proceed" shall mean the submission to the Department of an approvable grant or loan application.
- L. "Primary Treatment" shall mean any treatment system in use by a municipality that does not achieve an effluent quality consistent with the Federal EPA definition of secondary treatment found in 40 CFR 133.105.

- M. "POTW or Publicly Owned Treatment Works" shall mean all sewage collecting systems, pump stations and other approved methods of sewage conveyance, all treatment works including storage and disposal systems, and all sludge handling and disposal systems that are owned by a legally constituted municipality in the State of Vermont.
- N. "Privately-Owned Wastewater System" pursuant to the definition in 24 V.S.A. §4752(10) means a wastewater conveyance, treatment, and disposal system or elements thereof that is privately owned and that handles primarily domestic type wastes.
- O. "Municipally Sponsored Privately-Owned Wastewater System" means a privately owned wastewater system supervised and financed in accordance with 24 V.S.A. §4763 by a legally constituted municipality in the State of Vermont.
- P. "State or Federal Grant or Loan Funds" shall mean all funds appropriated by the Vermont Legislature to be used by the Department under the Pollution Control Grant program under 10 V.S.A. Chapter 55, or the Water Pollution Control Revolving Loan Fund, 24 V.S.A. Chapter 120; or from appropriations made by the Federal Government for pollution control grants or loans under the Clean Water Act.
- Q. "Median Household Income" (MHI) shall mean the Median Household Income as defined by the United States Census Bureau for the municipality in question.