

## Subchapter 21-3 PERMITS - ADMINISTRATION

### Introduction

~~Unless otherwise stated below, t~~This subchapter applies to the following water systems:

- (a) **Public Community** water systems;
- (b) **Public Non-Transient Non-Community** (NTNC) water systems;
- (c) **Public Transient Non-Community** (TNC) water systems; and
- (d) **Domestic and Imported Bottled** water systems.

This subchapter applies to Source Permits, Construction Permits, Operating Permits, and Approvals to Sell Bottled Water in Vermont. ~~Operating Permits consist of Operating Permits.~~

~~This subchapter applies to Source Permits for~~ **Public Community, Non-Transient Non-Community,** and **Domestic Bottled** water systems.

### 3.0 Prohibitions

- 3.0.1 No person shall modify, construct, or operate a **Public** water system without first obtaining the appropriate permit from the Secretary.
- 3.0.2 No person shall modify or construct a new **Public Community** or **Domestic Bottled** water system source, change an existing water source into a **Public Community** or **Domestic Bottled** water system source, or operate a **Public Community** or **Domestic Bottled** water system source without first obtaining a permit from the Secretary.
- 3.0.3 No person shall use or connect an unpermitted water source, including an emergency source, to a **Public Water System**, except
  - (a) following public notice to the water system customers (according to Agency public notification requirements);
  - (b) providing notice to the Secretary as soon as possible, but no later than within 12 hours of its connection or use; and
  - (c) in an emergency situation for a limited duration, no more than 90 cumulative days without prior written approval of extension by the Secretary.

### 3.1 Permits

- 3.1.1 The Secretary may issue, renew, deny, suspend, or revoke a **Public** water system or drinking water facility permit.

~~For~~ **Public Transient Non-Community** water systems, ~~Construction Permits and development of new drinking water sources are administered by the Drinking Water and Groundwater Protection Division.~~

- 3.1.2 For each application for a new source for a **Public water system or Community, Domestic Bottled**, ~~or a Public Non-Transient Non-Community~~, water system, the Secretary shall provide notice and opportunity for hearing or written comment, or both, in accordance with 10 V.S.A., §1675.

### **3.2 Suspension or revocation of permit**

- 3.2.1 Any permit issued under these regulations may be suspended or revoked if the Secretary finds that the **Public** water system or drinking water facility is maintained or operated in violation of this rule or of any applicable law, rule, order, ordinance or regulation, or is in violation of the conditions stated in the permit, or that the water supplier has submitted false or misleading information to the Secretary.
- 3.2.2 The Secretary shall comply with 10 V.S.A., §1675 and 3 V.S.A. §814 prior to revocation or suspension of a permit.
- 3.2.3 When a permit has been denied, suspended or revoked, emergency orders to protect the users may be issued and remain in effect until the operating permit is validated.

### **3.3 Emergency Permits to Construct**

- 3.3.1 The Secretary may issue an emergency permit to construct for modifications to a water system needed to address an exceedance of a maximum contaminant level pursuant to a Secretary-approved emergency response plan.
- 3.3.2 Emergency permits to construct shall be limited to authorizing measures identified in a Secretary-approved emergency response plan.
- 3.3.3 Emergency permits to construct shall be issued for not more than 180 days and may be renewed.
- 3.3.4 Emergency permits to construct shall follow the process for public notice and involvement established under 10 V.S.A. § 7716 (Type 5).

### **3.4 Appeals**

- 3.4.1 Final decisions made by the Secretary regarding permit issuance, renewal, denial, revocation, and suspension, for **Public** water systems, may be appealed formally as provided by 10 V.S.A., §1680 (or 10 V.S.A., §1977 for Non-Public water systems).

### **3.5 Transfer or Assignment of Permits**

- 3.5.1 Operating Permits (see Subchapter 21-5), Source Permits, and **Public Community, Non-Transient Non-Community, Domestic Bottled** and ~~Transient Non-Community~~ Water System Construction Permits are not transferable or assignable and shall automatically

become invalid upon a change of ownership or upon suspension or revocation. A new owner shall obtain a new permit prior to operation of the water system.

### **3.6 Requirements of Other Statutes and Permitting Authorities**

A permit issued under this rule allows the permittee to take specific actions. However, it does not relieve the permittee of obligations they may have under other statutes, regulations or permitting authorities including but not limited to Act 250, Agency of Natural Resources, Department of Public Safety, Department of Agriculture, Food and Markets, Department of Education, Public Service Board, Agency of Human Services, and Department of Public Service.

### **3.7 Variances from Technical Standards**

#### **3.7.1 General**

A request for approval of alternatives to the requirements of the *Vermont Standards for Water System Design, Construction and Protection* (Appendix A) shall be filed in writing. The application for a variance shall state the manner in which the proposed system or design varies from the specified criteria of these standards, and a basis for finding that the proposal meets the criteria set forth in Subsection 3.7.2 below. Requests for approval under this section shall be reviewed by the Secretary within 30 days of application.

For **Public Transient Non-Community** Construction Permits, variances may only be issued under the criterion in Subsection 3.7.2(e), below.

The Secretary shall maintain a file available to the public of all decisions issued under this section.

#### **3.7.2 Variances Criteria**

The Secretary may permit an alternative to the requirements of the standards in Appendix A upon finding that:

- (a) The proposal is designed to achieve the purpose of the standards as set forth in Section 1.2;
- (b) The proposed design is based on established engineering and/or hydrogeologic principles and can be expected to perform at the same level of reliability and health protection as the design criteria and standards included in this rule;
- (c) The proposed project will comply with all drinking water quality standards and not create a public health hazard or significant risk to public health;
- (d) The public and persons using the water system are protected from health hazards, health risks, pollution and increased costs in the event that the proposed alternative does not meet the purpose of this rule; and

- (e) In the case of remediation of existing health hazards, the proposal shall be in compliance, as closely as possible, with Appendix A of this rule, shall not be to accommodate new growth, and shall not violate drinking water quality standards.

### 3.7.3 Performance Security

The Secretary may require bonding or other security of an appropriate amount to ensure performance or replacement of any alternative in the event that it fails to meet the purpose of this rule. Security or bonding shall be established for a specified time period in each case.

### 3.7.4 Decision and Notice

The Secretary shall make the decision to allow or deny an alternate proposal in writing and shall state the reasons of the decision. A copy of each decision granted or approved under this section shall be posted for at least one month in the offices of the municipalities in which the project is located. Additionally, public notification to the users of the system shall be made in accordance with the provisions of Subchapter 21-10.

## 3.8 **Petition for Declaratory Ruling**

On petition of a person who may be affected by a statute or rule administered by the Agency, the Secretary shall issue a declaratory ruling as to the applicability of any statutory provision or any rule as provided for in 3 V.S.A. §808.

## 3.9 **Compliance with Permits**

The Secretary may issue a permit to the applicant subject to the conditions consistent with the purposes of this rule. No person shall proceed with a construction project except in accordance with the terms and conditions of the permit.

## Subchapter 21-4 SOURCE and CONSTRUCTION PERMITS

### Introduction

This subchapter applies to the following water systems:

- (a) **Public Community** water systems;
- (b) **Public Non-Transient Non-Community** (NTNC) water systems;
- (c) **Public Transient Non-Community** (TNC) water systems; and
- (d) **Domestic Bottled** water systems.

### 4.0 General

Source permits for **Public Community** and **Domestic Bottled** water systems shall be governed by Section 4.1 of this subchapter, and the requirements of Appendix A, Part 3. Source permits for **Public Non-Transient Non-Community** water systems shall be governed by Appendix A Part 11.

Construction permits for, or improvements to, **Public Community** and **Domestic Bottled** water systems shall be governed by Section 4.2 of this subchapter, as well as the requirements of Appendix A, Parts 1 through 10, and 12.

Construction permits for **Public Non-Transient Non-Community**, and **Public Transient Non-Community** water systems shall be governed by Sections 4.2.4, and 4.2.8 of this subchapter and the requirements of Appendix A, Parts 11 and 12. For **Public Non-Transient Non-Community and Public Transient Non-Community** water systems, some provisions of Parts 1-10 apply and are clearly noted in the text of Part 11 of Appendix A.

#### 4.0.1 Prohibitions

No person shall begin construction of, alter, renovate, or convert for use as a **Public** water system, any system or any portion thereof, except as provided in Section 4.0.2 of this subchapter, without first receiving a Source Permit or Construction Permit from the Secretary.

#### 4.0.2 Exemptions from Source and Construction Permits

No Construction Permit for **Public** water systems will be required for minor system improvements such as replacement of hydrants on existing distribution line(s), pipe extension projects of less than 500 feet, minor alterations or maintenance of an existing water system, and no source permit will be required for minor maintenance such as replacement of source pump or source structure repair, which would not in and of itself affect the quality or quantity of water service rendered, providing work is done according to the *Vermont Standards for Water System Design, Construction and Protection* (see Appendix A of this rule). It is recommended that the water supplier contact the Secretary for consultation on plans for minor improvements.

#### 4.0.3 Applicability of Vermont Standards

In addition to meeting the applicable requirements of this rule, all water system changes including construction, alteration, renovation, installation, extension and/or connection after the date this rule become effective shall conform to the *Vermont Standards for Water System Design, Construction and Protection* in Appendix A.

### 4.1 Source Permits

#### 4.1.0.1 Application Requirements

- (a) Source Permits are required for new **Public** water systems, ~~**Community**~~, ~~**Public Non-Transient Non-Community**~~, and **Domestic Bottled** water system sources and an increase in approved yield of existing **Public** ~~**Community**~~, ~~**Public Non-Transient Non-Community**~~, and **Bottled** water system sources, including but not limited to hydrofracturing and deepening of sources and other methods determined by the Secretary to impact quantity or quality of the well.
- (b) General procedural requirements for **Public Community** and **Domestic Bottled** water system Source Permits are outlined in subsection 4.1.1 below. Technical requirements for surface water are outlined in Appendix A, Subpart 3.2 and for groundwater in Appendix A, Subpart 3.3.
- (c) General procedural requirements for **Public** ~~**Non-Transient Non-Community**~~ water system Source Permits are outlined in Appendix A Parts 11 and 12.
- (c) Any permitted **Public Community**, **Non-Community**, or **Domestic Bottled** water source which has not been connected to the water system for a period of time greater than two years, may at the discretion of the Secretary, be required to obtain a valid Source Permit prior to connection of the source.

#### 4.1.0.2 First-In-Time

For the purpose of determining first-in-time for rights to water source development or groundwater degradation, and to accommodate compatible land uses, the following shall be recognized as initiating a project:

- (a) Submittal of a substantially complete application for approval of a drinking water source;
- (b) Submittal of a substantially complete application for a building permit or sewage disposal permit for a non-state regulated project;
- (c) Submittal of a substantially complete application for a State Permit to dispose, discharge, or use any substance which may affect water quality;
- (d) Existing land and groundwater uses; or
- (e) Other state and local planning actions as reviewed on a case by case basis.

#### 4.1.1 Water System Source Permit Process And General Requirements

The Secretary uses a step-by-step process culminating in the permitting of a **Public Community, Non-Community, and Domestic Bottled** water source. No Source Permit or Construction Permit will be issued until all of the Secretary's concerns are addressed.

Applicants for a Source Permit shall apply for and receive, as appropriate:

- (a) Source Construction approval;
- (b) Source Testing approval; and
- (c) Source Evaluation Report approval.

#### 4.1.1.1 Step 1. Source Permit Application

##### Application Form

The purpose of the Source Permit Application is to record information required to determine whether the site at the proposed location is suitable for source construction.

Applications for a Source Permit shall be submitted on forms provided by the Secretary that request information such as maps indicating source locations, nearby land use activities, project plans, and property ownership.

#### 4.1.1.2 Step 2. Site Inspection

At the discretion of the Secretary, Aa site inspection shall be conducted by the Drinking Water and Groundwater Protection Division, along with the applicant and/or consultants.

#### 4.1.1.3 Step 3. Source Application Public Notice and Source Construction

- (a) For site(s) approved by the Secretary, and prior to construction of source, the applicant shall provide the Secretary with certification that all landowners adjoining the parcel containing the proposed source have been notified of the proposed source. Certification shall be provided prior to receiving source construction approval.

~~The Secretary shall give public notice for each proposed public water source by publication in a newspaper of general circulation for the area containing the proposed system and by posting a notice in the clerk's office for the municipality containing the proposed source. The Secretary shall provide an opportunity for written comment or a public hearing, or both, on the application before ruling on the application.~~

- (b) The Secretary will review their findings and write a review letter requesting more information, or one of site approval, conditional approval, or denial of approval for the proposed site.
- (c) Source Construction approval shall be valid for two years and may be renewed upon written request by the applicant at the discretion of the Secretary.

- (d) The applicant may then construct the proposed source per the Secretary's approved plans.
- 4.1.1.4 Step 4. Source Testing Application/Source Testing

The purpose of the source testing application is to provide the applicant and Secretary with a review of the information needed to determine that the testing and data to be collected will address the concerns of the Secretary with respect to source yield, quality, site, interference/allocation, source protection area delineation, ground water under the direct influence of surface water, and the risk from potential sources of contamination.

- (a) Applications for Source Testing approval shall be submitted on a form provided by the Secretary. The form will request information regarding the source, such as pump test specifications, data collection, and other water uses in the area.
- (b) The Secretary will review a completed application and write a letter of approval, conditional approval, or denial.
- (c) Source Testing approval shall be valid for two years and may be renewed upon written request of the applicant at the discretion of the Secretary.

4.1.1.5 Step 5. Source Evaluation Report

Source evaluation reports must be prepared under the supervision of a hydrogeologist or engineer, knowledgeable in the field of well hydraulics and contaminant hydrogeology. Each report must consider and comment on the following:

- (a) Site isolation zone, ownership and/or easements;
- (b) Water Quality Results for the primary and secondary contaminants contained in Table 6-1 and Table 6-3 (Appendix A Subpart 3.2.4 includes information about additional monitoring that may be required);
- (c) Water Quantity (See Appendix A, subparts 3.2.3 and 3.3.3);
- (d) Source construction, as built engineering plans shall be included;
- (e) Interference with other water supply withdrawals as appropriate;
- (f) Source Protection Area and Protection Plan (See Subchapter 21-16);
- (g) Agricultural lands in source protection area; and
- (h) Additional studies as required by the Secretary.
- (i) For pumped groundwater sources the report shall include but not be limited to the following:
  - (1) A summary of the test design, test method, problems encountered, analysis used, and detailed hydrogeologic setting. Include a drawdown/discharge vs. discharge graph ( $S_w/Q$  vs  $Q$ ) and evaluation of step test data using published methodologies acceptable to the Secretary.
  - (2) Published analytical method or any preapproved proprietary method proposed by the consultant and approved by the Secretary for safe yield appropriate to the hydrogeologic setting based on data collected from the constant discharge and recovery tests. Rationale for choice of analytical method.



- (3) All calculations used in the determination of source yields, source protection areas, and interference with other source withdrawals.
  - (4) Plots of time drawdown data on log-log or semi-logarithmic paper for source yield tests.
  - (5) Plot of discharge vs time on the same semi-log plots of time vs drawdown for proposed production and observation wells. Plot of distance vs drawdown (if 2 or more observation wells are available).
  - (6) Plots of precipitation and temperature conditions occurring before, during, and after the testing, when appropriate.
  - (7) All raw data including drawdown, discharge, and recovery.
  - (8) A final source protection area delineated on a USGS topographic map or other base map as approved by the Secretary and include rationale, calculations and information specified in Appendix A, Subpart 3.3.6.2.
  - (9) Geologic cross sections and groundwater contour maps when data are available.
  - (10) Hydraulic information as requested on forms provided by the Secretary.
  - (11) Well Completion Report on Agency form.
  - (12) Calculations and tables of aquifer coefficients.
  - (13) Information as necessary to evaluate whether groundwater is under the direct influence of surface water. See Appendix A, Subpart 3.4.
- (j) A source protection plan, including a contingency plan, for emergency actions in cases of loss of source use. See Subchapter 21-16.

#### 4.1.1.6 Step 6. Source Protection Area Public Notice and Hearing

The Secretary shall give public notice of each proposed Public water source protection area through the Environmental Notice Board (ENB) ~~by publication in a newspaper of general circulation for the area containing the proposed protection area and by causing a notice to be posted in the clerk's office for the municipality containing the proposed area.~~ The Secretary shall also give notice to landowners within the source protection area and all appropriate officials of municipalities and state agencies. The Secretary shall provide an opportunity for written comment or a public hearing, or both, on the proposed area before designating the area.

#### 4.1.1.7 Issuance of Source Permit

- (a) Following the public comment period the Secretary will review a completed Source Evaluation Report and write either a Source Permit containing any required permit conditions or a letter of denial.
- (b) If the Secretary finds there are agricultural lands in the Source Protection Area which are likely to affect the proposed source but not likely to constitute a public health hazard, the secretary shall require the applicant to certify in the permit that the proposed source will be abandoned, replaced or treated if it becomes contaminated by agricultural activities conducted on the agricultural lands.
- (c) A Source Permit shall be valid for a period of two years and may be renewed upon written request of the applicant at the discretion of the Secretary if the source is not connected to the public water system.

- (d) Once the permitted source is connected to the water system it shall then become a permitted component of the water system's infrastructure, and shall be referenced in the water system's Permit to Operate.

## **4.2 Construction Permits**

### **4.2.1 Application Requirements**

- (a) An application for a construction permit shall be made on an application form provided by the Secretary, signed by the applicant, and shall be accompanied by, but not limited to, maps and detailed plans and specifications of the **Public** water system prepared by or under the direction of a Registered Professional Engineer, other than exceptions as provided in Paragraph 4.0.2.
- (b) Applications for permits to construct **Public Non-Transient Non-Community** and **Public Transient Non-Community** water systems shall follow the requirements as described in Appendix A, Parts 11 and 12.
- (c) ~~Applications for permits to construct for **Public Transient Non-Community** water systems shall be made to the Drinking Water and Groundwater Protection Division.~~

### **4.2.2 Long Range Plan and Engineer's Report**

In addition to meeting applicable requirements of this rule, all new **Public Community** and **Non-Transient Non-Community** water systems shall submit a long range plan (including but not limited to managerial capacity and financial capacity criteria. See Appendix B) and an Engineer's Report (See Appendix A, Subpart 1.2). This plan and report must be approved by the Secretary and a determination made that the system has demonstrated capacity in accordance with Subchapter 21-15 and other applicable requirements prior to issuance of a construction permit.

### **4.2.3 Deviation from Approved Plans & Specifications**

New water systems and modifications to water systems shall be constructed in accordance with the plans and specifications approved by the Secretary. Proposed deviations from the approved plans or specifications, operating units, the functioning of water treatment processes, or proposed change in the quality of the water to be delivered must be submitted in writing, except for minor field changes, for review and approval. A construction permit shall be obtained or amended by the Secretary before such changes are made.

### **4.2.4 Suspension and Revocation of Construction Permits**

A construction permit may be suspended or revoked in accordance with Section 3.2 of this rule.

### **4.2.5 Site Restrictions**

To the extent practicable, no new or expanded water system, or parts thereof, shall be located at a site which:

- (a) is subject to adverse effects from potential sources of contamination;
- (b) is subject to adverse effects from natural disasters; or
- (c) is located within the floodplain of a 100 year flood (except for sources and water lines).

#### 4.2.6 Permit Conditions

Construction permits issued under this rule may include, but shall not be limited to, conditions which:

- (a) limit the duration of the permit;
- (b) require construction in accordance with the approved plans;
- (c) require observation of construction under the general supervision of a Registered Professional Engineer;
- (d) require special studies or testing to evaluate risk of contamination;
- (e) state that the permit is not transferable;
- (f) require operation and maintenance manual, certified operator, and application for permit to operate before the system and/or its alterations and/or additions is placed in operation; and
- (g) require submission of record drawings prior to obtaining an Operating Permit.

#### 4.2.7 Term of Construction Permits

For **Public Community**, **Public ~~Non-Transient~~ Non-Community**, and **Domestic Bottled** water systems, a construction permit shall be valid for two years, and may be renewed at the discretion of the Secretary.

#### 4.2.8 Avoidance of Public Health Hazard or Risk

A construction permit for a **Public** water system shall not be issued or renewed if the Secretary determines that operation of the system will constitute a public health hazard or public health risk.

#### 4.2.9 Public Service Board

In cases where the Public Service Board has authority over a water system, a condition of any construction permit issued will require that the applicant receive a Certificate of Public Good (CPG) from the Board prior to commencing any construction. In the event that the CPG requires material modifications to the approved plans and specifications, the applicant must receive an amended construction permit from the Secretary before beginning construction.

Water systems under the jurisdiction of the Public Service Board are specified in 30 V.S.A., §203(3), and are generally any system, not municipally owned, which sells water

to one or more users. Applicants are encouraged to contact the clerk of the Public Service Board for additional information.

An applicant for a construction permit under this rule is responsible for timely application to the Public Service Board for its approval of the proposed water system and its rates.