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July 8, 2002

Senator Ann Cummings, Chair
Legislative Committee on Administrative Rules
State House
Montpelier, VT 05602

Re: Final Proposed Rule – Wastewater System and Potable Water Supply Rules

Dear Senator Cummings:

In accordance with the provisions of section 15(d) of Act 113 (S.27), the Agency of Natural Resources has revised “Rule #2” that was filed with LCAR on March 27, 2002 in order to track the provisions of S.27, to respond to comments made at prior LCAR hearings, and to respond to comments made to the standing legislative committees. Due to the extent of these revisions, (for example, consolidating four different permitting subchapters into one permitting subchapter), the Agency has not done a strike thru/underlined version of the revised rule. Therefore, in order to assist the committee in its review of the revised rule, the following is a summary of significant revisions that have been made:

1. Subchapters 4, 5, 6, and 7 of “Rule #2” originally filed with LCAR (“original rule”) have been consolidated into one permit chapter in accordance with S.27;
2. The appeal authority in section 1–305 of the original rule has been revised to track S.27;
3. The purpose section (1-102) has been revised to incorporate the purpose statement in S.27;
4. The site technician certification section (1-313) has been minimally revised to incorporate statutory language and refer to professional engineers and site techs as designers. Additional revisions will be made in a future rulemaking (see below).
5. The exemptions contained in S.27 have been added to the list of exemptions in the original rule,

resulting in some changes in the exemption language. In addition, some language of the exemptions in the original rule has been revised to reflect the fact that there is now only one permit program;

6. Some exemptions have been added to reflect the fact that the existing rule exemptions were still being claimed after the effective date of S.27. This addition was necessary in order to avoid potential clouded title problems that would have otherwise occurred
7. All of the exemptions that were contained in the prior statutes have been carried forward into this rule revision, with the exception of the exemption for the addition of accessory “mother-in-law” apartments. The accessory apartment exemption remains in effect for those apartments created before the effective date of the rule. New accessory apartments established within a residence will be exempt under section 1-403 (2)(10) of the rule (page 45).
8. The minimum site conditions language of what is now section 1-502 (formerly section 1-802 of the original rule) has been revised to track the requirements of S.27 concerning the 20% slope limitation and the planning and zoning pre-requisites in effect until July 1, 2007;
9. In response to comments presented at past LCAR hearings, the minimum septic tank size requirements of section 1-508 (formerly 1-808) have been revised to eliminate the requirement for 1500 gallon tanks for all small systems. The sizing requirement is now the same as it is in the existing rules;
10. In response to comments made at a House Natural Resources Committee Meeting, the language of the note at the end of section 1-4-01 of Appendix 1-A has been revised to more accurately reflect the concept of flexibility in certain design aspects of a wastewater system; and
11. Subchapter 6 (formerly subchapter 9) has been revised to reflect the requirements of S.27 for approval of municipal sewage ordinances and the establishment of statewide uniform minimum technical standards as of July 1, 2007.

Please note that there are a few provisions of S.27 that have not been addressed in this revised rule as due to the fact that they require details to be filled in and the Agency does not want to do that unilaterally. Therefore, there will be another set of amendments to this revised rule that that the Agency will start working on soon, that will be discussed with the Technical Advisory Committee and will be subject to notice and comment by the public through a new rulemaking process. The three main areas of S.27 that will be addressed in the next round of amendments are:

1. The establishment of classes of designers, including the expansion of the authority of site technicians;
2. The details for the requirements for delegation of the program to a municipality, including when delegation can be withdrawn and the reporting requirements. (Please note that until this rule

amendment is done, the Agency does not intend to delegate the program on a case by case basis as there is the potential for inequities in the delegation process); and

3. The specifications for constructed wetlands used as treatment components in wastewater systems.

In addition, please note that it is critical that these revised rules be filed now to reduce the amount of confusion currently experienced by attorneys, consultants, and the people who need permits or wish to use the updated technology standards, and to meet the statutory deadline for rule adoption of July 30, 2002. This revision process has been a significant effort by Agency personnel in a very short period of time. The Agency, however, believes that it is important for representatives of interests outside the Agency to review the revisions and eliminate any possible glitches (although the emergency rulemaking authority passed in this year's Capital Construction Bill provides a necessary safety net in the event of errors or omissions).

Therefore, the Agency has asked the ad hoc group of the title attorneys and real estate practitioners (who reviewed the proposed rule last fall) and the ad hoc Technical Advisory Committee (who helped to update the technical standards last summer and fall) to review and provide feedback on the revised rule before the LCAR meeting on July 17th. As a result of this feedback and other editorial changes that may make the rules easier to understand, it is possible that the Agency will have some changes to the revised rule that you are now reviewing. If there are changes, the Agency will identify them for you in writing and at the meeting on the 17th.

There are some revisions to the final proposed rule that refer to the effective date of the revised rule. The Agency is hereby asking LCAR's permission, once the rule has been approved, to change this phrase wherever it appears to the actual effective date. The Agency has found that this is helpful to the people using the rule (and it is the Agency's understanding that the same action will occur when the text of S.27 appears in the green books for the same reason).

Finally, the Agency is formally withdrawing "Rule #1" at this time since it has been superceded by the passage of S.27.

If you have any questions or concerns, please feel free to contact me.

Sincerely,

Christopher Recchia, Commissioner
Department of Environmental Conservation

Cc: Anne F. Whiteley, Associate General Counsel, DEC
Marilyn J. Davis, Director, Wastewater Management Division

Roger Thompson, Program Manager, Engineering Services