

**Draft**

State of Vermont  
Agency of Natural Resources  
Department of Environmental Conservation

Wastewater Management Division  
The Sewing Building  
103 South Main Street  
Waterbury, Vermont 05671-0405

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**Environmental Protection Rules**

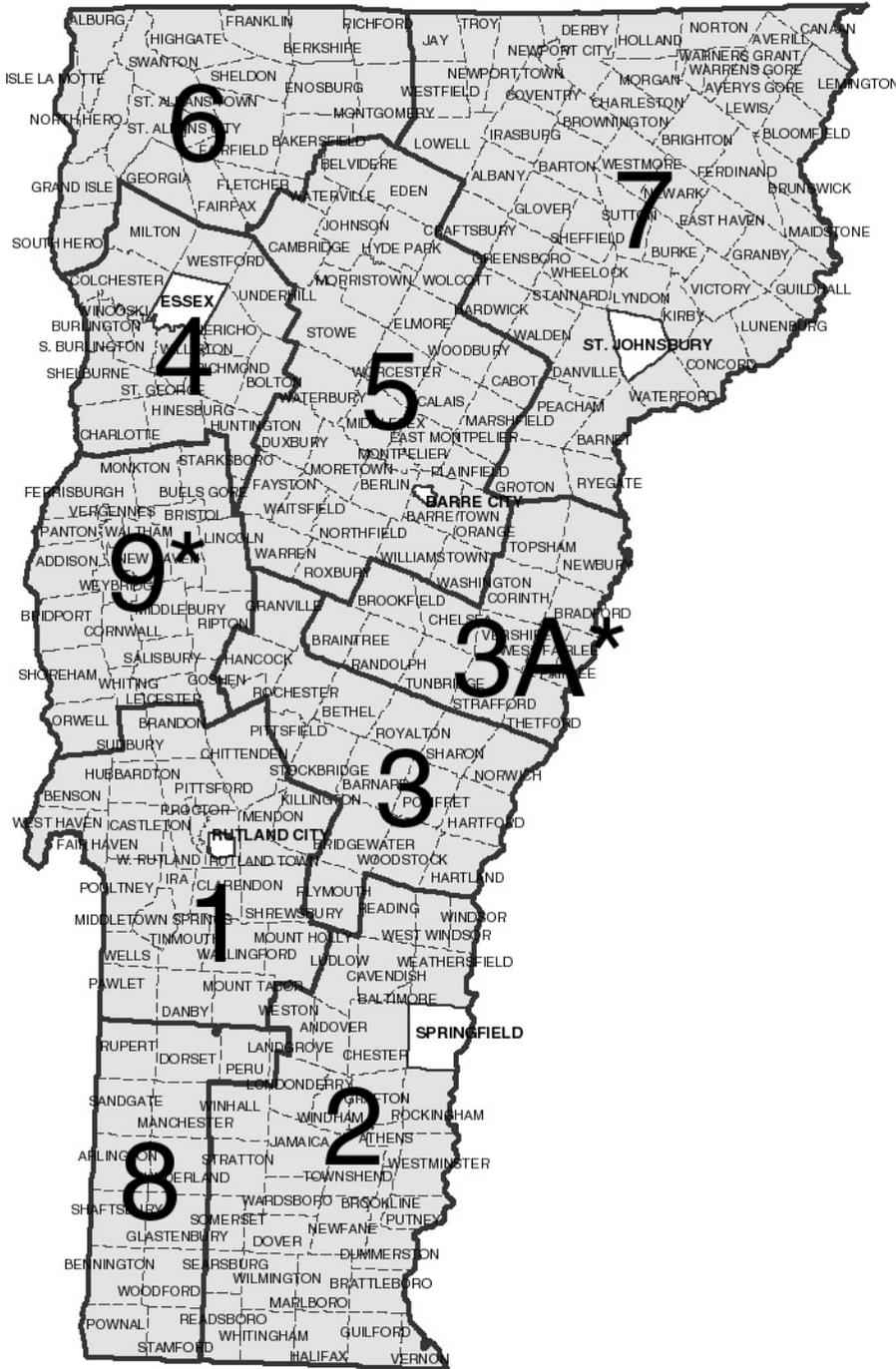
**Chapter 1**

**Wastewater System and Potable Water Supply Rules**

**Effective – \_\_\_\_\_, 2002**

# REGIONAL OFFICES

## AGENCY OF NATURAL RESOURCES (ANR) DISTRICT ENVIRONMENTAL COMMISSIONS (ACT 250) PERMIT SPECIALISTS



**DISTRICTS 1 & 8**  
450 Asa Bloomer State Office Bldg.  
Merchants Row  
Rutland, VT 05701-5903  
**Permit Specialist 786-5907**  
**Act 250 786-5920**  
**ANR Permits 786-5900**  
**River Management 786-5906**

**DISTRICTS 2 & 3**  
100 Mineral St, Ste #303  
Springfield, VT 05156  
**Permit Specialist 885-8850**  
**Act 250 & ANR Permits 885-8855**  
**River Management 786-5906**

**DISTRICTS 4, 6, & 9**  
111 West Street  
Essex Junction, VT 05452  
**Permit Specialist 879-5676**  
**Act 250 879-5614**  
**ANR Permits (Dist #4, 6) 879-5656**  
**ANR Permits (Dist # 9) 786-5900**  
**River Management 241-3757**

**DISTRICTS 3A & 5**  
324 North Main Street  
Barre, VT 05641  
**Permit Specialist (Both) 476-0195**  
**Act 250 (Dist # 3A) 885-8855**  
**Act 250 (Dist # 5) 476-0185**  
**ANR Permits (Both Dist) 476-0190**  
**River Management 241-3757**

**DISTRICT 7**  
1229 Portland St-Ste 201  
St. Johnsbury, VT 05819  
**Permit Specialist (Tues) 751-0127**  
**Act 250 751-0120**  
**ANR Permits 751-0130**  
**River Management 751-0129**

**3A\* NOTE:**

Towns in District 3A, contact the Springfield Office for Act 250 Permits. For Water Supply, Waster Disposal and Subdivision Permits, District 3A must contact the Barre Office.

**9\* NOTE:**

Towns in District 9, contact the Essex Junction Office for Act 250 Permits. For Water Supply, Wastewater Disposal and Subdivision Permits, contact the Rutland Office.

## Table of Contents

### Subchapter 1. Scope, Purpose and Authority

- §1-101 Scope...5
- §1-102 Purpose...5
- §1-103 Authority...6

### Subchapter 2 Definitions

- §1-201 Definitions...7

### Subchapter 3 Administration

- §1-301 Technical Assistance and Project Review...12
- §1-302 Application for Permits...12
- §1-303 Permit Filing and Effect of Permits...18
- §1-304 Administrative Reconsideration of Permitting Decisions...19
- §1-305 Appeal of Final Agency Action...20
- §1-306 Revocation of Permits...20
- §1-307 Declaratory Rulings...22
- §1-308 Variances...23
- §1-309 Innovative/Alternative Systems and Products: General Use...24
- §1-310 Innovative/Alternative Systems and Products: Pilot Projects...24
- §1-311 Innovative/Alternative Systems and Products: Experimental Designs...25
- §1-312 Application Process for Innovative/Alternative Systems and Products...26
- §1-313 Certification of Site Technicians...30
- §1-314 Enforcement Against Designers and/or Installers...33
- §1-315 Fees

### Subchapter 4 Subdivision

- §1-401 Applicability...34
- §1-402 Definitions...34
- §1-403 Permit Required...38
- §1-404 Exemptions...38
- §1-405 Limited Conditional Amnesty...39
- §1-406 Subdivision of Improved Lots...41
- §1-407 Permitting Standards for Potable Water Supplies...42
- §1-408 Permitting Standards for Wastewater Systems...42

## Subchapter 5 Public buildings

- § 1-501 Applicability...43
- § 1-502 Permit Required...43
- § 1-503 Exemptions...44
- § 1-504 Site or Foundation Approval...46
- § 1-505 Modification of Preexisting Building or Structures...47
- § 1-506 Home Occupations...47
- § 1-507 Permitting Standards for Potable Water Supplies...48
- § 1-508 Permitting Standards for Wastewater Systems...48
- § 1-509 Special Permitting Standards for Public Schools...50

## Subchapter 6 Campgrounds

- § 1-601 Applicability...51
- § 1-602 Definitions...51
- § 1-603 Permit Required...51
- § 1-604 Exemptions...52
- § 1-605 Permitting Standards...52

## Subchapter 7 Mobile Home Parks

- § 1-701 Applicability...53
- § 1-702 Definitions...53
- § 1-703 Permit Required...54
- § 1-704 Exemptions...55
- § 1-705 Basic Regulations...55
- § 1-706 Bonus for Improved Facilities and Layout...56
- § 1-707 Site Plan Review; Applications...57

## Subchapter 8 Wastewater Disposal Systems

- §1-801 General Requirements...59
- §1-802 Minimum Site Conditions...59
- §1-803 Design Flow...61
- §1-804 Building Sewers, Sewer Collection Systems, and Lift Stations...67
- §1-805 Soil and Site Evaluations...67
- §1-806 Groundwater Level Monitoring...68
- §1-807 Septic Tanks...70
- §1-808 Grease Interceptor...70
- §1-809 Dosing and Pressure Distribution System Design...71
- §1-810 Absorption Trenches...72
- §1-811 Absorption Beds...71
- §1-812 Spray Disposal Systems...76
- §1-813 Monitoring and Operations...79
- §1-814 Construction...79

§1-815 On-Farm Treatment and Disposal of Food Processing Wastewater...	80
§1-816 Site Modifications...	80
§1-817 Sand Filters...	100
§1-818 Filtrate Effluent Disposal Systems...	109
§1-819 Disposal of Wastes from Pump Out Facilities for Marine Sanitary Holding Tanks...	111
§ 1-820 Holding Tanks...	112

#### Subchapter 9 Municipal Ordinances

§ 1-901 Applicability...	114
§ 1-902 Minimum Standards...	114
§ 1-903 Approval of Ordinances...	114

#### Appendices

Appendix 1-A Design Guidelines...	115
Appendix 2-A Soil Mottles...	131
Appendix 3-A Septic Tank Specifications and Maintenance...	133
Appendix 4-A Percolation Test Procedures...	135
Appendix 5-A Minimum Isolation Distances...	136

## **Subchapter 1 – Scope, Purpose and Authority**

### **§1-101        Scope**

- (a) These rules apply to subdivision of land, and construction, modification and changes in use of buildings or structures, mobile home parks, tent and trailer campgrounds, and construction and operation of their related potable water supplies and wastewater disposal systems.
- (b) These rules regulate soil-based disposal systems with design flows of less than 6500 gallons per day, and sewage connections of any size.

### **§1-102        Purpose**

- (a) The purpose of these rules is to:
  - (1) Prevent the creation of health hazards and unsanitary conditions including, but not limited to, surfacing sewage and the pollution or contamination of potable water supplies, groundwater and surface water;
  - (2) Insure the availability of an adequate supply of potable water;
  - (3) Insure the provision of adequate effluent dispersal and drainage as related to the proper functioning of potable water supplies and wastewater systems;
  - (4) Insure that potable water supplies and wastewater systems are designed, constructed, operated and maintained in a manner which promotes sanitary and healthful conditions and protects against groundwater or surface water pollution;
  - (5) Insure that potable water supplies and wastewater systems are designed, constructed, operated and maintained in a manner that supports the intended use of the supplies and systems with respect to reliability, incremental costs, and sustainability; and
  - (6) Insure that owners of potable water supplies and wastewater systems permitted under these rules have knowledge of their system's design, its operation and maintenance requirements, and their responsibilities for the satisfactory functioning of the systems.
- (b) Basic performance criteria for the design, operation and maintenance of wastewater systems include the principle that wastewater systems, unless the permitted design requires otherwise, not allow wastewater to be exposed to the open air, pool on the surface of the ground, discharge directly to surface water, or back up into a building or structure;

- (c) While accomplishing the purposes of these rules, it is the express intent of the Department to encourage innovation, allow maximum flexibility in design, and minimize the amount of time necessary to process applications.

**§1-103 Authority**

- (a) These rules are adopted under the authority of the Secretary pursuant to Title 3 V.S.A. §§808, 2822 (f), (i) and (j), 2827, and 2873 (a) and (c); 10 V.S.A. Chapters 61 and 153, and 18 V.S.A. §§102, 1203, 1218 and 1221b; and 24 V.S.A. §§3631 - 3633.
- (b) These rules supersede the existing Small Scale Wastewater Treatment and Disposal Rules, which were effective on August 8, 1996, and amended on \_\_\_\_\_.
- (c) These rules are not intended to affect other existing regulations, including but not limited to Vermont Health Regulations, Chapter 5, Subchapter 2 (Food Service Establishments), 3 (Schoolhouse Regulations), 4 (Food Establishments – not restaurants), Subchapter 14 (Day Care Facilities) and Subchapter 16 (Rental Housing Health Code).
- (d) These rules do not limit the powers of state or local authorities to control existing or potential threats to human health or the environment, or to limit the exercise of other authorities to regulate human health, safety and welfare.

## Subchapter 2 - Definitions

### §1-201 Definitions

As used in these regulations, the following terms shall have the specified meaning. If a term is not defined, it shall have its common meaning:

- (a) **Absorption Bed** - means a disposal field that is a shallow excavation in the ground more than 48” wide, lined with crushed stone that releases wastewater into the soil through perforated distribution lines.
- (b) **Absorption Trench** - means a disposal field that is a shallow ditch with vertical sides lined with crushed stone 48” or less in width that releases wastewater into the soil through perforated distribution lines.
- (c) **Agency** - means the Agency of Natural Resources.
- (d) **Applicant** – means the owner of the land on which a project is located.
- (e) **Bedrock** – means both solid impervious ledge, and loose, slabby, or weathered rock and shale which are not soil and provide essentially no treatment of sewage effluent.
- (f) **Board** - means the Vermont Water Resources Board.
- (g) **Building or structure** – means a building or structure whose useful occupancy or use requires the construction or modification of a potable water supply or wastewater system.
- (h) **Change in use** – means increasing the number of permitted users/employees, converting to a different type of use such as from a residence to a restaurant or office space, change from seasonal use to year around use, and other changes that affect the volume of water and/or wastewater the nature of the effluent, or the operational requirements of the potable water supply or wastewater system.
- (i) **Commissioner** - means the Commissioner of the Department or her/his designated representative.
- (j) **Critical Depth** - means the minimum depth below the ground surface of the monitored groundwater table that determines the conditions for site-specific wastewater system designs.
- (k) **Crushed stone** - means clean, durable stone no smaller than ¾” or larger than 1-1/2” in diameter.
- (l) **Department** - means the Department of Environmental Conservation.

- (m) **Design Flow** - means the flows, set by Appendix 1-8A of Subchapter 8 of these rules and Table A2-1 of the Vermont Water Supply Rules, that establish the size of the potable water supply and wastewater system serving a lot, building or structure, or campground.
- (n) **Designer** – means:
  - (1) A Professional Engineer practicing within the scope of his or her engineering specialty and who is knowledgeable in the field of sanitary engineering as it applies to potable water supplies and wastewater systems; or
  - (2) A Certified Site Technician operating in a manner consistent with the requirements of his or her certification issued under § 1-314 of these rules.
- (o) **Desk Top Hydrogeologic Analysis** – means a hydrogeologic analysis that is based on assumptions about the hydraulic capacity of the soils on a specific site. The hydrogeologist will examine the test pits, and based on the soil properties, will assign a conservative estimate of the hydraulic conductivity for the soil. Based on this conservative assumption, the hydrogeologist will calculate the site’s hydraulic capacity without the expense of doing a site specific test.
- (p) **Director** - means the Director of the Division or her/his designated representative.
- (q) **Division** - means the Wastewater Management Division of the Department.
- (r) **Elevation** - means height above mean sea level, using the U.S. Geological Survey datums.
- (s) **Enhanced prescriptive designs** – means those designs for sites with less than 24” of naturally occurring permeable soil above bedrock and the seasonal high water table that can be designed using generally accepted assumptions about the hydraulic capacity of soils on a specific site, or through a Desk Top Hydrogeologic Analysis.
- (t) **Failed supply** - means a potable water supply: that is contaminated so that it is rendered not potable; that is providing an insufficient quantity of water to maintain the permitted use of the building or structure or, if unpermitted, to maintain the usual and customary uses of the building or structure; or where the source, treatment, or conveyance equipment used to provide potable water is broken or inadequate. Notwithstanding the provisions above, a potable water supply shall not be a failed supply if these effects can be and are remedied solely by minor repairs, including the repair of a broken pipe leading from a building or structure to a well. In addition, if a project is served by multiple potable water supplies, the failure of one supply will not require the issuance of a permit for any other supply that is not in a state of failure.
- (u)(1) **Failed system** - means a wastewater system that is functioning in a manner;

- (A) that allows wastewater to be exposed to the open air, pool on the surface of the ground, discharge directly to surface water, or back up into a building or structure, unless in any of these instances the approved design of the system specifically requires the system to function in such a manner; or
  - (B) so that a potable water supply is contaminated and rendered not potable; or
  - (C) that presents a threat to human health
- (2) Notwithstanding the provisions above, a system shall not be a failed system if:
- (A) these effects can be and are remedied solely by minor repairs, including the repair of a broken pipe leading from a building or structure to the septic tank, replacement of a cracked or broken septic tank, or replacement of a broken pump; or
  - (B) these effects have lasted for only a brief period of time, the cause of the failure has been determined to be an unusual and non-recurring event, and the system has recovered from the state of failure. Systems which have recurring, continuing, or seasonal failures shall be considered to be failed systems.
- (3) If a project is served by multiple wastewater systems, the failure of one system will not require the issuance of a permit for any other system that is not in a state of failure.
- (v) **Filtrate effluent** – means effluent that has been treated to reduce the Biochemical Oxygen Demand and Total Suspended Solids to 30 mg/l or less each.
  - (w) **Flood plain or area of special flood hazard** - means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. This is also known as the 100 year plain.
  - (x) **Floodway** - means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the 100 year frequency flood without cumulatively increasing the water surface elevation more than one foot.
  - (y) **Graywater** – means the wastewater from normal domestic activities such as bathing, clothes washing, food preparation, and cleaning but excluding wastewater from toilets.
  - (z) **Qualified hydrogeologist** - means a person with training or experience in bedrock geology, glacial geology and groundwater hydrology sufficient to adequately prepare the hydrogeologic studies and analyses required by these rules.

- (aa) **Impervious soil or subsoil** – means a soil layer with a percolation rate that is slower than 120 minutes per inch.
- (bb) **Installer** - means a person who constructs a potable water supply and/or wastewater system serving or intended to serve a lot, building or structure, or campground. Installer does not mean the owner of a owner occupied single family residence who constructs a potable water supply and/or wastewater system to serve such residence.
- (cc) **Minimum site conditions** – means those naturally occurring conditions related to soil permeability, soil depth, depth to seasonal high water table, and slope that must exist in order to construct any soil based wastewater system.
- (dd) **Municipality** - means a town, city, incorporated village or unincorporated village or gore.
- (ee) **Perched water table** – means a water table that forms in the upper horizons of some soils because layers with low permeability overlie layers with higher permeability. Under these rules, a perched water table is the seasonal high water table and shall be treated as such.
- (ff) **Performance based design** – means a design based on site specific hydrogeologic testing that demonstrates the site’s ability to function in accord with these rules.
- (gg) **Person** - means any individual, partnership, company, corporation, association, unincorporated association, joint venture, trust, municipality, the state of Vermont or any agency, department or subdivision of the state, federal agency, or any other legal or commercial entity.
- (hh) **Potable Water Supply** - means the source, treatment and conveyance equipment used to provide water used or intended to be used for human consumption, washing, bathing, the preparation of food or laundering.
- (ii) **Prescriptive design** – means a wastewater system design based on at least 24” of naturally occurring, permeable soil above bedrock and the seasonal high water table, such as a traditional septic tank and leachfield design. (See enhanced prescriptive and performance based designs for alternatives to Prescriptive design.)
- (jj) **Primary Area** - means the area reserved for or containing the original wastewater system.
- (kk) **Project** – means all lots, buildings, structures, campgrounds, potable water supplies and wastewater systems for which a particular permit application is submitted.
- (ll) **Professional engineer** - means a person registered to practice engineering in the State of Vermont acting within the authority of his or her license.

- (mm) **Replacement Area** - means the area reserved for a wastewater system that may be constructed in the event the wastewater system in the primary area fails or is removed from service.
- (nn) **Seasonal high water table** – means the highest elevation that the water table normally reaches during the seasonally wet times of the year. This is determined by soil examination or groundwater level monitoring as described in the rules.
- (oo) **Secretary** - means the Secretary of the Agency or her/his designated representative
- (pp) **Sewage** - means sanitary waste or used water from any building, including but not limited to carriage water, shower and wash water, and process wastewater. For purposes of these rules, storm water shall not be considered sewage.
- (qq) **Single Lot Subdivision** – means dividing a lot so that one, and not more than one, lot of less than ten acres is created during the period of two years ending with that act of subdivision. If, upon the act of division, there exists a newly created lot and a remaining original lot, both of which are less than ten acres in area, both shall be considered single lot subdivisions; however, any further division of either of these two lots shall be eligible for classification as a single lot subdivision only after the expiration of four years.
- (rr) **Site technician** - means a person who is certified under the provisions of these rules.
- (ss) **Soil based disposal system** – means a system that depends on naturally occurring soil to absorb the effluent from a wastewater disposal system and to transmit the wastewater away from the site without any overland flow. Soil based disposal systems consist of a septic tank with leachfield, an advanced treatment system with leachfield, or a spray disposal system.
- (tt) **Wastewater system** - means any piping, pumping, treatment or disposal system used for the conveyance and treatment of domestic, commercial or industrial waterborne wastes.

## Subchapter 3 – Administration

### § 1-301 Technical Assistance and Project Review

- (a) The Department has permit specialists available to assist applicants in identifying the applicability of specific permit programs to their projects. These permit specialists complete a Project Review Sheet, which, based on the information and description provided by the applicant, initially identify what permits are required for a project.
- (b) A prospective applicant should request a Project Review Sheet from the permit specialist or district coordinator in the early planning stages of a project so that all potential regulatory requirements are identified.
- (c) The Secretary reserves the option to issue a permit without prior detailed review of the potable water supply or wastewater design, and to rely on the certification of the designer that the design complies in all respects with the requirements of these rules and the Vermont Water Supply Rules.

### § 1-302 Application for Permits

- (a) **Applications:** Application for permits must be submitted to the appropriate Agency regional office. See the map of regional office areas on page \_\_\_\_.
- (b) **Preparation of Applications:**
  - (1) Designs: All plans for potable water supplies and wastewater systems submitted for approval shall be prepared by a designer. Designs must be accompanied by a certification, signed and dated by a designer, which states:

"I hereby certify that all the design-related information submitted with this application is true and correct, and that, to the best of my knowledge and belief and in the exercise of my professional judgment, the design included in this application for a permit complies in all respects with the Vermont Wastewater System and Potable Water Supply Rules and the Vermont Water Supply Rules.
  - (2) Hydrogeologic Studies: Where hydrogeologic studies are required, they shall be performed by a qualified hydrogeologist who is a designer or who is working under the supervision of a designer.
  - (3) Flagging: Proposed wastewater disposal areas and potable water supply well locations shall be accurately flagged in the field prior to filing an application. Final approved locations shall be flagged and shall be retained until construction is complete.

- (c) **Content of Application:** An application for either a subdivision permit or a water supply and wastewater permit shall contain the following information:
- (1) General Content:
    - (A) Name and location of the proposed project;
    - (B) Design flow of the project's wastewater system(s) and potable water supply(ies);
    - (C) Name and address of the applicant, and the landowner if different from the applicant;
    - (D) Signature of the applicant, and any co-applicants;
    - (E) Applicable fee as required by 3 V.S.A. section 2822;
    - (F) Name and address of the designer who designed the project;
    - (G) A statement of the purpose of the project, including the intended use of land after subdivision or improvement, such as residential, single family, 2-family, multiple housing, commercial, industrial, recreational, or agricultural;
    - (H) A statement of the type of potable water supply proposed for the project, such as individual systems on each lot, community system, or municipal system;
    - (I) A statement of the type of wastewater system proposed for the project, such as individual soil-based system on each lot, community soil-based system, or municipal system;
    - (J) A description of the existing use(s) of adjacent properties, including the locations of all existing and/or permitted water supplies (potable and non-potable) and wastewater systems that may be potentially affected by the project or which may potentially affect the project design;
    - (K) If the potable water supply or wastewater system is located on a different lot of land than the lot on which the building, structure or campground which it will be serving is located, evidence of permanent legal access to the supply or system for construction, operation and maintenance must be submitted; and
    - (L) Such additional information as the secretary deems necessary to determine compliance with these rules.

- (2) Plot Plan: An application shall also include a detailed plot plan of the proposed project drawn to an accurate scale of 1" = 100' or larger showing:
- (A) The location and dimensions of the land involved, with North arrow showing orientation;
  - (B) The scale of the plan, preparer's signature and date of preparation and revision(s) clearly indicated;
  - (C) A permanent benchmark shall be established and shown on the plan.
  - (D) Existing and proposed topographic contours. A minimum of five (5) foot contour intervals. At least 90% of the contours shall be accurate within one-half contour interval and no inaccuracies shall exceed one contour interval. This plan shall include the location of all outcroppings and existing and proposed embankments. The designer shall be responsible for the accuracy of the contour information on the plot plan in areas of the project where contours are of critical importance (wastewater system disposal areas, sewer lines, potable water supply source locations etc.). Photogrammetric contour maps may be used to show the general contour of the land in less critical areas.
  - (E) When lots are being subdivided, the location of all existing and proposed lots (including pre-existing and existing exempt lots), their dimensions and area;
  - (F) The location of all existing and proposed property lines, easements, rights-of-way, parking areas, streets, parks, playgrounds and open spaces;
  - (G) The location of all standing and flowing waters and wetlands on the lot on which the project is located, including but not limited to lakes, ponds, brooks, rivers, streams, swamps, bogs, sedge meadows, and marshes; and the location of all existing and/or permitted potable water supplies;
  - (H) The location of all drainage courses, natural or artificial, existing and proposed, within or immediately bordering the lot on which the project is located, including identification of surface drainage patterns and details regarding stormwater management improvements;
  - (I) The location and elevation of any applicable flood prone area on the lot on which the project is located, including the location of any flood plain or hazard area designated by the Secretary, or areas specified in

other official flood plain studies, including calculations and measurements showing the flood plain level or hazard area dimensions. At the discretion of the Secretary, the applicant may be required to submit additional information verifying the location of the flood prone areas; and

- (J) Detail sheets as may be needed to accurately portray the project, at a minimum including those aspects specified in Section 302(c)(3).
- (3) Detail Sheets. Detail sheets shall include building plans drawn to a scale of at least 1" = 100' and plans for potable water supplies and wastewater systems drawn to a scale of at least 1" = 30', that include:
- (A) The location of all existing and proposed buildings and building remnants on the lot on which the project is located, such as previous foundations and excavations;
  - (B) The location and detail of all existing and proposed wastewater system components on the lot on which the project is located such as septic tanks, treatment units, sewers, pump stations, siphons, disposal fields, and piping, including the location of replacement areas; and
  - (C) The location of all existing and proposed potable water supply sources on the lot on which the project is located, including any source protection areas, and the location and detail of the project's potable water supply components such as pipelines, pumphouses and reservoirs.
- (4) Soil Data. Soil data must be included in the application as follows:
- (A) If a project or any portion of a project is to be served by a publicly or privately owned wastewater treatment plant, no soil data is required for project or portion of a project served by the plant;
  - (B) If the project or a portion of the project is not served by a wastewater treatment plant, the soil and site evaluation report required under Section 1-805 of these rules must be submitted; and
  - (C) The designer shall submit the results of all soils tests or investigations performed for the project, whether or not they were used to support the project design.
- (5) Basis of design calculations: The designer shall include with the application, a copy of his/her basis of design for the complete potable water supply and wastewater system. The calculations shall include all values used and any assumptions made.

- (6) Flow Metering: For any application for which flow metering will be the basis of a request for increase in flow or for a new project, a designer shall verify the accuracy of the flow meters, ensure that all water related to the project is measured, and ensure that the system has been maintained and operated so that valid information is collected.
- (7) Construction details: Each application shall contain plans, material specifications and construction specifications sufficient for construction of the potable water supply and wastewater system and shall include, as applicable:
- (A) Lists of all materials to be used and specifications for those materials;
  - (B) Invert elevations;
  - (C) Final grades;
  - (D) Details of all buildings or structures, including structural details where required;
  - (E) Specifications for potable water supply and wastewater system components, such as treatment units, pipelines, sewer lines, pumps, etc.;
  - (F) The make, size and model numbers of all equipment to be used;
  - (G) Specifications on methods of installation, performance standards, quality of workmanship; and
  - (H) Any other information necessary for adequate construction of the potable water supply or wastewater system.
- (8) Waiver of Required Information: For projects that require a permit but which present a negligible potential for adverse environmental impact, the Secretary may waive submission of any of the specific information required in subdivisions (1)-(7) above as he or she deems appropriate.
- (9) Format. The Secretary may require information to be submitted in a standard format in order to expedite project review.

(d) **Review of Applications:**

- (1) Within 10 days of receipt of an application, the Secretary shall send a notice of receipt to the applicant. The notice of receipt shall either state that the application is administratively complete, or that the application is incomplete and therefore inadequate for review. If the notice of receipt indicates that the application is complete, a copy of the notice shall be sent to the municipality where the project is located. When an application is deemed incomplete, the Secretary shall identify the deficiencies which must be corrected to complete the application;
- (2) Within 60 days of issuance of the notice of receipt, the Secretary shall issue a written decision on the project. The decision shall be in the form of a Permit for approvals; a Denial of Application for denials; or a review letter specifying the Secretary's evaluation of the information submitted and any further information needed to complete the technical review;
- (3) The Secretary shall reply to a response to a review letter within 30 days of receipt;
- (4) Notwithstanding other provisions of this section, for subdivision permit applications, a permit will be issued to the applicant if the Secretary fails to approve or deny the application within 60 days of the issuance of the notice of receipt of the application. Technically incomplete applications for subdivision shall be denied within this timeframe, and any reapplication shall require a new fee. Upon request by the applicant, the Secretary may continue the review of an otherwise incomplete subdivision application through the review letter and response process identified above, provided the applicant waives his or her right to an automatic permit approval under 18 V.S.A. 1218.

(e) **Permit Issuance or Denial:**

- (1) If the Secretary approves an application, he or she shall issue a permit to the applicant enabling the project to proceed in accord with the terms of the permit as approved. The Secretary may include any condition in a permit that he or she deems necessary to protect human health and the environment or to satisfy the purposes and requirements of these rules, including, but not limited to, requirements for operation and maintenance. No person shall proceed with a project except in accord with the terms and conditions of the permit.
- (2) The Secretary may deny an application in writing for one or more of the following reasons:

- (A) The site conditions are not suitable for a soil-based wastewater system or potable water supply, or where an unreasonable burden will be placed on a municipal or private sewer system or potable water supply;
  - (B) The proposed project does not meet the technical requirements set forth in these rules;
  - (C) The information submitted is not sufficient to make a determination that the proposed project can be developed in accord with these rules;
  - (D) An applicant has failed to respond to a request for additional information within 30 days of receipt of a review letter;
  - (E) The information submitted is determined to be in error; or
  - (F) Conditions exist or may be created which may endanger public health.
- (3) No permit shall be issued by the secretary unless the secretary receives a statement from a designer certifying that, to the best of his or her knowledge and belief and in the exercise of his or her professional judgment, the design included in the application for the permit complies with these rules and the Vermont Water Supply Rules.

(f) **Withdrawal of Applications:**

An applicant may withdraw an application without prejudice at any time until the Secretary renders a decision on the project. If the application is withdrawn prior to initiation of technical review, the application fee will be refunded. No fee shall be refunded once technical review has begun on an application.

**§ 1-303 Permit Filing and Effect of Permits**

- (a) The Secretary shall forward a copy of all permits and/or denials to the municipal planning commission for the municipality in which the project is located, or municipal clerk in municipalities without a planning commission.
- (b) Each permit shall be filed by the permittee on the land records of the municipality in which the project is located prior to commencement of any activity authorized under that permit. The permittee shall be responsible to ensure that all required certifications are also recorded on the land records of the municipality in which the project is located, and that copies of all certifications are sent to the Secretary.
- (c) No permit issued by the secretary shall be valid for a substantially completed potable water supply or wastewater system until the secretary receives a statement from a

designer or the installer certifying that, to the best of his or her knowledge and belief and in the exercise of his or her professional judgment, the potable water supply and wastewater system have been installed in accordance with the permitted design and were properly tested and successfully met those performance tests.

- (d) Construction and operation of a potable water supply or wastewater system as permitted does not relieve the permittee from the responsibility to operate a functioning system or supply.
- (e) Permits issued under these rules shall run with the land.
- (f) The Secretary, by issuing permits under these rules, accepts no legal responsibility for any damage, direct or indirect, of whatever nature and by whomever suffered, arising out of the permitted project.
- (g) Permits do not convey any property rights in either real or personal property, or any exclusive privileges, nor do they authorize any infringement of federal, state or local laws or regulations.

**§ 1-304      Administrative Reconsideration of Permitting Decisions**

- (a) An applicant, or following issuance of a permit, a permittee or any person whose interests are directly affected by the permitted project, may request that a decision made in a regional office be reviewed by the Regional Office Programs Manager. The decision shall be issued in writing within 30 days.
- (b) Any person who has requested a reconsideration under subsection (a) of this section may request that a decision of the Regional Office Programs Manager be reviewed by the Director using the following procedures:
  - (1) The person shall submit a written request for reconsideration to the Director. This request must specify which aspects of the decision are at issue, the reasons why the person believes the decision to be in error, and the decision requested of the Director.
  - (2) As soon as possible but no later than 15 days after receipt of the request, the Director shall convene a meeting with affected persons, their representatives and Division personnel. The Director may call on other individuals within or outside the Department who have expertise appropriate to the case to assist in her/his review.
  - (3) The Director shall issue a written decision within 15 days of the meeting. This time period may be extended if the affected persons agree.

- (c) Any person who requested a reconsideration under subsection (b) above may submit a written request for reconsideration of the Director's decision to the Commissioner using the following procedure:
  - (1) The person shall submit a written request for reconsideration to the Commissioner. This request must specify which aspects of the decision are at issue, the reasons why the person believes the decision to be in error, and the decision requested of the Commissioner;
  - (2) The Commissioner may hold additional meetings at her/his discretion or act on the basis of the record;
  - (3) The Commissioner shall issue a written decision within 30 days from the date of the request or the last meeting held on the matter, whichever is later. This written decision shall constitute the final Agency action in the matter.

**§ 1-305 Appeal of Final Agency Action**

- (a) An appeal of a final Agency action concerning the issuance, denial, renewal, revocation, suspension, annulment, or withdrawal of a subdivision, water supply and wastewater, campground or mobile home park permit is to the Water Resources Board pursuant to 3 V.S.A. §2873(c)(4) with the exception of the denial or revocation of a mobile home park permit. Any person aggrieved by the denial or revocation of a mobile home park permit may appeal to the superior court in the county in which the mobile home park is located, pursuant to 10 V.S.A. §6233. All other program decisions under these rules are appealable to the State court system, if provided for by law.

**§ 1-306 Revocation of Permits**

- (a) General: The Secretary may revoke a permit either in response to a petition or on his or her own motion. The Division may file a petition and may participate in revocation proceedings.
- (b) Bases for revocation: The bases for revocation are:
  - (1) Violation of a permit condition;
  - (2) False or misleading information submitted in support of the permit;
  - (3) Incorrect certifications submitted in support of the permit;
  - (4) Violation or failure to comply with the provisions of these rules or authorizing statutes; or
  - (5) A request to revoke submitted by the permittee.

- (c) Petition for Revocation: All petitions for revocation shall be addressed to the Secretary, shall be copied to the permittee and the landowner, and shall include:
- (1) The name, address, and telephone number of the petitioner;
  - (2) The signature of the petitioner;
  - (3) Identification of the specific statutory provision or rule in question;
  - (4) A statement of the petitioner's interest in the matter and the petitioner's contentions, including the basis for the revocation of the permit; and
  - (5) A statement that a copy of the petition for revocation has been sent by the petitioner to the permittee and landowner.
- (d) Party Status: The Secretary shall determine the right of the petitioner or other persons requesting party status to participate in the proceedings. In determining party status, the Secretary shall consider whether a person or his/her property is directly affected by the permitted project. The Division is automatically a party in a revocation proceeding.
- (e) Notice of Revocation Hearing: Notice of a Petition for Revocation of a permit shall be sent to the permittee, the municipality in which the project is located, and all other potentially affected parties. The notice shall be issued at least two weeks prior to hearing and shall include the following information:
- (1) The legal authority for revocation;
  - (2) A brief statement of facts upon which the proposed action is based;
  - (3) A statement that the Secretary will hold a hearing for the purpose of determining whether the permit shall be revoked; and
  - (4) The date, time, and place where the hearing will be held.
- (f) Hearing: The hearing in a contested case shall be conducted by the Secretary. Any party to the revocation proceedings shall either appear in person or shall be represented by an attorney. The burden of proceeding and of proving that the permit should be revoked shall be upon the party petitioning for revocation. The admissibility of evidence in all revocation proceedings shall be determined under criteria set forth in 3 V.S.A. §810. Upon the request of a party, a hearing shall be transcribed by a qualified stenographer or recorded on an electronic sound device at the election of the party. If transcription by a stenographer is requested, the request shall be in writing and filed at least 10 days before the hearing. Costs shall be borne by the requesting party. The requesting party shall provide one copy of the transcript

to the Secretary without cost; other parties wishing a copy shall reimburse the requesting party on a prorated basis.

- (g) Examination of Evidence, Decision and Order: The examination of evidence, decision and order shall be governed by the provisions of 3 V.S.A. §§811 and 812. A final decision shall be made within 20 days after the close of the hearing. Copies shall be sent to the permittee, other parties, the legislative body of the municipality, and municipal and regional planning commissions.
- (h) Voluntary Revocation: The permittee may voluntarily waive the right to have a hearing, in which case the permit may be administratively revoked by the Secretary.
- (i) Recording: If the final decision of the Secretary is to revoke the permit, that revocation decision shall be filed by the party who petitioned for revocation in the land records of the municipality in which the project is located upon close of the appeal period, or upon final resolution of any appeal, whichever is later.

**§ 1-307      Declaratory Rulings**

- (a) General: On petition of the Division or of a person who may be affected by a statute or rule administered by the Division, the Secretary shall make a declaratory ruling as to the applicability of any statutory provision or any rule as provided for in 3 V.S.A. §808.
- (b) Content of Petition for Declaratory Ruling: The petition shall contain:
  - (1) The name, address, and telephone number of the petitioner;
  - (2) The signature of the petitioner;
  - (3) Identification of the specific statutory provision or rule in question;
  - (4) A statement of the controversy or uncertainty involved;
  - (5) A statement of the petitioner's interest in the subject matter, including the reasons for the submission of the petition;
  - (6) A statement of the petitioner's contentions; and
  - (7) A memorandum of legal authorities in support of such position or contention.
- (c) Hearing: Although in the usual course of disposition of a petition for a declaratory ruling, a hearing will not be required, the Secretary may require a hearing in response to a request or by his/her own motion.

- (d) Hearing Procedure: Hearings on petitions for declaratory rulings shall be conducted in accordance with the provisions of 3 V.S.A., §§809-814, and this section, except that the burden of proceeding and proof that the facts in the petition are correct shall be upon the petitioner.
- (e) Secretary's Action: The Secretary shall issue a decision within 30 days of the receipt of a petition for declaratory ruling unless a hearing is held, in which case the Secretary shall issue a decision within 30 days following the close of the hearing.
- (f) Record of Declaratory Rulings: All declaratory rulings shall be in writing. The Department shall maintain a file of all declaratory rulings and make copies of the rulings available to the public upon request.

**§ 1-308      Variances**

- (a) Variances from the technical standards of these rules for replacement wastewater systems may be granted in the following limited circumstances:
  - (1) Replacement systems shall be constructed in accordance with the rules for new systems whenever possible.
  - (2) Replacement systems that serve lots, buildings or structures, or campgrounds under these rules may be granted the minimum necessary variances from the technical standards when full compliance cannot be obtained or when it would not be cost effective, meaning the value of the incremental increase in environmental and human health protection does not outweigh the cost of achieving the incremental increase. In addition, when considering variances for mobile home parks, the availability of housing stock shall be taken into account in determining the degree of variance allowed;
  - (3) A wastewater system does not have to be a failed system in order to qualify for a variance;
  - (4) Any replacement system must result in equal or better environmental and public health protection than the previous system;
  - (5) Variances may not be granted if they would allow a replacement system to remain a failed system; and
  - (6) Variances will not be granted to projects that:
    - (A) required a permit under these rules but never obtained the required permit, unless the project is a subdivided lot which qualifies for limited conditional amnesty;

- (B) are not altering or modifying existing lots, buildings or structures, campgrounds, potable water supplies, and/or wastewater systems; or
  - (C) will have an increase in design flows.
- (b) Requests for variances shall be accompanied by plans and specifications for the wastewater system for which a variance is being requested and a statement of the grounds for the request. The disposition of the variance request shall be in writing and shall state the reasons for a denial or the specifications and conditions of any approval.
  - (c) Approval of a variance under this section shall not relieve the applicant of the responsibility to comply with all other applicable State and local laws, rules or ordinances.
  - (d) Variances related to a potable water supply are governed by the Vermont Water Supply Rules.

**§ 1-309 Innovative/Alternative Systems and Products: General Use**

- (a) The Secretary shall authorize an innovative/alternative system or product for general use when the Secretary determines that:
  - (1) The innovative/alternative system or product is designed to achieve the purposes and to satisfy the performance criteria of these rules;
  - (2) The innovative/alternative system or product is of demonstrated reliability and performance based on its use elsewhere in sufficient numbers and ranges of applications to support its use in the manner proposed;
  - (3) All persons using or affected by the alternative system, product or design will be protected from health hazards and pollution associated with the use of the innovative/alternative system or product; and
  - (4) The innovative/alternative system or product will not place an unreasonable burden on persons using or affected by the innovative/alternative system or product through unreasonable increased costs or unreasonable long-term operation and maintenance obligations.
- (b) In authorizing the general use of an innovative/alternative system or product the Secretary shall specify the conditions under which such a system or product may be used.

**§ 1-310 Innovative/Alternative Systems and Products: Pilot Projects**

- (a) The Secretary shall permit an innovative/alternative system or product for a limited number of specific applications, either individually or as part of a pilot project, when the Secretary determines that:
  - (1) The innovative/alternative system or product as designed is likely to achieve the purposes and to satisfy the performance criteria of these rules;
  - (2) All persons using or affected by the innovative system, product or design are protected from health hazards and pollution in the event the innovative/alternative system or product does not meet the purposes or the performance criteria of these rules;
  - (3) The innovative/alternative system or product is not likely to place an unreasonable burden on persons using or affected by the innovative/alternative system or product through unreasonable increased costs or unreasonable long-term operation and maintenance obligations; and
  - (4) The proposal is designed to measure and report on criteria related to reliability, performance and cost necessary to determine its suitability for general use under section 1-309.
- (b) Up to twenty-five (25) innovative/alternative systems or products of the same or substantially the same type may be permitted under this subsection.
- (c) The Secretary may require demonstration of any innovative/alternative system or product under this subsection before considering an application for general use under § 1-309. Once the Secretary determines through individual project applications or through a pilot project that the innovative system or product performs as intended under this section, the secretary may, on his or her own motion or upon application, consider the innovative/alternative system or product for general use in accordance with § 1-309 of these rules.

**§ 1-311 Innovative/Alternative Systems and Products: Experimental Designs**

- (a) The Secretary may permit an experimental system or product intended to try a new technology or application, provided such experimental system or product meets the following criteria:
  - (1) The proposal as designed has the potential to achieve the purposes of these rules and to satisfy all applicable performance criteria;
  - (2) The proposal is based on sound scientific and engineering principles;
  - (3) All persons using or affected by the proposal are protected from health hazards, pollution and increased costs in the event the experimental system,

product or design does not meet the purposes or the performance criteria of these rules;

- (4) In the case of an experimental system, the site(s) at which the experimental system is to be located is capable of accommodating a fully complying system under these rules, or the Secretary has determined that, as a replacement system, the experimental system is equal to or better than any other option available, considering costs;
  - (5) In the case of an experimental product, the criteria in (a)(4) above are met, or the Secretary determines that sufficient safeguards exist in the rest of the system design to satisfy (a)(3) above; and
  - (6) Adequate monitoring of the experimental system or product is provided to ensure protection of public health and the environment as well as to assess the performance of the experimental system, product or design.
- (b) Up to five (5) experimental systems or products of the same or substantially the same type may be permitted under this subsection.
  - (c) The Secretary may require bonding or other surety of an appropriate amount to ensure performance or replacement of an experimental system or product in the event that it fails to meet the purposes of these rules. Surety or bonding shall be established for a specified time period in each case.

**§ 1-312      Application Process for Innovative/Alternative Systems and Products**

An application for use of an innovative/alternative technology shall be submitted on a form prepared by the Secretary. The application form shall require the following information:

**(a)      Applicant Information**

- (1)      Applicant
  - (A)      Name
  - (B)      Address
  - (C)      Telephone, Fax, E-mail
- (2)      Contact
  - (A)      Name
  - (B)      Address

(C) Telephone, Fax, E-mail

**(b) System Information**

- (1) System trade name and model/s #, if any
- (2) Description of theory of operation

**(c) Statement of Claim**

- (1) Advantages related to prevention of health hazards, surface and ground water pollution, environmental protection or other advantages.
- (2) Treatment performance claims, if any, expressed in mg/l or in appropriate units for biologic constituents.
- (3) Type of approval (general, pilot, or experimental) requested and justification why the product belongs in the requested class.
- (4) Possible modes of failure and an assessment of the risks to public health, owners/operators of the system, and the environment.

**(d) Approval/Denial History**

- (1) Approvals from: (include copies of all approvals and the contact person)
  - (A) Other states
  - (B) Other jurisdictions
- (2) Denials from: (include copies of all denials and the contact person)
  - (A) Other states
  - (B) Other jurisdictions

**(e) Information related to the system**

- (1) Copies of all operational reports, patent information, technical reports, and laboratory reports published on the proposed system, even if the information might in whole or part reflect negatively on the system.
- (2) The number of systems installed and their jurisdictional location
- (3) Reports of any failures, with the cause if determined, and any corrections or system modifications to correct/prevent failures.

**(f) Design criteria**

- (1) Design and material requirements
- (2) Plans and cross sections
- (3) Design limitations or restriction
- (4) Leachfield sizing and justification
- (5) Construction requirements and limitations
- (6) Esthetic (noise and appearance) issues

**(g) Operation requirements**

- (1) Technical qualifications for operators
- (2) Specific actions required to operate the system

**(h) Maintenance requirements**

- (1) Technical qualifications for maintenance personnel
- (2) Specific actions required to maintain system

**(i) Monitoring requirements**

- (1) Applicants schedule for monitoring, including frequency and constituents, if any is proposed
- (2) All treatment systems shall include suitable sample collection locations for routine or verification monitoring

**(j) Cost**

- (1) Design cost estimates
- (2) Construction or installation costs
- (3) Operation and maintenance costs
- (4) Energy costs

**(k) Approval or denial of applications**

- (1) The secretary shall make a determination for each of the factors related to the specific class (general, pilot, or experimental) for which approval is requested.
- (2) The secretary shall consider all of the information available and its reliability as follows:
  - (A) An advisory opinion for the Technical Review Committee for the New England Interstate Regulatory Cooperation Project that verifies one or more performance claims shall satisfy the requirements related to that performance claim.
  - (B) Information from third party testing at certified laboratories and test facilities that represent a significant number of systems that have been installed in a variety of situations representative of Vermont's soils and climate shall be given great weight in determining whether performance claims are met. Such testing will normally be required for any treatment system seeking general use approval.
  - (C) Recommendations from other states based on use of a particular system that has been installed in a variety of situations representative of Vermont's soils and climate will be important. Reports related to systems that have been installed in large numbers for more than 5 years and that the state has monitored to determine successful operation will be given significant weight.
  - (D) Limited third party testing at certified laboratories.
  - (E) Extensive testing by the applicant based on accepted testing protocols.
  - (F) A combination of favorable results from (C), and (D) or (E), will normally be sufficient for pilot approval.
  - (G) Bench testing and other applicant collected information. Limited information and a proposed process based on established scientific principles, when coupled with appropriate site limitations will normally be sufficient for experimental approval.
- (3) Decisions
  - (A) All decisions shall be in writing and shall be made available for public review.

- (B) Approvals shall include conditions related to the conditions under which the system may be used, the obligations of the system owner to operate and maintain the system, and any requirements to submit records.
- (C) Any denial shall state the basis of the denial. Denials may be issued when it has been determined that the system does meet the performance requirements of the rules or when the applicant has failed to provide information that demonstrates compliance with the rules.

(4) Revocation of approval

A system approval may be revoked if the secretary determines:

- (A) The approval was granted on the basis of incorrect, false, or misleading information, or
- (B) The system fails to perform in compliance with any performance standard established for the system, or
- (C) The system does not function with the expectations for reliability and protection of health and the environment that the approval was based on, or
- (D) The applicant fails to comply with conditions in the approval, including but not limited to:
  - (i) Filing required reports
  - (ii) Maintaining a required supply of repair parts
  - (iii) Ensuring an adequate supply of trained individuals to operate and maintain the system if required.
- (E) The revocation process will be in accord with §1-306 of these rules.

**§ 1-313 Certification of Site Technicians**

- (a) Certification Required: Any person who wishes to be a site technician must be certified by the Secretary. Professional Engineers may be certified as site technicians. Certification allows a site technician to:
  - (1) Submit applications to the Division for single lot subdivisions.

- (2) Prepare designs for individual water supplies and individual on-site sewage disposal systems serving single family residences with a design flow of no more than 600 gallons per day in any municipality whether or not that municipality has a sewerage ordinance, and to prepare any associated application for municipal approval required by a municipal sewerage ordinance adopted pursuant to chapter 102 of Title 24.
  - (3) Perform reviews for a municipality of applications required by a municipal sewerage ordinance adopted pursuant to chapter 102 of Title 24. A site technician acting on behalf of a municipality may not perform a review of an application or system design that he or she prepared.
- (b) Application: To be eligible for certification as a site technician, a person must:
- (1) Submit a completed and signed application form, provided by the Secretary. The application must be received by the Secretary at least three weeks prior to the date of the required examination;
  - (2) Submit with the application, a written resume of work and educational experience relevant to the work required to be done in the submittal or review of an application as provided under §1-204(A) of these rules;
  - (3) Pay appropriate fees as specified in Title 3 V.S.A. §2822;
  - (4) The person may submit references furnished from persons having professional knowledge of the applicant, such as registered professional engineers, soil scientists, land surveyors, geologists, and certified site technicians; and
  - (5) Complete and pass the examination administered by the Secretary.
- (c) Demonstration of Ability: Opportunities for potential site technicians to demonstrate their ability to prepare applications for permits for single lot subdivisions shall be offered at least once a year at a time and place publicly announced at least six weeks before the examination.
- (d) Examinations: Demonstration of ability shall consist of both written and field examinations prepared by the Secretary and shall be adequate to distinguish between the following types of certification:
- (1) Type A - a site technician certified under this section may do all aspects of site evaluation, application preparation, and review that are described in subsection (a) of this section, but may not design or review site modifications as defined in Subchapter 1-8 of these rules.

- (2) Type B - site technicians certified under this section may design site modifications in accordance with Subchapter 1-8 in addition to the work authorized under the Type A certification.
- (e) Certification: When the Secretary makes a decision to certify or deny certification of a person to be a site technician, notice shall be furnished in writing to the applicant within ten (10) days of the decision. The Secretary shall issue a certification number for each site technician.
- (f) Review by the Secretary: The Secretary may review, on a random basis or in response to a complaint, the test procedures employed by a site technician, the systems designed by a site technician, the designs approved or recommended for approval by a site technician, and any work associated with the performance of these tasks.
- (g) Disciplinary action: The Secretary, after a hearing, in accordance with Chapter 25 of Title 3, may suspend, revoke or impose conditions on a site technician's certification. Notice of that revocation shall be included in the next environmental notice bulletin. This proceeding may be initiated on the secretary's own motion or upon a written request which contains facts or reasons supporting the request for suspension or for revocation. Cause for imposing conditions, suspension, or revocation is any one or more of the following:
- (1) False or misleading information submitted in support of an application;
  - (2) Misrepresentation of any relevant fact at any time; or
  - (3) Negligence or incompetence in completing the work necessary for an application, a design, or the review of an application.
- (h) Hearing: A hearing on revocation shall be held by the Secretary to be hearing officer. The hearing is a contested case, and shall be governed by the provisions of the Vermont Administrative Procedures Act, 3 V.S.A, §809-814.
- (i) Rules of Conduct: Site technicians shall be objective and truthful in reports, statements, or testimony submitted in support of an application or review performed within their authority. All relevant and pertinent information shall be included in such reports, statements or testimony.
- (j) Prior Certification Clause: Site technicians certified prior to April 26, 1977 shall remain certified, but are subject to the imposition of conditions, suspension or revocation procedures and are not entitled to a Type B certification without first passing the examination.

- (k) Renewals: Site Technicians shall maintain their certification by filing a renewal fee every year. Expiration of certification for a period exceeding 2 years shall require recertification under this subsection, including re-examination.

**§1-314 Enforcement Against Designers and/or Installers**

If the Secretary finds that a statement by a designer or installer submitted under these rules is incorrect, the person who signed the statement may be subject to penalties and required to take all actions necessary to remediate the situation in accordance with the provisions of 10 V.S.A. Chapter 201 and/or 10 V.S.A. Chapter 211.

**§1-315 Fees**

Fees for permit applications required by these rules, and other associated fees set forth in 3 V.S.A. §2822.

## **Subchapter 4 - Subdivisions**

### **§1-401      Applicability**

- (a) This subchapter sets forth the permitting requirements for the subdivision of land, for buildings or structures located on subdivided lots together with their associated potable water supplies and wastewater systems, and for certain single family residences located on their own individual lots together with their associated potable water supplies and wastewater systems.
- (b) Subdivided lots may also: require a permit under Subchapter 5 (Water Supply and Wastewater Permits) of these rules; be subject to the standards and requirements of Subchapters, 6 (Campgrounds), and 7 (Mobile Home Parks) of these rules; and be subject to other state permits.
- (c) Subdivided lots, buildings and structures, potable water supplies and wastewater systems may also have to comply with municipal ordinances and bylaws that require municipal land use permits.

### **§1-402      Definitions**

As used in this Subchapter and these rules, the terms listed below shall have the following meanings:

- (a) **Bedroom** - means:
  - (1) Any room in a residential structure which is at least 80 square feet in area, which is susceptible to present or future use as a private sleeping area and which has at least:
    - (i) One window and
    - (ii) One interior method of entry and exit, excluding closets and bathrooms, allowing the room to be closed off from the remainder of the residence for privacy; and
  - (2) Any room within a building or structure that actually serves primarily as sleeping quarters.

Note: In determining the number of bedrooms contained in any residence, it shall be presumed that all residences contain a living room, kitchen, bathroom, and at least one bedroom.

(b) **Existing exempt lot** - means:

- (1) A lot which on March 5, 1973, contained two or more buildings or structures which were used on or before that date as primary single or two family residences, but only to the extent that a subdivision of the lot would create a boundary between two such structures, and thereby place each structure on its own lot, provided the subdivision occurred prior to the effective date of these rules;
- (2) Two individual lots subdivided out of the same lot and described by deeds which were recorded between September 18, 1969 and March 5, 1973. The first two lots created can claim exempt status even if the project involved the creation of more than two lots. When the order of creation cannot be determined from the records, the Secretary will make the determination of which lots will have the existing exempt status;
- (3) A lot which is ten acres or larger in size provided that the lot was created before September 1, 2002.
- (4) A subdivided lot which contains a primary single family residence, or other building or structure with design flows of sewage of 300 gallons per day or less, which was constructed on the lot prior to March 5, 1973, provided the following conditions are met:
  - (A) The building or structure is served by a public water supply permitted by the Secretary or a potable water supply which has been tested and has tested negative for the presence of total coliform;
  - (B) The building or structure is served by a municipal or private wastewater treatment plant permitted by the Secretary or has a soil based wastewater system which has not failed and if the existing disposal field complies with one of the following:
    - (i) Is at least 100 feet from any property boundary created by conveyance;
    - (ii) Is at least 100 feet from the boundary created by an easement which allows for the installation of a replacement potable water supply or wastewater system for the exempt lot within the easement area; or
    - (iii) Is less than 100 feet from the property boundary or easement boundary provided that a fully complying replacement area has been identified;

Note: If the wastewater system is an outhouse or other system not requiring interior plumbing and conventional subsurface disposal, the 100 feet will be measured from the location where a subsurface disposal system would likely be installed;

- (C) The building or structure is not a seasonal dwelling; and
  - (D) The subdivision occurred prior to the effective date of these rules.
- (5) Two or more lots containing one or more existing seasonal dwellings if the lots were created by the subdivision of a single lot provided:
- (A) Any existing wastewater system and any existing potable water supply is not a failed supply or system;
  - (B) A request is submitted to the Secretary and a letter is issued which approves a design for replacement wastewater systems and potable water supplies which meet the technical standards of these rules;
  - (C) The person requesting the exemption has created a legal mechanism which insures that the existing seasonal dwellings will remain in seasonal use unless and until a permit is issued by the Secretary approving the conversion to year round use;
  - (D) No unimproved lots less than 10 acres in size are created without a permit as a result of the subdivision; and
  - (E) The subdivision occurs prior to the effective date of these rules.
- (c) **Existing seasonal dwelling** - means a building or structure, such as a summer cottage, constructed or erected prior to June 1, 1970, which has not been used as primary single family residence and is not used for more than six months per year.
- (d) **Improved Lot** - means a lot which has a substantially completed building or structure, and an associated substantially completed potable water supply and wastewater system which may or not be located on the lot.
- (e) **Lot** - means a tract or portion of land with defined boundaries created by the act of subdivision. A deed may describe one or more lots. Multiple lots described in a single deed remain separate lots provided that they are described as having separate and distinct boundaries and that any subsequent deed describing the lots does not eliminate the separate and distinct boundaries.

(f) **Minor Repairs** – means

- (1) For wastewater systems, the repair of a broken pipe leading from a building or structure to the septic tank, replacement of a cracked or broken septic tank, replacement of a broken pump, or any other repair which the Secretary, on a case by case basis, determines to be a minor repair.
- (2) For potable water supplies, the repair of broken pipe leading from a building or structure to a well, replacement of a broken pump, repair or replacement of filters or screens, or any other repair which the Secretary, on a case by case basis, determines to be a minor repair.

(g) **Pre-existing lot** - means a lot:

- 1) Whose boundaries were in existence on September 18, 1969, and were so described in a deed recorded on or before that date;
- 2) Which has been approved by a municipality pursuant to the administration of a subdivision ordinance or bylaw prior to September 18, 1969;
- 3) Whose boundaries were described in a plan prepared by an engineer or land surveyor that was recorded in the land records of the municipality in which the land is located provided that, on the basis of the plan, one or more lots depicted thereon were conveyed or made the subject of a contract for sale prior to September 18, 1969; or
- 4) Which was not of record on September 18, 1969, but which the Secretary accepted as a subdivided lot existing on that date on the basis of evidence submitted to the Secretary prior to July 1, 1970;

(h) **Subdivide** - means to divide land by sale, gift, lease, mortgage foreclosure, court-ordered partition, or filing of a plat, plot plan, or deed in the town records where the act of division creates one or more lots. Subdivision shall be deemed to have occurred on the conveyance of the first lot or the filing of a plat, plot plan or deed in the town records, whichever first occurs. A subdivision of land shall also be deemed to have taken place when a lot is divided by a state or municipal highway, road or right-of-way or when a lot is divided by surface waters with a drainage area of greater than ten square miles. A subdivision of land shall not include leases for mobile homes when those leases are subject to the requirements of 10 V.S.A. chapter 153.

(i) **Substantially completed** - means a structure, building, potable water supply, or wastewater system that is sufficiently constructed so that it can be used for its intended purpose with no further construction.

**§1-403 Permit Required**

- (a) No person shall take or cause to be taken any of the following actions without first obtaining a permit or permit amendment from the Secretary:
  - (1) The subdivision of a lot or lots;
  - (2) The initial construction of a single family residence on its own individual lot;
  - (3) The alteration or modification of a single-family residence located on its own individual lot, resulting in one or more additional bedrooms;
  - (4) The construction, alteration, modification or replacement of any potable water supply or wastewater system serving a single-family residence located on its own individual lot;
  - (5) The use or operation of a failed potable water supply or failed wastewater system if the supply or system serves a single family residence on its own individual lot;
  - (6) The conversion of a single-family residence on its own individual lot from seasonal to year-round use; or
  - (7) The alteration or modification of the site layout as shown on the permitted site plan.
- (b) Applications for permits required by this subchapter shall be made and reviewed in accordance with the requirements of Subchapter 3 of these rules.

**§1-404 Exemptions**

- (a) The following are exempt from the permitting requirements of this subchapter provided the specified conditions are met:
  - (1) Pre-existing lots, unless the lot is subdivided, and the resulting lots are not otherwise exempt from the permitting requirements of this subchapter;
  - (2) Existing exempt lots unless:
    - (A) The lot is subdivided, and the resulting lots are not otherwise exempt from the permitting requirements of Subchapter; or
    - (B) The lot is unimproved in which case a permit will be required only:
      - (i) When the lot is subdivided;

- (ii) Prior to the improvement of the lot; or
  - (iii) Prior to the transfer of ownership of the lot, unless the language set forth in subsection (a)(3) of this section is inserted into the deed describing the affected property.
- (3) Unimproved lots created by an act of subdivision that occurs after the effective date of these rules, provided that the deed that describes the affected property contains the following language:

“Notice of permit requirements. In order to comply with applicable state rules concerning potable water supplies and wastewater systems, a person shall not construct or erect any structure or building on the lot of land described in this deed if the useful occupancy of that structure or building will require the installation of or connection to a potable water supply or wastewater system, without first complying with the applicable rules and obtaining any required permit. Any person who owns this property acknowledges that this lot may not be able to meet state standards for a potable water supply or wastewater system and therefore this lot may not be able to be developed.”

This exemption shall terminate when the person subsequently takes any of the actions that require a permit under these rules.

- (4) Lot line adjustments, provided the Secretary issues a letter indicating that the proposed adjustment will result in a negligible affect on human health or the environment. The letter will require that a properly indexed plot plan, and revised deed if the lot lines are described in a deed, be filed in the land records of the municipality where the lot is located. The plan shall show the existing and revised lot layout.
- (5) Minor repairs of a potable water supply or wastewater system;
- (6) The subdivision of a lot by state or municipal condemnation for highway or utility construction, including lots created as a result of a settlement of an action for condemnation and lots created by a transfer in lieu of condemnation provided that the state has held a hearing pursuant to 19 V.S.A. § 502 or a municipality has held a necessity hearing pursuant to 19 V.S.A. § 709.

**§1-405 Limited Conditional Amnesty**

- (a) A subdivided lot which required a subdivision permit on which a building or structure and its associated potable water supply and wastewater system was substantially constructed as of January 1, 1999 is exempt from the permitting requirements of this subchapter, provided that;

- (1) The wastewater system is not failed;
  - (2) The lot is not subsequently subdivided;
  - (3) There is no significant modification of the building or structure after January 1, 1999, that would increase design flows;
  - (4) There is no significant modification of the potable water supply or wastewater system after January 1, 1999; and
  - (5) If a subdivision permit had been issued for the lot prior to January 1, 1999, the conditions of the permit concerning actions required to be taken after January 1, 1999 shall remain in effect. Such conditions include ones concerning operation and maintenance, and transfer of ownership.
- (b) A lot which was subdivided on or before January 1, 1999 which required a subdivision permit, and which has not been developed through the construction of a building or structure is exempt from the permitting requirements of this subchapter provided:
- (1) that the lot is not subsequently subdivided;
  - (2) that prior to the improvement of the lot a subdivision permit is obtained; and
  - (3) that prior to the transfer of ownership of the lot, unless a permit has been obtained by that time, the following language is inserted into the deed describing the affected property:  
  
“Notice of permit requirements. In order to comply with applicable state rules concerning potable water supplies and wastewater systems, a person shall not construct or erect any structure or building on the lot of land described in this deed if the useful occupancy of that structure or building will require the installation to connection to a potable water supply or wastewater system, without first complying with the applicable rules and, if necessary obtaining the required permit. Any person who owns this property acknowledges that this lot may not be able to meet state standards for a potable water supply or wastewater system and therefore this lot may not be able to be developed.”
- (c) For the purposes of this subsection, a wastewater system has failed when the system is functioning in a manner;
- (1) That allows wastewater to be exposed to the open air, pool on the surface of the ground, discharge directly to surface water, or back up into a building or structure, unless the approved design of the system specifically requires the system to function in such a manner;

- (2) So that the potable water supply is contaminated or rendered not potable;
  - (3) That presents an imminent hazard to human health; or
  - (4) That presents a serious threat to the environment.
- (d) If a wastewater system benefiting from the limited amnesty granted under this subsection has failed, the owner of the system shall apply for and obtain a permit, and shall correct the failure in accord with the permit. Permits issued under this subsection may include permits that include variance provisions if the failed wastewater system cannot be modified or replaced in a way that enables the Secretary to issue a permit that fully complies with these rules. When approving a variance under this subsection, the secretary shall consider the cost of the modification or replacement of the system in addition to the potential impacts on human health and the environment.

**§1-406          Subdivision of Improved Lots**

- (a) Notwithstanding any other provisions of these rules, the permit required under this subchapter for the subdivision of an improved lot shall comply with the following requirements:
- (1) If the lot has a permit, the permit must be amended. The amended permit shall require compliance with these rules, except that the potable water supply and wastewater system serving the building or structure at the time of subdivision may continue to be used as is, even if they do not meet the current technical standards of these rules, unless the supply or system meets the definition of a failed supply or failed system, or unless the potable water supply or wastewater system are in non-compliance with the permit at the time of subdivision. In addition, there must be permanent legal access to the permitted primary and replacement areas for the wastewater system and permanent legal access to the potable water supply. Permanent legal access must include access for the construction, operation and maintenance of the potable water supply and wastewater system.
  - (2) If the lot is a pre-existing lot, an existing exempt lot, or a lot which benefited from limited conditional amnesty, the potable water supply or wastewater system serving the building or structure at the time of subdivision may continue to be used as is, even if they do not meet the current technical standards of these rules, unless the supply or system meets the definition of a failed supply or system. In addition a fully complying replacement area for the wastewater system and a fully complying area for a potable water supply shall be identified. In the event that there is no fully complying area for the supply or system on the developed lot, and any fully complying area off the lot is so remote or inaccessible that it would be clearly unreasonable to

require its use, a variance may be granted for the replacement area or areas. If the area is off the lot, there must be permanent legal access to the replacement area. Permanent legal access must include access for the construction, operation and maintenance of the replacement potable water supply and wastewater system.

**§1-407 Permitting Standards for Potable Water Supplies**

- (a) All improved lots shall have a potable water supply that is designed, constructed, operated and maintained in accordance with the requirements of the Vermont Water Supply Rules, unless otherwise specified in this section.
- (b) All water produced by a potable water supply shall be delivered through a piped system. For lots that are improved with something other than only one single family residence, the Secretary may waive the requirement for the connection of a potable water supply on a case by case basis if he or she determines that a piped system would be unreasonable due to the infrequency or briefness of occupancy or the availability of a nearby potable water supply.

**§1-408 Permitting Standards for Wastewater Systems**

- (a) All improved lots shall have a wastewater system that is designed, constructed, operated and maintained in accordance with the requirements of subchapters 3 and 8 of these rules.
- (b) Wastewater systems designed to dispose of 6,500 gallons or more per day of sewage may be under the jurisdiction of the Vermont Indirect Discharge Rules. For such systems, the applicant shall contact the Secretary for a jurisdictional ruling. If the project is under the jurisdiction of the Indirect Discharge Rules, an Indirect Discharge Permit will be required for the treatment and disposal system and a permit issued under this subchapter will be required for the building, structure or campground connected to that system.
- (c) Wastewater systems designed for the subsurface disposal of non-sewage wastes are under the jurisdiction of the Underground Injection Control Rules. For systems under those rules, an Underground Injection Control Permit will be required unless the waste is deemed to be compatible with sewage and is disposed of in a wastewater system permitted under this Subchapter.

## **Subchapter 5 – Water Supply and Wastewater Permits**

### **§1-501            Applicability**

- (a) This subchapter sets forth the permitting requirements for buildings or structures, together with their associated potable water supplies and wastewater systems, and for all other potable water supplies and wastewater systems.
- (b) Buildings or structures, potable water supplies, and wastewater systems may also require a permit under Subchapter 4 (subdivisions) of these rules; be subject to the standards and requirements of Subchapters, 6 (campgrounds) and 7 (Mobile Home Parks) of these rules; and be subject to other state permits.
- (c) No provision of this Subchapter shall limit the authority of the Department of Health with respect to facilities licensed by that Department.
- (d) Buildings or structures, potable water supplies, and wastewater systems may also have to comply with municipal ordinances and bylaws that require municipal land use permits.
- (e) Examples of buildings or structures which require a permit under this Subchapter include, but are not limited to, the following: accessory apartments, duplexes, buildings with three or more dwelling units, condominiums, apartments, two or more park model recreational vehicles, two or more mobile homes used for vacation or recreational purposes, places of employment, hospitals, nursing homes, motels, hotels, restaurants, filling stations, boarding homes, rooming houses, stores, shops, buildings or structures used as places of public assembly, buildings or structures used for home occupations, offices, manufacturing facilities, industrial facilities, and farm buildings or structures.

### **§1-502            Permit Required**

- (a) No person shall take or cause to be taken any of the following actions without first obtaining a permit or permit amendment from the Secretary:
  - (1) construct a new potable water supply or wastewater system;
  - (2) modify an existing potable water supply or wastewater system;
  - (3) construct a new building or structure;
  - (4) modify an existing building or structure in a manner that increases the design flows or modifies other operational requirements of a potable water supply or wastewater system;

- (5) connect an existing potable water supply or wastewater system to a new or modified structure;
  - (6) change 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;
  - (7) use or operate a failed potable water supply or failed wastewater system;
  - (8) alter or modify the site layout shown on a permitted site plan;
  - (9) commence construction of any of the above. For the purposes of this section, commencing construction means any work involving the physical construction or modification of a building or structure and its associated potable water supply or wastewater system including, but not limited to: foundation excavation; foundation or building construction; and site work which involves or may affect any portion of the existing or proposed potable water supply or wastewater system serving the project.
- (b) Applications for permits required by this Subchapter shall be made and reviewed in accordance with the requirements of Subchapter 3 of these rules.
- (c) A person may request, in writing, a jurisdictional determination by the Secretary that a particular building or structure's useful occupancy and/or use does not require either a potable water supply or a wastewater system and therefore does not require a permit under this Subchapter. Such request should be submitted prior to the submission of a permit application. All jurisdictional determinations by the Secretary shall be in writing and, if the Secretary determines that no permit is required, such determinations shall be filed in the land records of the municipality where the building or structure is located.

**§1-503 Exemptions**

- (a) A permit shall not be required under this subchapter for:
- (1) A building or structure, and its potable water supply and wastewater system, which was in existence before June 1, 1970 provided that none of the actions listed in § 1-502 have occurred since June 1, 1970.
  - (2) a single family residence located on its own individual lot and its associated potable water supply and wastewater system;
  - (3) family day care homes and their associated potable water supplies and wastewater systems;

- (4)(A) a single family residence with an attached or included accessory residential unit provided that:
- (i) the floor space of the accessory residential unit does not exceed 30 percent of the floor space of the existing living area of the single family residence or 400 square feet, whichever is greater;
  - (ii) the single family residence is occupied by an owner;
  - (iii) the accessory unit is inhabited by not more than two persons, one of whom is related by blood, marriage or civil union to an owner of the primary single family residence; and
  - (iv) a designer reviews the water supply and wastewater system and determines them to be adequate to accommodate the needs of the single family residence together with the attached or included accessory residential unit.
- (B) When a permit is not required under this subsection, the owner shall deliver to the town clerk for recording under 24 V.S.A. § 1154:
- (i) a copy of the designer's written determination of system adequacy issued under subdivision (A)(iv) of this subsection; and
  - (ii) a notice that if the accessory apartment is ever inhabited by more than two persons, or exclusively by persons that are not related by blood, marriage, or civil union to the owner of the primary single family residence, then a permit shall be required to be obtained under the provisions of this Subchapter.
- (5) a single family residence that is used for both residential and commercial purposes, provided that: the commercial purposes do not entail the substantial presence of nonresidential employees or regular visits by the public; the commercial purposes do not result in an increase in design flow or potable water supply demands; and the commercial use of the residence started after the building was used solely as a residence.
- (6) a single family residence that is used for both residential and commercial purposes, when: the commercial purposes entail the substantial presence of nonresidential employees or regular visits by the public, but do not result in an increase in design flow or potable water supply demands; and the commercial use of the residence started after the building was used solely as a residence provided that:

- (A) the owner of residence tests the water supply for bacteria, lead, nitrate, sodium and arsenic and notifies the Secretary of compliance with the drinking water standards adopted by the secretary;
  - (B) the owner of the residence certifies to the Secretary that the wastewater system is not a failed system;
  - (C) the certification is accompanied by a fee of \$20.00; and
  - (D) there has been no change to the residence, lot, potable water supply or wastewater system in a manner so that the permitting requirements of this subchapter are triggered.
- (7) the connection of an existing building or structure to a municipal sewer at the time of initial construction and operation of the municipal sewer, provided that :
- (A) the municipal sewer and the associated building connection is part of a project approved by the Facilities Engineering Division of the Department; and
  - (B) either the Facilities Engineering Division has approved the building connection or a designer has certified to the Facilities Engineering Division that the design for the building connection complies with these rules.
- (8) the construction or modification of a sugarhouse that is not open to the public, provided it is operated in accord with the Department of Agriculture, Food and Markets requirements for sugarhouses.
- (9) disposal of non-sewage milkhouse waste. Note: consult the Vermont Department of Agriculture, Food and Markets regarding regulation of this type of disposal.

**§1-504 Site or Foundation Approval**

Site work or foundation construction may commence prior to the issuance of a permit under this subchapter only if the Secretary issues a written authorization for the commencement of such activities. This authorization may be granted if the Secretary finds that the commencement of site work or foundation construction will not inhibit the proper planning, design, or construction of the required potable water supply or wastewater system. Such authorization shall either be granted or denied within 21 days of the submission of a written request for the authorization provided that the written request includes all plans and information that the Secretary deems necessary to make the required finding.

**§1-505            Modification of Pre-Existing Buildings or Structures**

- (a) Notwithstanding any other provisions of these rules, the permit required under this subchapter for the modification of a building or structure which was in existence prior to June 1, 1970 may authorize the continued use of the existing potable water supply and wastewater system as is, even if they do not meet the current technical standards of the rules, provided that:
  - (1) the proposed modification will not increase design flows or modify other operational requirements of the existing potable water supply or wastewater system;
  - (2) the wastewater system has not failed; and
  - (3) a chemical and bacteriological test of the potable water supply demonstrates compliance with the drinking water standards adopted by the Secretary.

**§1-506            Home Occupations**

- (a) Notwithstanding any other provisions of these rules, when a building or structure is used for a home occupation, the Secretary, on a case-by-case basis, may determine that the potential for adverse effects on human health and the environment as a result of the home occupation is so insignificant that no new potable water supply or wastewater system is required. If the Secretary can make such a finding, a permit shall be issued provided that:
  - (1) a potable water supply and a wastewater system, including toilets, is reasonably accessible to the employees; and
  - (2) the permit prohibits any change in use or expansion of the building or structure unless and until an amended permit is issued.
- (b) For the purposes of this section, home occupation means a business:
  - (1) where the only employees are or will be the owner and/or the owner's immediate family;
  - (2) where the public does not have general access to the building or structure;
  - (3) if the business or enterprise is located in a single family residence, the commercial use started at the same time that the building or structure was used solely for residential purposes; and
  - (4) if the business or enterprise is located in a building or structure which is not a single family residence, such building or structure is located on the same lot of land as the owner's residence.

**§1-507          Permitting Standards for Potable Water Supplies**

- (a) All buildings, structures and campgrounds which require a permit under this subchapter shall have a potable water supply that is designed, constructed, operated and maintained in accordance with the requirements of the Vermont Water Supply Rules unless otherwise specified in this section.
- (b) All water produced by a potable water supply shall be delivered through a piped system unless it would be unreasonable to require a piped system due to the infrequency or briefness of occupancy, or the availability of a nearby potable water supply. If the Secretary determines that a piped system would be unreasonable, he or she may waive the requirement for the connection of a permitted potable water supply to the building or structure on a case by case basis.

**§1-508          Permitting Standards for Wastewater Systems**

- (a) All buildings, structures and campgrounds which require a permit under this subchapter shall have a wastewater system that is designed, constructed, operated and maintained in accordance with the requirements of Subchapters 3 and 8 of these rules unless otherwise specified in these rules.
- (b) All buildings or structures shall have conventional sanitary facilities consisting of toilets and lavatories. The Secretary may alter or waive this requirement under the following circumstances:
  - (1) Toilets and lavatories will not be required for buildings or structures: that are not normally occupied (such as telephone relay stations); whose use does not require water for operation or clean-up, including employee wash-up; and which are visited for less than two hours a day by no more than four employees;
  - (2) The Secretary may waive the requirement for sanitary facilities on a case by case basis when he or she determines that it would be unreasonable to require them due to the availability of sanitary facilities nearby the building or structure.
  - (3) Unconventional toilets and lavatories may be approved if the use of the building or structure is infrequent or brief. For the purposes of this subsection, infrequent or brief use means:
    - (A) the general public may have access to but would not normally use the building or structure;
    - (B) there are no more than four employees in the building over a 24 hour period;

- (C) the building or structure is visited for less than two hours a day by no more than two individual;
  - (D) the use of the building or structure does not require water for operation or clean-up, including employee wash-up; and
  - (E) there is no food or drink handling, preparation or consumption in the building or structure.
- (4) Unconventional toilets may be allowed when the building or structure has conventional lavatory facilities.
- (5) For the purposes of this subsection, unconventional toilets means toilet facilities such as privies, chemical toilets, and incinerating toilets excluding privies which do not have durable, watertight vaults and portable toilets.
- (6) Portable toilets, with or without portable handwashing facilities as deemed necessary by the Secretary, may be allowed in lieu of conventional or unconventional toilets for certain intermittent short duration special events, such as concerts or weddings, in the following situations:
- (A) the special event is held in a building or structure that is used by the general public for a special event no more than once a month; and
  - (B) the special event does not last for more than two days in any given month or the special event does not last for more than seven days in any given year.
- (7) The Secretary may allow the use of portable toilets in other situations on a case by case basis if he or she finds that there are unusual circumstances and that the use of portable toilets are the most reasonable and suitable method for protecting human health and the environment.
- (8) Notwithstanding any other provision of this subsection:
- (A) if a building or structure is not required to have sanitary facilities but has chosen to have them, the sanitary facilities must comply with the requirements of this section; and
  - (B) the provision does not supercede any Federal, state or local laws concerning potable water supplies or wastewater systems for the employees or the general public in specific buildings or classes of buildings or activities, nor does it supercede labor agreements or judicial decisions.

- (c) Wastewater systems that discharge sewage to manure pits are prohibited under these rules.
- (d) Wastewater systems designed to dispose of 6,500 gallons or more per day of sewage may be under the jurisdiction of the Vermont indirect Discharge Rules. For such systems, the applicant shall contact the Secretary for a jurisdictional ruling. If the project is under the jurisdiction of the Indirect Discharge Rules, an Indirect Discharge Permit will be required for the treatment and disposal system and a permit issued under this subchapter will be required for the building, structure or campground connected to that system.
- (e) Wastewater systems designed to use land application for disposal of non-sewage wastes may be under the jurisdiction of the Indirect Discharge Rules. For such systems the applicant shall contact the Secretary for a jurisdictional ruling. If the project is under the jurisdiction of the Indirect Discharge Rules, an Indirect Discharge Permit will be required for the land application of those wastes and a permit issued under this subchapter will be required for the building or structure generating the waste. Any approval for land application of non-sewage wastes will be based on the Vermont Guidelines for the Land Application of Dairy Processing Wastes or other guidance documents approved by the Secretary.
- (f) Wastewater systems designed for the subsurface disposal of non-sewage wastes are under the jurisdiction of the Underground Injection Control Rules. For systems under those rules, an Underground Injection Control Permit will be required unless the waste is deemed to be compatible with sewage and is disposed of in a wastewater system permitted under this Subchapter.

**§1-509 Special Permitting Standards for Public Schools**

- (a) Design flows for the expansion of wastewater systems serving existing public schools may be based on the historical rate of septic system loading, upon showing that there currently is sufficient capacity for periods of peak demand and there is a strong likelihood of sufficient capacity for future periods of peak demand.
- (b) Replacement area requirements for wastewater systems in Subchapter 8 of these rules may be waived for existing public schools if the system design includes sufficient safety factors to protect the primary area.

## **Subchapter 6 - Campgrounds**

### **§ 1-601      Applicability**

- (a) This subchapter sets forth the permitting requirements for campgrounds, including campsites. These permitting requirements shall be applied through water supply and wastewater permits issued under Subchapter 5 of these rules.
- (b) Campgrounds may also require a permit under Subchapter 4 (Subdivisions) of these rules as well as other state permits.
- (c) Campgrounds may also have to comply with municipal ordinances and bylaws that require municipal land use permits.

### **§ 1-602      Definitions**

As used in this Subchapter and these rules, the terms listed below shall have the following meanings:

- (a) **Campground** means any lot of land occupied by more than three (3) automobile trailers, campers, recreational vehicles, tent sites or temporary cabins for a brief period for vacation or recreational purposes. There shall be no distinction made between non-commercial (no charge, no service) and commercial operations. A mobile home used as a residence is considered to be a dwelling and this subchapter is not applicable. Campground does not mean a lot of land occupied by a Park Model Recreational Vehicle or a mobile home.
- (b) **Campsite** means an area in a campground, at least 2500 square feet in area, which is designed to accommodate either tent(s) or recreational vehicle(s), for which design flows will be calculated. A site may be dependent upon water faucets and/or a dumping station or may have individual potable water supply and sewer connection.

### **§1-603      Permit required**

- (a) No person shall take or cause to be taken any of the following actions without first obtaining a permit or permit amendment from the Secretary:
  - (1) create or modify a campground in a manner that affects a potable water supply or wastewater system; or
  - (2) create or modify one or more individual campsites.
- (b) Applications for permits required by this Subchapter shall be made and reviewed in accordance with the requirements of Subchapter 3 of these rules.

### **§1-604      Exemptions**

- (a) The following are exempt from the permitting requirements of this Subchapter and Subchapter 5 of these rules provided the specified conditions are met:
  - (1) Campgrounds in existence before June 1, 1970 provided that none of the actions listed in sections 1-502 or 1-603 have occurred after June 1, 1970;
  - (2) Bonafide primitive or wilderness campgrounds unless the Secretary determines, on a case-by-case basis, that a particular campground is likely to create a health hazard or threat to the environment.

**§1-605      Permitting Standards**

- (a) In addition to meeting the potable water supply and wastewater system permitting standards described in Subchapter 5 of these rules, the following permitting standards shall apply:
  - (1) Each individual campsite shall be at least 2,500 square feet in size, with a minimum width of 25 feet. Each site shall be dry, clean and well drained.
  - (2) Potable water shall be available at faucets or from approved water supply risers or both. No water supply riser shall be located within 10 feet of a sewer connection. A faucet shall be provided within 400 feet of any dependent campsite. Common drinking vessels at such faucets are not allowed.
  - (3) If water from a piped system is not available, water may be obtained from a spring or a well that is developed and protected in a manner approved by the Secretary.
  - (4) When showers or baths are provided, all plumbing shall conform to the Vermont Plumbing Rules.
  - (5) At least one dumping station shall be provided per campground, unless all sites have individual sewer connections or the campground consists entirely of tent sites (which excludes all use by automobile trailers, campers, and recreational vehicles). Each dumping station shall serve no more than 100 dependent campsites, and shall be supplied with piped water under pressure for flushing and cleaning of the concrete apron after each use.
  - (6) All dependent campsites shall be within 400 feet of a toilet facility. These may be either water-carried toilets, vault-type privies, composting toilets, or incinerating toilets that the Secretary determines to be suitable for their intended use. One toilet or privy seat shall be provided to serve 10 or fewer campsites each.

## **Subchapter 7 – Mobile Home Parks**

### **§1-701          Applicability**

- (a) This subchapter sets forth the permitting requirements for mobile home parks. These permitting requirements shall be applied through water supply and wastewater permits issued under Subchapter 5 of these rules.
- (b) Mobile home parks may also require a permit under Subchapter 4 (Subdivisions) of these rules as well as other state permits.
- (c) No provision of this Subchapter shall limit the authority of the Agency of Commerce and Community Development with respect to its authority to regulate certain aspects of mobile home parks including, but not limited to, sales, evictions, rents, habitability, and registrations.
- (d) Mobile home parks may also have to comply with municipal ordinances and bylaws that require municipal land use permits.

### **§1-702          Definitions**

- (a) As used in this Subchapter and these rules, the terms listed below shall have the following meanings:
  - (1) **Mobile home** - means a prefabricated dwelling unit which:
    - (A) is designed for long term and continuous residential occupancy;
    - (B) is designed to be moved on wheels, as a whole or in sections;
    - (C) on arrival at the site, is complete and ready for occupancy, except for incidental unpacking, assembly, connections with utilities, and placing on support or a permanent foundation, or installation as a unit in a previously prepared structure;
    - (D) contains the same type of water supply and waste disposal as immovable housing;
    - (E) meets all other criteria of the rules of the Agency for distinguishing mobile homes from other types of residential housing.
  - (2) **Mobile home park** - means any lot of land under single or common ownership or control which contains, or is designed, laid out or adapted to accommodate, more than two mobile homes. Nothing herein shall be construed to apply to premises used solely for the storage or display of

mobile homes. Mobile home park does not mean any parcel of land under the ownership of an agricultural employer who may provide up to four mobile homes used by full-time agricultural workers or employees of the agricultural employer as a benefit or condition of employment or any parcel of land used solely on a seasonal basis for vacation or recreational mobile homes.

- (3) **Mobile home lot** - means a parcel of land within a mobile home park provided for the placement of a single mobile home and the exclusive use of its occupants.
- (4) **Single or common ownership or control** - means ownership or control by any person or persons and includes affiliations of individuals or entities, or both, that are formed in order to derive profit, consideration or any other beneficial interest. The following individuals and entities shall be presumed not to be affiliated for beneficial interest unless there is substantial evidence of an intent to evade the purposes of this chapter:
  - (A) A stockholder in a corporation, if the stockholder and the stockholder's spouse, parents, children and siblings own, control or have a beneficial interest in less than five percent of the outstanding shares in the corporation.
  - (B) An individual in the capacity as an agent and within the normal scope of the individual's duties as a court appointed guardian, attorney, real estate broker or salesperson, engineer or land surveyor, unless compensation received or beneficial interest obtained as a result of these duties indicates more than an agency relationship.
  - (C) A seller or chartered lending institution that only provides financing for all or a part of the purchase price at rates not substantially higher than prevailing lending rates in the community and subsequently grants a partial release of the security when the buyer establishes or maintains a mobile home park.

**§1-703 Permit Required**

- (a) No person shall take or cause to be taken any of the following actions without first obtaining a permit or permit amendment from the Secretary:
  - (1) create a mobile home park;
  - (2) modify an existing mobile home park through the creation of new mobile home lots and/or the addition of mobile homes;

- (3) reopen a mobile home park that was closed pursuant to 10 V.S.A. §6237(a)(5) (Evictions) and reduced to no more than two occupied leased lots;
- (4) use or operate a failed potable water supply or failed wastewater system that serves a mobile home park;
- (5) alter or modify the site layout as shown on the permitted site plan; or
- (6) modify a permitted mobile home park so that it is in non-compliance with the permitting standards of this Subchapter.

**§1-704 Exemptions**

- (a) A permit shall not be required under this Subchapter for:
  - (1) a mobile home park, and its associated potable water supply(s) and wastewater system(s) that were in existence before July 1, 1970 provided that none of the actions listed in sections 1-502 or 1-703 have occurred since July 1, 1970;
  - (2) premises used solely for the storage or display of unoccupied or uninhabited mobile homes;
  - (3) a mobile home which is a single family residence located on its own individual lot of land which:
    - (A) is permitted under Subchapter 4 (Subdivisions) of these rules; or
    - (B) is subject to the jurisdiction of Subchapter 4 of these rules but which is exempt from the permitting requirements of that Subchapter.

**§1-705 Basic regulations**

- (a) In addition to meeting the potable water supply and wastewater system permitting standards described in Subchapter 5 of these rules, mobile home parks which require a permit under this Subchapter shall comply with the following requirements:
  - (1) Mobile home lots shall not be located within a floodway and the pad shall be above the area of special flood hazard.
  - (2) A minimum of 8,000 square feet of lot area shall be provided for each mobile home, including at least 5,000 square feet for each mobile home lot, plus at least 3,000 square feet for each mobile home in common open space, exclusive of roads. Such common open space shall be accessible to all

residents of the mobile home park, and shall have a minimum dimension of 30 feet.

- (3) At least two trees (of at least 1" caliper) shall be planted on each mobile home lot. All trees required under this subsection shall be suitably maintained by the owner or lessee. In the event of the demise of any tree so required, it shall be replaced at the earliest practical time by the owner.
- (4) At least one off-street parking space shall be provided for each mobile home, and at least one off-street parking space shall be provided for each two mobile homes for visitor parking. The space need not be paved. The space may be included in the minimum lot area requirement and shall be indicated on the site plan.
- (5) All buildings which are not physically connected must be at least 15 feet apart, except as otherwise permitted by section 1-706 of this Subchapter.
- (6) All roads within the mobile home park shall be of sufficient width and suitable grade and alignment so as to permit two way vehicular traffic at all times. The design of roads shall be adequate to provide for the utilization of police, fire, ambulance, and other emergency vehicles. Proper traffic control signs shall be established, including stop or yield right-of-way signs, as is consistent with the public safety. All entrances to, or exits from, State or town highways shall be approved by the district highway engineer or town selectmen, as applicable.

**§1-706 Bonuses for Improved Facilities and Layout**

- (a) In any case where sufficient facilities or an improved site plan is provided in accordance with this section, the required site area may be reduced as follows:
  - (1) The required lot area for mobile home parks shall be reduced by five percent of the total area otherwise required under § 1-705(a)(3) of this Subchapter for each of the following facilities which are provided in such park:
    - (A) central recreational building;
    - (B) central laundry and drying facilities;
    - (C) central television antenna system;
    - (D) central maintenance shed; and
    - (E) underground utilities, including fuel storage
- (b) Facilities provided by the owner will be considered sufficient when:

- (1) A laundry is provided with sufficient washing and drying facilities, which may be coin operated, to assure that an adequate number of the occupants of all mobile homes within the park may utilize such facilities simultaneously;
  - (2) A recreation building shall be of sufficient size as to accommodate an adequate number of the occupants of all mobile home lots simultaneously; and
  - (3) A central maintenance shed shall contain sufficient mechanical equipment and maintenance equipment to provide maintenance service to all mobile home lots and shall be of sufficient size to contain under cover all such equipment at the same time.
- (c) Any bonus or reduction in lot size granted under this section shall apply to the minimum 8,000 square foot requirement.

**§1-707 Site Plan Review; Applications**

- (a) When reviewing applications for permits under this Subchapter, the Secretary shall give due consideration to:
- (1) The suitability of the site for development as a mobile home park, taking into consideration the prospects for developing an attractive residential environment, the structure of the soil and the possibility of danger from flooding and erosion, the proximity to sources of air pollution and other nuisances, the availability of air drainage apart from such nuisances, and other similar factors.
  - (2) The relation of a proposed park to the municipal and regional plan and to municipal zoning regulations, if any.
  - (3) Arrangement of buildings and open spaces.
  - (4) Adequacy of access to and from public highways, including vision clearance at the point of intersection, and the effect on the traffic pattern on such highways.
  - (5) Safe and convenient pedestrian circulation on the site and at its approaches.
  - (6) Adequacy of provisions for water supply, drainage of surface waters and for waste disposal.
  - (7) Availability of adequate housing in the area for low and moderate income groups.

- (8) Availability of other sites for mobile home park development.
  - (9) Protection of existing natural cover and plant material.
  - (10) Visibility of the park from public highways.
  - (11) Availability of public facilities.
  - (12) Orientation to sun and wind; and
  - (13) Other factors affecting the safety and the physical and mental welfare of the residents of the park.
- (b) In the site plan review required under this section, the Secretary shall also encourage creative design, to provide a more convenient and attractive layout.
- (c) In addition to the application information required in Subchapter 3 of these rules, all persons applying for a mobile home park approval under this chapter shall provide all information necessary for the Secretary to make the considerations required under subsection (a) of this section including, but not limited to:
- (1) copies of all relevant municipal and regional plans;
  - (2) traffic impact analyses describing the effect of the park on affected public highways; and
  - (3) evidence of compliance with all applicable local ordinances and/or zoning bylaws, including copies of all such ordinances and bylaws