

NOTES OF MEETING ON ON-SITE RULES 10/29/01 IN ST. JOHNSBURY HOSTED BY  
NORTHEAST VERMONT DEVELOPMENT ASSOCIATION

*Comment: ANR is becoming a policymaker and usurping the powers of the Legislature. The Rules may be fine, but closing the 10 acre exemption is not a technical decision and ANR should not be making that decision. Many towns do not have zoning. ANR is again making policy by delaying implementation of the new siting conditions until towns have planning and land use controls. ANR has no right to do that. Towns should make their own decisions.*

**Response:** Closing the 10 acre exemption and creating new technical standards have both been legislative issues for the past nine years. Since there was gridlock again last year, the Governor decided that ANR would do all it could for comprehensive reform by rule and work with the legislature to try and get the rest of needed reform through some version of S.27. With the 10 acre exemption question decided, we hope that we can show the legislature our good faith with the revised technical standards and get movement on other important issues. The delay for planning is necessary to give towns who want to make changes to their planning and zoning time to do so. If they choose not to, the new rules will go into effect statewide in five years.

*Comment: ANR has 1000 expired stormwater discharge permits. You are rolling out a new stormwater program and now these new permit requirements (closing the 10 acre exemption). Some of these systems will require oversight for operation and maintenance. How will ANR do it all? Are you expecting to dump this all on the towns?*

**Response:** ANR is proposing to change how we do business. In many cases we will be going to permits which require less intensive review such as general permits, particularly in the stormwater program. We will be doing some similar things in the on-site program. We will be focusing on the site visits and making sure that the sites can adequately handle the sewage, and requiring the designers to be more accountable for their work.. We will require contracts to be maintained for certain systems. Towns will not have to take over the program unless they wish to.

*Comment: There is a tradition of owners of large acreages breaking off a lot for their kids. Now both the 90 acre lot and the 10 acre lot will require a new system with precise designs. You will need to hire two engineers. This will price kids out of the market for ownership.*

**Response:** The 10 acre exemption is in the rule and will be closed by a rule. The standards for systems are to provide health protection. The original thought was that if a person had a 10 acre lot and put a septic system in the middle that they could find a complying site, and if not, that no one else would be affected. That is not what happens. Developers or owners create 10-acre lots but put the houses all down on road frontage where the effective lot size is an acre or so. This is poor health protection and is also an equity issue for someone who has a complying adjoining lot that is compromised by the system on the 10-acre lot. Vermont is only one of two states that do not have jurisdiction over all on-site wastewater and water supply systems, one county in Texas with huge

depths to groundwater is the other). Towns have relied on these septic regulations to control development. It is time for the standards to reflect current science, and the land use regulation to be done by the towns as they choose. These new rules will both allow sprawl and encourage in-fill in villages. We are empowering towns and giving them time to respond. We have worked a long time with the Legislature on this issue and will continue to do so. It is appropriate to close the 10 acre exemption for health and safety reasons. We will continue to work with the legislature on consolidation of the rest of the on-site program.

*Q: Do the systems need to be installed by an engineer?*

A: No. they need to be designed by a licensed designer.

*Q: Can a contractor be a licensed designer?*

A: A contractor could be a licensed designer if s/he received the necessary training and became licensed. Installers are not required to be licensed under these rules. A licensed designer or the installer will have to certify that the system has been installed in accord with the rules.

*Q: Will a state employee check the installation?*

A: No. The installation will be certified by a designer or installer. ANR staff will be focusing on the review of the site conditions, especially the soils information.

*Q: What if my existing system fails? Will I have to move my house?*

A: Existing exempt systems are not regulated by these rules, even failed systems. You should replace such a system with the “best fix” that you can manage. Failed systems that are regulated get the “best fix” also. Variances from the rules are approved as required for such systems. Expansion of a system on a 10 acre lot after 9/1/2002 will require a permit. Expansion of a system with a permit will require an amendment.

*Q: I have a 20 acre lot with only a septic system and a well. What will I have to do?*

A: After 9/1/2002 you will have to get a permit to construct a house on the lot.

*Comment: I'll just get a junk trailer and install it to get past the deadline for jurisdiction.*

Response: That is one action to take. On the other hand if the systems are satisfactory and safe, then you would be better off getting a permit. People will do whatever they choose, as they have done in the past, even when their lots could support a complying system.

*Comment: It may cost more for an engineer than it will to get a junk trailer installed.*

*Q: What is the definition of a home-something that can't be moved?*

A: Mobile homes are houses.

*Q: Is a lot with a septic system and water supply but no house "developed"?*

A: No. There must be a house.

*Q: In Connecticut if a camp with a septic system could not meet the rules and the "best fix" cost \$100,000 then you had to do it. It costs about \$35,000 for a mound system. What is a "best fix"?*

A: A "best fix" takes into account the incremental improvement in public health or environmental protection against the increased cost as a cost benefit calculation. It does not consider the ability of the individual owner to pay for the system.

*Q: What if a individual can't meet ANR's expectations?*

A: We deal with this situation now and there is nearly always a reasonable solution. A holding tank could be a solution if necessary. If this is an existing exempt system then we have no jurisdiction. If it is currently regulated then there is a replacement area.

*Q: You have made a lot of changes to the technical standards. Were they too strict before?*

A: We had very conservative standards and they needed to be brought up to current day for some time. We have better understanding of the science. Changing them will create more land use pressures, which the local communities will have to decide how to control.

*Q: Can you build up a site to get vertical separation? Will you allow more sand?*

A: More fill doesn't get you anywhere if you don't have sufficient native soil to absorb the effluent. If the effluent will flow away, okay. Generally, adding more sand doesn't work. Most effective systems are along the contours.

*Q: If you are going to final rulemaking by the end of January, will you have both by then? Will the rules be in effect by the time the 10 acre exemption closes?*

A: Rule #1 is expected to be adopted by early March. The 10 acre exemption closes September 1, 2002. Rule #2 is expected to be adopted by May or June with any changes necessary to accommodate bills passed by the Legislature.

*Q: Are you closing the 10 acre exemption first? The legislature will object if Rule #2 is not in place.*

A: This reflects the old debate that has been going on for many years. Our phase-in takes both sides of the debate into account. The environmentalists want only Rule#1. Some others want only Rule#2. We have been consistent in our approach. This accommodates both sides as best we can.

*Q: What gives ANR the authority to close the 10 acre exemption? The legislature said no many times.*

A: the legislature enacted closure of the exemption in H.206, H.444, and S.27 over the long history of this reform process. People on both sides of the legislature have said close the exemption. They just want a way out if ANR does something stupid. They know all lots are not buildable. The new rules are the most flexible we can be. This is a very good attempt to meet the legislative intent as we understand it.

*Comment; This proposal does address some of the concerns voiced by legislators.*

*Comment: This is a good job of solving an issue that should have been resolved 30 years ago.*