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Department of Environmental Conservation

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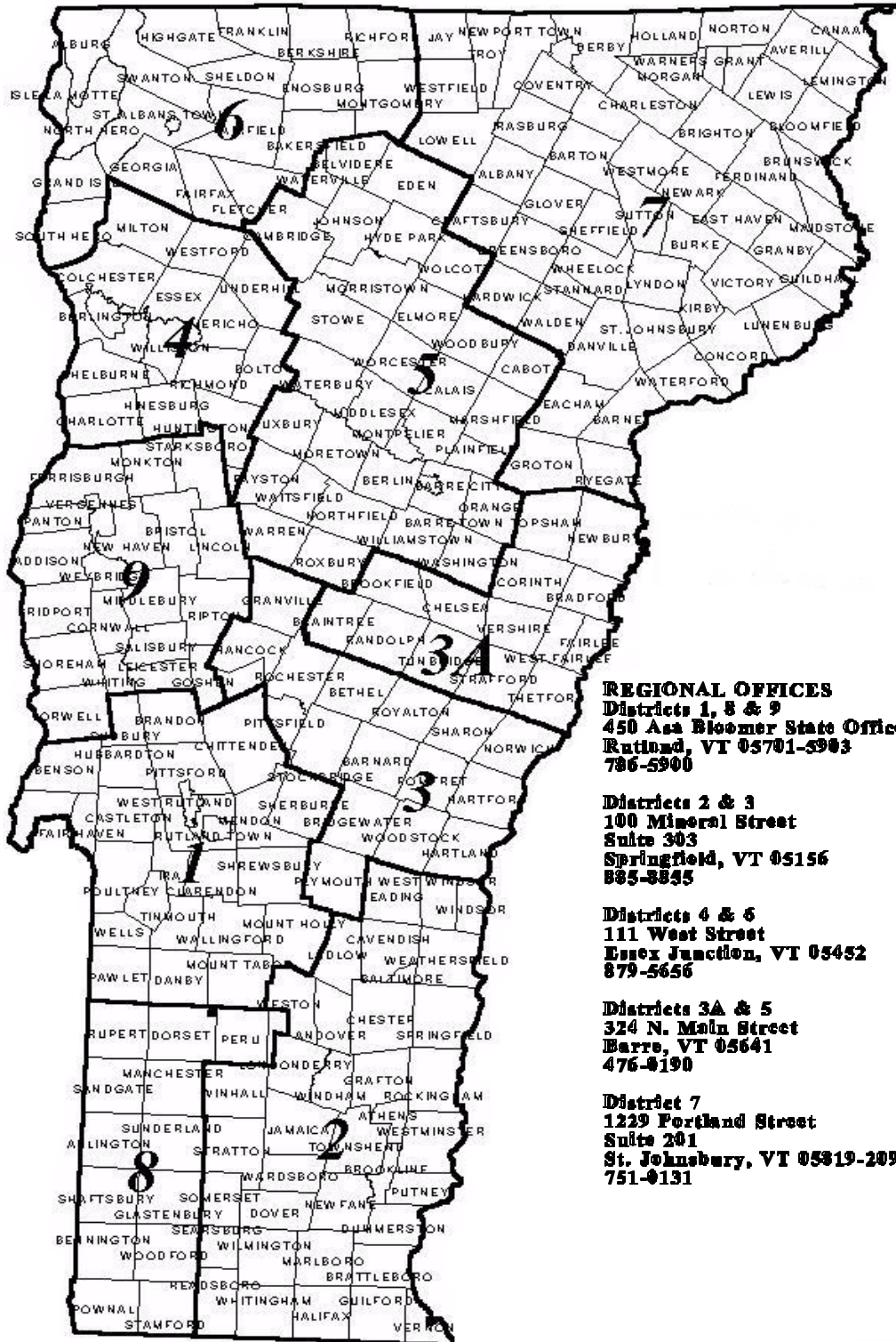
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## **Environmental Protection Rules**

### **Chapter 1**

#### **Wastewater System and Potable Water Supply Rules**

**Effective – \_\_\_\_\_, 2002**



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

### **§1-101        Scope**

- (a) These Rules apply to the subdivision of land, the construction, modification or change in use of a building or structure, the creation or modification of a campground, and the construction, modification, replacement and operation of their associated 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 sewerage connections of any size.

### **§1-102        Purpose**

- (a) The purpose of these Rules is to:
  - (1) establish a comprehensive program to regulate the design, construction, replacement, modification, operation, and maintenance of potable water supplies and wastewater systems in order to protect human health and the environment, including potable water supplies, surface water and groundwater;
  - (2) prevent the creation of health hazards or unsanitary conditions;
  - (3) insure the availability of an adequate supply of potable water;
  - (4) insure adequate effluent dispersal and drainage for the proper functioning of wastewater systems;
  - (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;
  - (6) insure that owners of potable water supplies and wastewater systems permitted under these Rules have knowledge of their systems' design, the operation and maintenance requirements, and their responsibilities for the satisfactory functioning of the systems;
  - (7) allow the use of alternative, innovative, and experimental technologies for the treatment and disposal of wastewater in the appropriate circumstances;
  - (8) protect the investment of homeowners through a flexible remediation process for failed potable water supplies and wastewater systems; and

- (9) increase reliance on and the accountability of the private sector for the design and installation of potable water supplies and wastewater systems through licensing and enforcement.
- (b) The basic performance criteria for the design, construction, operation and maintenance of wastewater systems are that:
  - (1) wastewater systems do not contaminate a potable water supply so that it is rendered not potable;
  - (2) wastewater systems do not present a threat to human health;
  - (3) wastewater systems assure that wastewater stays at least six (6) inches below the naturally occurring ground surface, unless the approved design requires it to do otherwise; and
  - (4) wastewater systems do not allow direct discharges of wastewater to surface waters.
- (c) While implementing 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 (i) and (j), and 2827; 10 V.S.A. Chapter 64; and 24 V.S.A. Chapter 102.
- (b) These Rules supersede the existing Small Scale Wastewater Treatment and Disposal Rules, which were effective on August 8, 1996.
- (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

- (a) As used in these Rules, the following terms shall have the specified meaning. If a term is not defined, it shall have its common meaning:
- (1) **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.
  - (2) **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.
  - (3) **Agency** - means the Agency of Natural Resources.
  - (4) **Applicant** – means the person(s) who owns the land on which a project is located.
  - (5) **Bedrock** – means both solid impervious ledge, and loose, slabby, or weathered rock and shale that are not soil and provide essentially no treatment of sewage effluent.
  - (6) **Bedroom** – means:
    - (A) any room in a residential structure that is at least 80 square feet in area, that is susceptible to present or future use as a private sleeping area, and that has at least:
      - (i) one window;
      - (ii) one closet; and
      - (iii) 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; or
    - (B) any room within a building or structure that actually serves primarily as sleeping quarters.
    - (C) On a case by case basis, the Secretary may determine that a room that meets the criteria of subsection (6)(A) of this section shall not be deemed to be a bedroom. When making this determination, the Secretary shall consider the following criteria:
      - (i) whether the room has a history of use as a bedroom;

- (ii) whether the size of the room is similar to other bedrooms in the residential structure or is consistent with room sizes customarily used for bedrooms;
- (iii) whether the room is located within the residential dwelling in an area customarily used for sleeping;
- (iv) whether the room is in fairly close proximity to bathroom facilities;
- (v) whether the room affords a level of privacy customarily expected for a bedroom;
- (vi) whether the room has been, or could be, marketed as a bedroom; and
- (vii) whether there are any other factors which could support a determination that the room is not a bedroom.

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.

- (7) **Board** - means the Vermont Water Resources Board.
- (8) **Building or Structure** – means a building or structure whose use or useful occupancy requires the construction or modification of a potable water supply or wastewater system.
- (9) **Campground** – means any lot of land containing more than three (3) campsites occupied for vacation or recreational purposes by camping units, such as: tents, yurts, tepees, leantos, camping cabins, and recreational vehicles including motor homes, folding camping trailers, conventional travel trailers, fifth wheel travel trailers, truck campers, van campers, and conversion vehicles designed and used for travel, recreation and camping. There shall be no distinction made between non-commercial (no charge, no service) and commercial operations. Note: A mobile home or Park Model recreational vehicle that is used as a residence at a campground is regulated as a building or structure.
- (10) **Campsite** – means an area in a campground that is designed to accommodate camping units, for which design flows will be calculated. Design flows may be different for campsites in campgrounds that are open more than seven (7) months per year. A campsite may rely on water faucets, central toilet facilities, and/or a dumping station or may have individual potable water supply and sewerage connections.



- (11) **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, adding bedrooms, 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.
- (12) **Commissioner** - means the Commissioner of the Department or her/his designated representative.
- (13) **Critical Level** - means the elevation of the seasonal high water table that must not be exceeded. Each site has a critical level that must be met in order to allow installation of any soil-based disposal system. The critical level varies when using the prescriptive, enhanced prescriptive, or performance based design approaches. The critical level also varies depending on the type of soil-based disposal system that will be used on the site.
- (14) **Crushed Stone** - means clean, durable stone no smaller than ¾” or larger than 1-1/2” in diameter.
- (15) **Department** - means the Department of Environmental Conservation.
- (16) **Design Flow** - means the flows, set by section 1-504 of these Rules and Section 2.2 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.
- (17) **Designer** – means a person who is operating within the scope of his or her license, as specified in section 1-313 of these Rules.
- (18) **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 consider the soil properties based on the test pit information and 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.
- (19) **Director** - means the Director of the Division or her/his designated representative.
- (20) **Division** - means the Wastewater Management Division of the Department.
- (21) **Elevation** - means height above mean sea level, using the U.S. Geological Survey datums.
- (22) **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.

(23) **Existing Exempt Lot** - means:

- (A) a lot that on March 5, 1973 contained two or more buildings or structures that 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 lot was in existence before June 14, 2002;
- (B) two individual lots of less than 10 acres each, subdivided out of the same lot and described by deeds that 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;
- (C) a lot that is ten acres or larger in size provided that the lot was in existence before June 14, 2002.
- (D) a subdivided lot that contains a primary single family residence, or other building or structure with design flows of sewage of 300 gallons per day or less, that was constructed on the lot prior to March 5, 1973, provided the following conditions are met:
  - (i) The building or structure is served by a public water supply permitted by the Secretary or a potable water supply that has been tested and has tested negative for the presence of total coliform;
  - (ii) The building or structure is served by a municipal or private wastewater treatment plant permitted by the Secretary or has a soil-based disposal system that has not failed and if the existing leachfield complies with one of the following:
    - (aa) is at least 100 feet from any property boundary created by the creation of the lot;
    - (bb) is at least 100 feet from the boundary created by an easement that allows for the installation of a replacement potable water supply or wastewater system for the exempt lot within the easement area; or
    - (cc) is less than 100 feet from the property boundary, or easement boundary, provided that a fully complying replacement area has been located on the lot, or located off the lot if there is permanent legal access to the replacement area;

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

- (iii) The building or structure is not a seasonal dwelling; and
  - (iv) The lot was in existence before June 14, 2002.
- (E) two or more lots containing one or more existing seasonal dwellings if the lots were created by the subdivision of a single lot provided that:
- (i) any existing wastewater system and any existing potable water supply is not a failed or system or supply;
  - (ii) a request is submitted to the Secretary and a letter is issued that approves a design for replacement wastewater systems and potable water supplies that meet the technical standards of these Rules;
  - (iii) the person requesting the exemption has created a legal mechanism that 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;
  - (iv) no unimproved lots of less than 10 acres in size were created without a permit as a result of the subdivision; and
  - (v) the lot was in existence before June 14, 2002.
- (F) a pre-existing lot, whether improved or unimproved, that was reconfigured before June 14, 2002 provided:
- (i) any land added to the overall subdivision had the required permit(s) or was exempt from the permitting requirements of this Subchapter before June 14, 2002;
  - (ii) no additional lots were created;
  - (iii) all of the lots were the same size or larger after the reconfiguration as they were on September 18, 1969;
  - (iv) the municipality or municipalities in which the land is located had a valid health ordinance based on Chapter 5, Subchapter 10, Part II, effective June 7, 1983 or a more recently adopted sewage ordinance approved by the Department of Environmental Conservation pursuant to Title 24 V.S.A. Chapter 102, or a valid zoning ordinance that

specifically referred to such a health or sewage ordinance as the basis for regulating wastewater systems;

- (v) a copy of the pre-existing and proposed revised lot lines is submitted to the Secretary; and
- (vi) the revised plot plan is recorded and indexed in the land records for the municipality where the lots are located.

(24) **Existing Seasonal Dwelling** – means a building or structure, such as a summer cottage, constructed or erected prior to June 1, 1970, that has not been used as a primary single family residence, and is not used for more than six months per year.

(25) **Failed Supply** - means

- (A) a potable water supply:
  - (i) that is contaminated so that it is rendered not potable;
  - (ii) 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
  - (iii) or where the source, treatment, or conveyance equipment used to provide potable water is broken or inadequate.
- (B) Notwithstanding the provisions above, a potable water supply shall not be a failed supply if:
  - (i) these effects can be and are remedied solely by minor repairs; or
  - (ii) 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 supply has recovered from the state of failure. Supplies which have recurring, continuing, or seasonal failures shall be considered to be failed supplies.
- (C) If a project is served by multiple potable water supplies, the failure of one supply will not require the issuance of a permit or permit amendment for any other supply that is not in a state of failure.

(26) **Failed System** - means

- (A) a wastewater system that is functioning in a manner:

- (i) 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;
  - (ii) that results in a potable water supply being contaminated and rendered not potable; or
  - (iii) that presents a threat to human health.
- (B) Notwithstanding the provisions above, a system shall not be a failed system if:
- (i) these effects can be and are remedied solely by minor repairs; or
  - (ii) 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 that have recurring, continuing, or seasonal failures shall be considered to be failed systems.
- (C) If a project is served by multiple wastewater systems, the failure of one system will not require the issuance of a permit or permit amendment for any other system that is not in a state of failure.
- (27) **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.
- (28) **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 flood year plain.
- (29) **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.
- (30) **Graywater** – means the wastewater from normal domestic activities such as bathing, clothes washing, food preparation, and cleaning but excluding wastewater from toilets.
- (31) **Impervious Soil or Subsoil** – means a soil layer with a percolation rate that is slower than 120 minutes per inch.
- (32) **Improved Lot** – means a lot that has a substantially completed building or structure on it, and an associated substantially completed potable water supply and wastewater system that may or not be located on the lot.

- (33) **Induced Groundwater Mounding** – means the rise in the seasonal high water table caused by the discharge of wastewater into a soil-based disposal system.
- (34) **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 an owner occupied single family residence who constructs a potable water supply and/or wastewater system to serve such residence.
- (35) **Leachfield** – means that portion of a soil-based disposal system used to discharge wastewater into the soil. Examples of leachfields include, but are not limited to: absorption trenches and beds; at grade systems; and mound systems.
- (36) **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.
- (37) **Minimum Site Conditions** – means those naturally occurring conditions related to soil permeability, soil depth, depth to seasonal high water table, depth to bedrock and slope that must exist in order to construct any soil-based wastewater system.
- (38) **Minor Repairs** – means:
- (A) 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 and/or associated valves, switches and controls, or any other repair that the Secretary, on a case by case basis, determines to be a minor repair.
  - (B) 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, repair or replacement of a mechanical component, deepening or hydrofracturing a well, or any other repair that the Secretary, on a case by case basis, determines to be a minor repair.
- (39) **Mobile Home** - means a prefabricated dwelling unit that:
- (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 supports or a permanent foundation, or installation as a unit in a previously prepared structure; and

- (D) contains the same type of water supply and waste disposal as immovable housing;
- (40) **Mobile Home Park** - means any lot of land under single or common ownership or control that 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 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.
- (41) **Mobile Home Lot** - means an area of land within a mobile home park designated for the placement of a single mobile home and the exclusive use of its occupants.
- (42) **Municipality** - means a town, city, incorporated village or unincorporated village, or gore.
- (43) **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.
- (44) **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.
- (45) **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.
- (46) **Potable Water Supply** - means the source, treatment and conveyance equipment used to provide water used or intended to be used for human consumption, including drinking, washing, bathing, the preparation of food, or laundering. This definition does not include any internal piping or plumbing, except for mechanical systems, such as pump stations and storage tanks or lavatories, that are located inside a building or structure and that are integral to the operation of a potable water system. This definition also does not include a potable water supply that is subject to regulation under 10 V.S.A. Chapter 56 (Public Water Supplies).
- (47) **Pre-existing Lot** - means a lot:
- (A) whose boundaries were in existence on September 18, 1969, and were so described in a deed recorded on or before that date;

- (B) that has been approved by a municipality pursuant to the administration of a subdivision ordinance or bylaw prior to September 18, 1969;
  - (C) 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
  - (D) that 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;
- (48) **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.)
  - (49) **Primary Area** - means the area reserved for or containing the original wastewater system.
  - (50) **Project** – means all lots, buildings, structures, campgrounds, potable water supplies and wastewater systems for which a particular permit application is submitted.
  - (51) **Professional Engineer** - means an engineer licensed and in good standing by the Board of Professional Engineering under 26 V.S.A. Chapter 20.
  - (52) **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.
  - (53) **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.
  - (54) **Seasonal High Water Table** – means the highest elevation that the water table reaches during the seasonally wet times of the year. This is determined by soil examination or groundwater level monitoring as described in the Rules.
  - (55) **Secretary** - means the Secretary of the Agency or a duly authorized representative of Secretary. A duly authorized representative of the Secretary includes a municipality that has requested delegation, in writing, and has been delegated the authority to implement provisions of these Rules in lieu of the Secretary.



- (56) **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, stormwater shall not be considered sewage.
- (57) **Single Lot Subdivision** – means subdividing a lot so that two, and not more than two, lots are created during the period of two years ending with that act of subdivision. The newly created lot and the remaining original lot, shall be both 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.
- (58) **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.
- (59) **Soil-Based Disposal System** – means a wastewater system that depends on naturally occurring soil to absorb the effluent from the system and to transmit the wastewater away from the site without any overland flow. Soil-based disposal systems include those that have a septic tank with leachfield, an advanced treatment system with leachfield, or a spray disposal system.
- (60) **Subdivide** - means to divide land by sale, gift, lease, mortgage foreclosure, court-ordered partition or decree, or filing of a plat, 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, 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.

- (61) **Substantially completed** - means a building or structure, potable water supply, or wastewater system that is sufficiently constructed so that it can be used for its intended purpose with no further construction.
- (62) **Unimproved Lot** – means a lot that has no building or structure on the lot.
- (63) **Wastewater system** - means any piping, pumping, treatment or disposal system used for the conveyance and treatment of sanitary waste or used water, including, but not limited to, carriage water, shower and wash water, and process wastewater. This definition does not include any internal piping or plumbing, except for mechanical systems, such as pump stations and storage tanks or toilets, that are located inside a building or structure and that are integral to the operation of a wastewater system. This definition also does not include wastewater systems that are used exclusively for the treatment and disposal of animal manure. For the purposes of these Rules, “wastewater system” refers to a soil-based disposal system of less than 6,500 gallons per day, or a sewerage connection of any size.

## 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, that, based on the information and description provided by the applicant, initially identifies 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 potential regulatory requirements are identified.
- (c) The Secretary shall give deference to a certification by a designer with respect to engineering design or judgment exercised by the designer in order to minimize the Secretary's review of certified designs. Nothing in this subsection shall limit the responsibility of the designer to comply with the standards and the Rules, or the authority of the Secretary to review and comment on design aspects of an application or to enforce these Rules with respect to the design or the design certification.
- (d) The Secretary reserves the option to issue a permit without prior detailed review of the potable water supply or wastewater system design by relying the design certification required by these Rules.

### § 1-302 Application for Permits

- (a) **Applications:** Applications for permits must be submitted to the appropriate Agency Regional Office.
- (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, that states:  
  
"I hereby certify that the design-related information submitted with this application is true and correct, and that, in the exercise of my reasonable professional judgment, the design included in this application for a permit complies 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 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;
  - (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) the global positioning coordinates of all existing or proposed potable water sources serving the project and the center of all existing or proposed leachfields serving the project;
  - (K) 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 that may potentially affect the project design;

- (L) 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 that it will be serving is located, evidence of permanent legal access to the supply or system for construction, operation and maintenance; and
  - (M) 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) the permanent benchmark established on the land involved and shown on the plan.
  - (D) existing and proposed topographic contours, in the areas that may be potentially affected by the project or that may potentially affect the project design, using contour intervals that are no greater than five (5) feet. 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. Some types of wastewater systems may require different contours. See Subchapter 5 of these Rules.
  - (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 that may be potentially affected by the project or that may potentially affect the project design;

- (G) the location of all standing and flowing waters and wetlands on the lot on which the project is located that may be potentially affected by the project or that may potentially affect the project design, 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 that may be potentially affected by the project or that may potentially affect the project design;
  - (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 that may be potentially affected by the project or that may potentially affect the project design, including identification of surface drainage patterns; and
  - (I) the location and elevation of any applicable flood prone area on the lot on which the project is located that may be potentially affected by the project or that may potentially affect the project design, including the location of any flood plain or special 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
- (3) Detail Sheets. The application shall include detail sheets that include site 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 that may be potentially affected by the project or that may potentially affect the project design, including 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 the project or the 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 1-506 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. If the designer prepared a map or diagram that shows the location of all soils tests or investigations, a copy of the map or diagram shall also be submitted.
- (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/or 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. Note: See section 1-504 of these Rules.
- (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 present a negligible potential for adverse environmental impact, the Secretary may waive submission of any of the specific information required in subsections (c) (1) through (7) of this section 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 that 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.
- (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 that may endanger public health.
- (3) No permit shall be issued by the Secretary unless the Secretary receives the designer certification required to be submitted with the permit application under section 1-302 (b)(1) of these 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, or development review board, for the municipality in which the project is located, or to the municipal clerk in municipalities without a planning commission or development review board.
- (b) Each permit shall be recorded and indexed by the permittee in the land records for the municipality in which the project is located prior to commencement of any activity authorized under that permit. The permittee shall also be responsible to

ensure that all required certifications are also recorded and indexed in the land records for 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 certification from a designer or the installer, signed and dated, that states:

“I hereby certify that the installation-related information submitted is true and correct and that, in the exercise of my reasonable professional judgment, the potable water supply and wastewater system have been installed in accordance with the permitted design and all permit conditions, were inspected, were properly tested, and have successfully met those performance tests.”

- (d) Construction of a potable water supply or wastewater system, as permitted, does not relieve the permittee from the responsibility to properly operate and maintain the supply or system.
- (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.
- (h) Notwithstanding the repeal of 3 V.S.A. §2873(c), 10 V.S.A. Chapter 61, the mobile home park permitting requirements of 10 V.S.A. Chapter 153, and 18 V.S.A. § 1218, permits regarding trailer camps, tent sites, campgrounds, potable water supplies, and wastewater systems, mobile home parks, and subdivisions issued before the effective date of these Rules shall remain in effect, except as otherwise provided in these Rules. These permits shall be deemed to be permits issued under these Rules and may be amended by the Secretary under these Rules.

#### **§ 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, in writing, 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 act or decision by the Secretary.

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

- (a) A person aggrieved by a final act or decision, other than an enforcement decision, of the Secretary under these Rules may appeal to the Vermont Water Resources Board in accordance with 10 V.S.A. section 1977.

**§ 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) Untrue or incorrect design or installation certifications and/or design or installation certifications that do not reflect the exercise of reasonable professional judgement submitted in support of the permit;
  - (4) Violation or failure to comply with the provisions of these Rules or authorizing statutes; or
  - (5) A petition 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(s), 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 alleged 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(s).
- (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 and the municipality in which the project at issue is located are automatically parties 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 30 days after the close of the hearing. Copies shall be sent to the permittee, other parties, the legislative body of the municipality, and all affected 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 recorded and indexed, by the party who petitioned for revocation, in the land records for 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 the enabling statutes for this Rule or by this Rule itself, the Secretary shall make a declaratory ruling as to the applicability of any statutory provision or this 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 section of this 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 requirements for new wastewater 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;
  - (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 human 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 for replacement systems when:
  - (A) the replacement system is for a project that requires a permit under these Rules but never obtained the permit, unless the project is a subdivided lot that qualifies for the exemption described in section 1-403(a)(4) of these Rules or farm buildings or structures that qualify for the exemption described in section 1-404(a)(10) of these Rules; or
  - (B) the replacement system will allow an increase in design flow.
- (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 or product 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 authorize 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 or product 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) installations or uses of each specific innovative/alternative system or product may be authorized 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 authorize 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 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 or product 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 the cost of the incremental increase in environmental and human health protection;
  - (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 or product.
- (b) Up to five (5) installations or uses of each specific experimental system or product may be authorized 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) **General Information**

- (1) Company or vendor name.
- (2) Address.
- (3) Specific contact name, address, phone number, fax number, and E-mail address.

(b) **System or Product Information**

- (1) System trade name and model/s number(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 authorization (general, pilot, or experimental) requested and justification why the system or 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 or product, and the environment.

(d) **Authorization/Denial History**

- (1) Authorizations from (include copies of all authorizations 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 or Product**

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

(g) **Operation Requirements**

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

(h) **Maintenance Requirements**

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

(i) **Monitoring Requirements**

- (1) Proposed schedule for monitoring, including frequency and constituents, if any is proposed.

- (2) All treatment systems or products 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 authorization is requested.
- (2) The Secretary shall consider all of the information available and its reliability as follows:
  - (A) an advisory opinion of 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 or products 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 or product seeking general use authorization.
  - (C) recommendations from other states based on use of a particular system or product that has been installed in a variety of situations representative of Vermont's soils and climate will be important. Reports related to systems or products 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 company or vendor 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 information collected by the company or vendor. Limited information and a proposed process based on established scientific principles, when coupled with appropriate site limitations will normally be sufficient for experimental authorization.

(3) Decisions

- (A) All decisions shall be in writing and shall be made available for public review.
- (B) Authorizations shall include conditions related to the conditions under which the wastewater system or product may be used, the obligations of the system or product owner to operate and maintain the system or product, 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 wastewater system or product does not meet the performance requirements of the Rules or when the company or vendor has failed to provide information that demonstrates compliance with the Rules.

(4) Revocation of authorization

A system or product authorization may be revoked if the Secretary determines:

- (A) the authorization was granted on the basis of incorrect, false, or misleading information; or
- (B) the system or product fails to perform in compliance with any performance standard established for the system; or
- (C) the system or product does not function with the expectations for reliability and protection of health and the environment upon which the authorization was based on; or
- (D) the company or vendor fails to comply with conditions in the authorization, including but not limited to:
  - (i) filing required reports;
  - (ii) maintaining a required supply of repair or replacement parts; or

(iii) ensuring an adequate supply of trained individuals to operate and maintain the system or product, if required.

(E) The revocation process will be conducted in accordance with section 1-306 of these Rules.

### § 1-313 Designer Licensing

- (a) **License Required:** No person shall design a potable water supply or wastewater system that requires a permit under these Rules without first obtaining a designer license from the Secretary.
- (b) **Conflicts of Interest:** No person shall review or act on permit applications for a potable water supply or wastewater system that he or she designed or installed.
- (c) **Professional Engineers:** A professional engineer shall be deemed to have a valid designer license under this section, without going through the licensing process, provided that:
- (1) the engineer is practicing within the scope of his or her engineering specialty; and
  - (2) if the engineer will be designing soil-based disposal systems, the engineer, by June 30, 2003, submits evidence to the Secretary that demonstrates that he or she:
    - (A) has satisfactorily completed a college-level soils identification course with specific instruction in the areas of soils morphology, genesis, texture, permeability, color, and redoximorphic features; or
    - (B) has passed a soils identification test administered by the Secretary; or
    - (C) will retain one or more licensed designers who have taken the course specified in this subsection or passed the soils identification test, whenever performing work regulated under these Rules.
- (d) **Designers who are not professional engineers:** Persons other than professional engineers may be licensed as a designer to perform the following work:
- (1) prepare applications for single lot subdivisions that will contain only one single family residence per lot and submit them to the Secretary;
  - (2) prepare designs for individual potable water supplies and individual soil-based 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 sewage ordinance, and to prepare any associated application for municipal approval required by a municipal sewage ordinance adopted pursuant to chapter 102 of Title 24; and

- (3) perform reviews for a municipality of applications required by a municipal sewage ordinance adopted pursuant to chapter 102 of Title 24.
- (e) **Application:** To be eligible for a designer license, 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 subsection (a) above;
  - (3) pay the fee for site technician certification 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 professional engineers, soil scientists, land surveyors, geologists, and other designers; and
  - (5) complete and pass the examination administered by the Secretary.
- (f) **Demonstration of Ability:** Opportunities for potential designers to demonstrate their ability to perform design work shall be offered at least once a year at a time and place publicly announced at least six weeks before the examination.
- (g) **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 licenses:
- (1) Type A - a designer licensed as a Type A designer may do all aspects of site evaluation, application preparation, and review that are described in subsection (d) of this section, but may not design or review site modifications as defined in Subchapter 5 of these Rules.
  - (2) Type B – a designer licensed as a Type B designer may design site modifications in accordance with Subchapter 5 in addition to the work authorized under the Type A license.
- (h) **Certification:** When the Secretary makes a decision to issue or deny a designer license, notice shall be furnished in writing to the applicant within ten (10) days of the decision. The Secretary shall issue a license number for each designer.

- (i) **Review by the Secretary:** The Secretary may review, on a random basis or in response to a complaint, the testing procedures employed by a licensed designer, the systems designed by a licensed designer, the designs approved or recommended for approval by a licensed designer, and any work associated with the performance of these tasks. This review authority shall apply to all types of designers, including professional engineers.
- (j) **Engineering Disputes:** If there is a dispute between the Secretary and a professional engineer concerning the design prepared by the engineer or the judgement exercised by the engineer, the engineer may request that the disputed issues be reviewed by a professional engineer employed or retained by the Secretary. The Secretary shall grant all such requests for review.
- (k) **Disciplinary action:** The Secretary, after a hearing conducted in accordance with Chapter 25 of Title 3, may suspend, revoke or impose conditions on a designer's license, except one held by a professional engineer. 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 imposing conditions, suspension, or revocation. Cause for imposing conditions, suspension, revocation is conduct specified in 3 V.S.A. §129a as constituting unprofessional conduct by a licensee. In response to a complaint, or on his or her own motion, the Secretary shall refer deficiencies in design or installation performed under these Rules by a professional engineer to the Board of Professional Engineering for further investigation and potential disciplinary action.
- (l) **Rules of Conduct:** Licensed designers 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.
- (m) **Prior Certification Clause:** Designers certified as site technicians prior to April 26, 1977 shall remain licensed provided that they pay the licensing fees, 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.
- (n) **Renewals:** Designers shall maintain their licenses by filing a renewal fee every year. Expiration of license for a period exceeding 2 years shall require re-examination prior to relicensing.

**§1-314 Enforcement**

- (a) If the Secretary determines that a person:



- (1) has taken, or caused to be taken, an action that requires a permit or permit amendment under these Rules without first obtaining the required permit or permit amendment;
- (2) has taken, or caused to be taken, an action that is in non-compliance with a permit or permit amendment issued under these Rules;
- (3) is, or has been, in non-compliance with any order or assurance of discontinuance which addresses compliance with these Rules;
- (4) has signed a design and/or installation certification, and that the information submitted to the Secretary is untrue or incorrect or does not reflect the exercise of reasonable professional judgement, and as a result a potable water supply and/or wastewater system has been built that is in non-compliance with these Rules; or
- (5) has otherwise not complied with the provisions of these Rules,

the Secretary may initiate an enforcement action against such person 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 are set forth in 3 V.S.A. §2822.

#### **§1-316 Recording and Indexing of Documents**

When a document is required under these Rules to be recorded and indexed in the land records for the municipality where the project is located, it shall be recorded and indexed in accordance with the provisions of 24 V.S.A. sections 1154 and 1161.

## **Subchapter 4 – Water Supply and Wastewater Permits**

### **§1-401            Applicability**

- (a) This Subchapter sets forth the permitting requirements for buildings or structures and campgrounds, together with their associated potable water supplies and wastewater systems, and for all other potable water supplies and wastewater systems.
- (b) Buildings or structures, campgrounds, potable water supplies, and wastewater systems may also 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. No provision of this Subchapter shall limit the authority of the Agency of Commerce and Community Development with respect to its authority to regulate mobile home parks including, but not limited to, sales, evictions, rents, habitability, and registrations.
- (d) Buildings or structures, potable water supplies, and wastewater systems may also have to comply with municipal ordinances and bylaws that require municipal permits.
- (e) Examples of buildings or structures that require a permit under this Subchapter include, but are not limited to, the following: single family residences on their own individual lots, accessory apartments, duplexes, buildings with three or more dwelling units, condominiums, apartments, mobile homes, Park Model recreational vehicles and/or mobile homes used as a residence at a campground, 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.

### **§1-402            Permit Required**

- (a) Except as provided in this section and in sections 1-403 and 1-404 of this Subchapter, 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 construction of a new potable water supply or wastewater system;
  - (3) the modification or replacement of an existing potable water supply or wastewater system;
  - (4) the construction of a new building or structure;

- (5) the modification of an existing building or structure in a manner that increases the design flow or modifies other operational requirements of a potable water supply or wastewater system;
  - (6) the connection of an existing potable water supply or wastewater system to a new or modified structure;
  - (7) the change of use of a building or structure in a manner that increases the design flow or modifies other operational requirements of a potable water supply or wastewater system, including the conversion of a single family residence from seasonal to year-round use;
  - (8) the creation of a campground;
  - (9) the modification of a campground, including the creation, modification or relocation of one or more individual campsites, in a manner that affects a potable water supply or wastewater system or the requirements for providing potable water and wastewater disposal;
  - (10) the use or operation of a failed potable water supply or failed wastewater system;
  - (11) the alteration or modification of the site layout shown on a permitted site plan in a manner that affects or may affect any portion of the existing or proposed potable water supply or wastewater system serving the project; or
  - (12) the commencement of 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 that 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's or structure's use or useful occupancy 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 recorded and indexed by the person who

requested the determination in the land records for the municipality where the building or structure is located.

**§1-403 Exemptions for Single Family Residences on their own Individual Lots and Unimproved Lots**

- (a) The following are exempt from the permitting requirements of this Subchapter provided the specified conditions are met (Note: more than one exemption may apply in a particular situation):
  - (1) A single family residence on its own lot, and its associated potable water supply and wastewater system, that were substantially complete before June 14, 2002 that is located on a pre-existing lot or existing exempt lot that was in existence before June 14, 2002. This exemption shall remain in effect unless and until:
    - (A) the lot is subdivided and the resulting lots are not otherwise exempt under this Subchapter; or
    - (B) any other action for which a permit is required under this Subchapter is taken or is caused to be taken after June 30, 2007;
  - (2) unimproved pre-existing lots and existing exempt lots in existence before June 14, 2002 that are improved before November 1, 2002 with only one single family residence. This exemption shall remain in effect unless and until:
    - (A) the lot is subdivided and the resulting lots are not otherwise exempt under this Subchapter; or
    - (B) any other action for which a permit is required under this Subchapter is taken or is caused to be taken after June 30, 2007;
  - (3) (A) unimproved pre-existing lots and existing exempt lots in existence before June 14, 2002 that are improved after October 31, 2002 but before July 1, 2007 with only one single family residence provided that:
    - (i) the potable water supply and wastewater system meets the technical standards of Subchapter 5 of these Rules;
    - (ii) a designer provides a written statement certifying that the design-related information is true and correct and that, in the exercise of his or her reasonable professional judgement, the

design of the potable supply and wastewater system meets the technical standards of the Rules;

- (iii) an installer or a designer provides a written statement certifying that the installation-related information is true and correct and that, in the exercise of his or her reasonable professional judgement, the potable water supply and wastewater system were installed in accordance with the certified design, were inspected, were properly tested, and have successfully met those performance tests; and
  - (iv) copies of the design and installation certifications are filed with the Secretary and recorded and indexed in the land records for the municipality in which the lot is located.
- (B) This exemption shall terminate:
- (i) on July 1, 2007 if the lot has not been improved by that date;
  - (ii) whenever the lot is subdivided and the resulting lots are not otherwise exempt under this Subchapter; or
  - (iii) when any other action for which a permit is required under this Subchapter is taken or caused to be taken after June 30, 2007;
- (4) (A) A lot that contains a single family residence that required a permit under this Subchapter but did not have one or that had a permit but was not in compliance with its permit provided that:
- (i) the lot was in existence as of January 2, 1999; and
  - (ii) the lot was improved with only one single family residence as of January 1, 1999.
- (B) If a permit has been issued for the lot before January 2, 1999 any conditions of such permit that required actions to be taken after January 1, 1999 shall remain in effect, including conditions concerning operation and maintenance and transfer of ownership.
- (C) This exemption shall terminate when any action for which a permit is required under this Subchapter is taken or is caused to be taken after January 1, 1999.

- (D) If a single family residence is exempt under this subdivision of the Rules, the exemptions contained in subsections (a)(1), (2), (3), (6), (7), (11), (13), (17), (18), (19), and (20) of this section shall not apply.
- (5) (A) unimproved lots created by an act of subdivision that occurs after June 13, 2002, provided that:
  - (i) the deed, that is recorded and indexed, 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 of building on the lot of land described in this deed if the use or 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 improved.”; or
  - (ii) If the deed is not modified as a result of the act of subdivision, the owner of the unimproved lot records and indexes a copy of the notice language described in subdivision (5)(A)(i) above in the land records for the municipality in which the unimproved lot is located.
- (B) This exemption shall terminate when the person who owns the unimproved lot takes or causes to be taken any action for which a permit is required under this Subchapter.
- (6) The addition of one or more bedrooms to a single family residence on its own individual lot provided:
  - (A) the addition of bedrooms is accomplished solely through the modification of the existing residence;
  - (B) the exterior of the residence is not expanded horizontally; and
  - (C) if the residence has been issued a permit under this Subchapter, it shall continue to comply with that permit until the permit is amended.
- (7) After June 30, 2007, the addition of one or more bedrooms or any other attached exterior horizontal expansion to a single family residence on its own lot that was exempt under subdivisions (a)(1), (2), or (3) of this section provided that:

- (A) a fully complying replacement area has been identified by a designer and a diagram identifying the location of that area is certified by the designer and recorded and indexed in the land records for the municipality in which the residence is located; and
  - (B) no other action for which a permit is required under this Subchapter is taken or caused to be taken after June 30, 2007; and
  - (C) if the residence has been issued a permit under this Subchapter, it shall continue to comply with that permit until the permit is amended.
- (8) Primitive camps on their own individual lots with no interior plumbing consisting of more than a sink with water that are used for no more than three (3) consecutive weeks per year and no more than a total of sixty (60) days per year. This exemption does not apply to seasonal dwellings.
- (9) A single family residence on its own individual lot, and its associated potable water supply and wastewater system, that is used as a family day care home as defined in 33 V.S.A. section 4902(3), provided that :
- (A) the residence has been permitted under this Subchapter or is exempt from the permitting requirements of this Subchapter; and
  - (B) there has been no other change to the residence, lot, potable water supply or wastewater system that would otherwise require a permit under this Subchapter.
- (10) A single family residence on its own individual lot, and its associated potable water supply and wastewater system, that is used for both residential and commercial purposes provided that:
- (A) the commercial purposes do not entail the substantial presence of non-residential employees or regular visits by the public;
  - (B) the residence has been permitted under this Subchapter or is exempt from the permitting requirements of this Subchapter; and
  - (C) there has been no other change to the residence, lot, potable water supply or wastewater system that would otherwise require a permit under this Subchapter.
- (11) An existing single family residence on its own lot, and its associated potable water supply and wastewater system, that is used for both residential and commercial purposes where the commercial purposes entail the substantial

presence of non-residential employees or regular visits from the public provided that:

- (A) the commercial use of the residence does not result in an increase in design flow or a change in the operational requirements of the potable water supply or wastewater system;
  - (B) the commercial use of the residence started after the building was used solely as a residence;
  - (C) the owner of the residence tests the potable water supply for bacteria, lead, nitrate, sodium and arsenic;
  - (D) the results of the water tests demonstrate compliance with the drinking water standards adopted by the Secretary and the owner of the residence submits a copy of such water test results to the Secretary;
  - (E) the residence has been permitted under this Subchapter or is exempt from the permitting requirements of this Subchapter; and
  - (F) there has been no other change to the residence, lot, potable water supply or wastewater system that would otherwise require a permit under this Subchapter.
- (12) The adjustment of the boundaries of a lot containing only one single family residence provided that:
- (A) the owner of the lot submits to the Secretary a diagram which shows the existing and revised lot boundaries and the location of all potable water supplies and wastewater systems;
  - (B) the Secretary makes a written determination that the proposed adjustment will result in a negligible effect on the potable water supply and wastewater system serving the residence, and on adjacent lots, whether improved or unimproved;
  - (C) a copy of the diagram and the Secretary's determination is recorded and indexed in the land records for the municipality where the lot is located;
- (13) A single family residence on its own lot, and its associated potable water supply and wastewater system, that has an attached or included accessory residential unit where the unit was in existence before the effective date of these rules, provided that:



- (A) 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;
  - (B) the single family residence is occupied by an owner of the residence;
  - (C) 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 single family residence;
  - (D) the residence has been permitted under this Subchapter or is exempt from the permitting requirements of this Subchapter;
  - (E) a designer reviews the water supply and wastewater system and makes a written determination that they are adequate to accommodate the water and sewage needs of the single family residence together with the attached or included accessory residential unit;
  - (F) a copy of the designer's written determination is recorded and indexed in the land records for the municipality where the residence is located;
  - (G) a notice is recorded and indexed in the land records for the municipality where the residence is located stating that if the attached or included accessory residential unit is ever inhabited by more than two persons, or exclusively by persons who are not related by blood, marriage, or civil union to an owner of the residence, then a water supply and wastewater system permit must be obtained; and.
  - (H) there has been no other change to the residence, lot, potable water supply or wastewater system that would otherwise require a permit under this Subchapter.
- (14) minor repairs of a potable water supply or wastewater system that serve a single family residence on its own lot;
  - (15) the subdivision of a lot improved with only one single family residence 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;
  - (16) the connection of an existing single family residence to a municipal sewer by a municipality at the time of initial construction and operation of the municipal sewer, provided that:

- (A) the municipal sewer and the associated building connection are part of a project approved by the Facilities Engineering Division of the Department; and
- (B) either the Facilities Engineering Division of the Department has approved the building connection or a designer retained by the municipality has certified, using the language contained in section 1-302(b)(1) of these Rules, to the Secretary that the design for the building connection complies with these Rules;

Note: If the single family residence has been permitted under these Rules prior to the new connection, the existing permit shall be amended to reflect the change in the wastewater disposal method and the amended permit shall be recorded and indexed in the land records for the municipality where the single family residence is located.

- (17) a lot that on March 5, 1973 contained two or more buildings or structures that 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 after June 13, 2002 but before the effective date of these Rules. This exemption shall terminate:
  - (A) whenever the lots are further subdivided and the resulting lots are not otherwise exempt under this Subchapter; or
  - (B) when any other action for which a permit is required under this Subchapter is taken or is caused to be taken on or after the effective date of these Rules.
- (18) a subdivided lot that contains only one single family residence that was constructed on the lot before to March 5, 1973, provided the following conditions are met:
  - (A) The residence is served by a public water supply permitted by the Secretary or a potable water supply that has been tested and has tested negative for the presence of total coliform;
  - (B) The residence is served by a municipal or private wastewater treatment plant permitted by the Secretary or has a soil- based disposal system that has not failed and if the existing leachfield complies with one of the following:
    - (i) is at least 100 feet from any property boundary created by the creation of the lot;

- (ii) is at least 100 feet from the boundary created by an easement that 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 located on the lot, or located off the lot if there is permanent legal access to the replacement area;

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

- (C) The residence is not a seasonal dwelling;
  - (D) The subdivision occurred after June 13, 2002 but before the effective date of these Rules; and
  - (E) No other action for which a permit is required under this Subchapter is taken or is caused to be taken on or after the effective date of these Rules.
- (19) two or more lots containing one or more existing seasonal dwellings if the lots were created by the subdivision of a single lot provided that:
- (A) any existing wastewater system and any existing potable water supply is not a failed or system or supply;
  - (B) a request is submitted to the Secretary and a letter is issued that approves a design for replacement wastewater systems and potable water supplies that meet the technical standards of these Rules;
  - (C) the person requesting the exemption has created a legal mechanism that 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 are created without a permit as a result of the subdivision;
  - (E) the subdivision occurred after June 13, 2002 but before the effective date of these Rules; and

- (F) no other action for which a permit is required under this Subchapter is taken or is caused to be taken on or after the effective date of these Rules.
- (20) a pre-existing lot, whether improved or unimproved, that was reconfigured after June 13, 2002 but before the effective date of these Rules, provided that:
- (A) any land added to the overall subdivision had the required permit(s) or was exempt from the permit requirements of this Subchapter before the effective date of these Rules;
  - (B) no additional lots were created;
  - (C) all of the lots were the same size or larger after the reconfiguration as they were on September 18, 1969;
  - (D) the municipality or municipalities in which the land is located had a valid health ordinance based on Chapter 5, Subchapter 10, Part II, effective June 7, 1983 or a more recently adopted sewage ordinance approved by the Department of Environmental Conservation pursuant to Title 24 V.S.A. Chapter 102, or a valid zoning ordinance that specifically referred to such a health or sewage ordinance as the basis for regulating wastewater systems;
  - (E) a copy of the pre-existing and proposed revised lot lines is submitted to the Secretary;
  - (G) a revised plot plan is recorded and indexed in the land records for the municipality where the lots are located; and
  - (H) no other action for which a permit is required under this Subchapter is taken or is caused to be taken on or after the effective date of these Rules.
- (b) (1) An unimproved pre-existing lot or existing exempt lot is in existence before June 14, 2002 if:
- (A) the lot is delineated in a plat, plan, or deed that was recorded and indexed in the land records for the municipality where the lot is located before June 14, 2002;
  - (B) the lot or lots were conveyed before June 14, 2002;
  - (C) an administratively complete application for a state subdivision permit, including a plan showing the proposed lot lines of the new

lots (including any retained lot), was filed with the Secretary before June 14, 2002; or

- (D) a document that includes a plan showing the proposed creation of a lot or multiple lots was filed for approval with the municipality where the lot(s) is located before June 14, 2002.
- (2) An unimproved pre-existing lot or existing exempt lot shall lose the status of being in existence before June 14, 2002 when:
- (A) the lot is further subdivided; or
  - (B) the lot lines are adjusted, unless the lot line adjustment is exempt from the requirement for a permit under this Subchapter under subsection (a)(12) of this section.
- (c) When a single family residence on its own lot is exempt under this section due to the fact that it was substantially complete by a specified date, the residence, and the lot, potable water supply and wastewater system, shall remain exempt even if the residence has been destroyed or replaced, provided that:
- (1) if the residence was destroyed due to fire, flooding, or other acts of nature, the residence is rebuilt or replaced before July 1, 2007 within two years of its destruction; or
  - (2) if the residence was destroyed on or after July 1, 2007, the residence is rebuilt or replaced in the same location within two years of its destruction and there is no increase in design flow.
  - (3) This two year period may be extended by the Secretary on a case by case basis if the Secretary determines that there are unavoidable delays in rebuilding or replacement.
- (d) Persons who wish to take advantage of any of the permit exemptions listed above are strongly encouraged to document compliance with the conditions of the exemption and record and index such documentation in the land records for the municipality where the exempt lot and/or residence is located in order to avoid delays in closings for real estate transactions or financing.

#### **§1-404 Other Exemptions**

- (a) The following are exempt from the permitting requirements of this Subchapter provided the specified conditions are met (Note: more than one exemption may apply in a particular situation. In addition, these exemptions do not apply to single family residences, except when the language specifically refers to single family residences.):

- (1) a building or structure, and its associated potable water supply and wastewater system, that was in existence before June 1, 1970, provided that none of the actions for which a permit is required under this Subchapter have been taken or have been caused to be taken after May 31, 1970;
- (2) a building or structure that is used for commercial purposes by an occupant of a single family residence that is located on the same lot and that uses the potable water supply and wastewater system serving the single family residence, provided that:
  - (A) the commercial purposes do not entail the substantial presence of non-residential employees or regular visits by the public;
  - (B) the single family residence is in compliance with the conditions of any permit or permit exemption for the residence or lot under this Subchapter; and
  - (C) there has been no other change to the building or structure, lot, potable water supply or wastewater system that would otherwise require a permit under this Subchapter.
- (3) the use of an existing building or structure, and its existing associated potable water supply and wastewater system, for commercial purposes by an occupant of a single family residence that is located on the same lot, when the commercial purposes entail the substantial presence of nonresidential employees or regular visits by the public, provided that:
  - (A) the commercial use of the building or structure does not result in an increase in design flow or a change in the operational requirements of the potable water supply or wastewater system;
  - (B) the owner of the residence tests the potable water supply for bacteria, lead, nitrate, sodium and arsenic;
  - (C) the results of the water tests demonstrate compliance with the drinking water standards adopted by the Secretary and the owner submits a copy of such water test results to the Secretary; and
  - (D) there has been no other change to the building or structure, lot, potable water supply or wastewater system that would otherwise require a permit under this Subchapter;
- (4) the adjustment of the boundaries of a lot containing a building or structure provided that:

- (A) the owner of the lot submits to the Secretary a diagram which shows the existing and revised lot boundaries and the location of all potable water supplies and wastewater systems;
  - (B) the Secretary makes a written determination that the proposed adjustment will result in a negligible affect on the potable water supply and wastewater system serving the building or structure and on adjacent lots, whether improved or unimproved; and
  - (C) a copy of the diagram and the Secretary's determination is recorded and indexed in the land records for the municipality where the lot is located.
- (5) the subdivision of an improved 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.
- (6) the connection of an existing building or structure by a municipality 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 are part of a project approved by the Facilities Engineering Division of the Department; and
  - (B) either the Facilities Engineering Division of the Department has approved the building connection or a designer retained by the municipality has certified to the Secretary, using the language contained in section 1-302(b)(1) of these Rules, that the design for the building connection complies with these Rules;

Note: if the building or structure has been permitted under these Rules prior to the new connection, the existing permit shall be amended to reflect the change in the wastewater disposal method and the amended permit shall be recorded and indexed in the land records for the municipality where the building or structure is located.
- (7) disposal of wastewater associated with the operation and cleaning of milking equipment, milk storage tanks, and milking parlors. Note: consult the Vermont Department of Agriculture, Food and Markets regarding regulation of this type of disposal;

- (8) land application of process wastewater generated by farming activities, provided that the land application is conducted in accordance with the Accepted Agricultural Practices adopted by the Department of Agriculture, Food and Markets and, if applicable, the Guidelines for Land Application of Dairy Processing Wastes adopted by the Agency. Note: This type of land application may require an indirect discharge permit from the Secretary;
- (9) buildings or structures used for farming purposes, and their associated potable water supplies and wastewater systems, including only one associated single family residence and its associated potable water supply and wastewater system, where the use of the building or structure entails the substantial presence of non-residential employees or regular visits by the public, provided that:
  - (A) if a water supply and wastewater permit had been issued prior to the effective date of these Rules, the building or structure, residence, supply, and system are in compliance with the permit; and
  - (B) no action for which a permit is required under this Subchapter is taken or is caused to be taken on or after the effective date of these Rules.
- (10) minor repairs of a potable water supply or wastewater system;
- (11) two or more detached single family residences on a single lot provided that the residences and their associated potable water supplies and wastewater systems were substantially completed before June 1, 1984, and that none of the actions for which a permit is required under this Subchapter have been taken or have been caused to be taken after May 31, 1984;
- (12) an owner occupied duplex and its associated potable water supply and wastewater system that was substantially completed before July 24, 1978 provided that none of the actions for which a permit is required under this Subchapter have been taken or have been caused to be taken after July 23, 1978;
- (13) a day care facility and its associated potable water supply and wastewater system that were substantially completed between June 21, 1988 and June 30, 1989, provided that none of the actions for which a permit is required under this Subchapter have been taken or have been caused to be taken after June 30, 1989;
- (14) a subdivided lot that contains a building or structure with design flows of sewage of 300 gallons per day or less that was constructed on the lot before 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 that 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 disposal system that has not failed and if the existing leachfield complies with one of the following:
  - (i) is at least 100 feet from any property boundary created by the creation of the lot;
  - (ii) is at least 100 feet from the boundary created by an easement that 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 located on the lot, or located off the lot if there is permanent legal access to the replacement area;

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

- (C) the building or structure is not a single family residence or a seasonal dwelling;
  - (D) the subdivision occurred before the effective date of these Rules; and
  - (E) no other action for which a permit is required under this Subchapter is taken or is caused to be taken on or after the effective date of these Rules;
- (15) a pre-existing lot, whether improved or unimproved, that was reconfigured before the effective date of these Rules, provided:
- (A) any land added to the overall subdivision had the required permit(s) or was exempt from the permitting requirements of this Subchapter before the effective date of these Rules;
  - (B) no additional lots were created;
  - (C) all of the lots were the same size or larger after the reconfiguration as they were on September 18, 1969;
  - (D) the municipality or municipalities in which the land is located had a valid health ordinance based on Chapter 5, Subchapter 10, Part II,

effective June 7, 1983 or a more recently adopted sewage ordinance approved by the Department of Environmental Conservation pursuant to Title 24 V.S.A. Chapter 102, or a valid zoning ordinance that specifically referred to such a health or sewage ordinance as the basis for regulating wastewater systems;

- (E) a copy of the pre-existing and proposed revised lots lines is submitted to the Secretary;
  - (F) the revised plot plan is recorded and indexed in the land records for the municipality where the lots are located; and
  - (G) No other action for which a permit is required under this Subchapter is taken or is caused to be taken on or after the effective date of these Rules.
- (16) campgrounds in existence before June 1, 1970 provided that none of the actions for which a permit is required under this Subchapter have been taken or have been caused to be taken after May 31, 1970;
  - (17) 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; and
  - (18) the elimination of a campsite in a campground, provided that a permit is obtained before the campsite is reopened or relocated.
  - (19) a mobile home park, and its associated potable water supply(ies) and wastewater system(s), that were in existence before July 1, 1970 provided that none of the actions for which a permit is required under this Subchapter have been taken or have been caused to be taken after June 30, 1970;
  - (20) a mobile home park, and its associated potable water supply(ies) and wastewater system(s) that were in existence as of July 1, 1970, that added up to five (5) additional mobile homes and their associated potable water supply(ies) and wastewater system(s), provided that the mobile homes were added and all work on the supply(ies) and system(s) was completed before July 1, 1988 and that none of the actions for which a permit is required under this Subchapter have been taken or have been caused to be taken after June 30, 1988;
  - (21) a mobile home park and its associated potable water supply(ies) and wastewater system(s) that were in existence before July 1, 1970 that added up to five (5) mobile homes and their associated potable water supply(ies) and wastewater system(s), as allowed under subdivision (a)(20) of this section, and that then added up to five additional mobile homes provided that:

- (A) all additional mobile homes were added and all work on the supply(ies) and systems(s) was completed prior to July 1, 1988 and none of the actions for which a permit is required under this Subchapter have been taken or have been caused to be taken after June 30, 1988;
- (B) there are at least two (2) trees of one inch caliper on each mobile home lot that contains one of the additional mobile homes;
- (C) at least 8,000 square feet of lot area is provided for each additional mobile home, including at least 5,000 square feet for each additional mobile home site, plus at least 3,000 square feet for each additional mobile home in common open space, exclusive of roads. Such open space shall be accessible to all residents of the mobile home park and shall have a minimum dimension of 30 feet. The land provided for common facilities listed below shall not count towards the minimum lot area, though provision of one or more shall allow a reduction in the total area required by 5% for each facility that is provided, up to a total of 25%:
  - (i) central recreational building;
  - (ii) central laundry and drying facilities;
  - (iii) central television antenna system;
  - (iv) central maintenance shed; and
  - (v) underground utilities, including fuel storage.

Note: The Secretary must determine that the facilities provided under (i) and (iv) are adequate in order for this exemption to apply; and

- (D) at least one off-street parking space is provided for each additional mobile home, plus at least one off-street parking space for each two additional mobile homes for visitor parking. Such spaces need not be paved and may be counted as part of the space required under subdivision (a)(21)(C) of this section;
- (22) the replacement of failed potable water supplies or failed wastewater systems serving mobile home parks in existence before June 1, 1970, including those parks that added additional mobile homes in compliance with subdivisions (a)(21) and (a)(22) of this section, provided that:
- (A) such replacement supplies and/or systems were constructed before July 1, 2000;

- (B) such replacement supplies and/or systems have not failed after June 30, 2000;
  - (C) the potable water supply that failed was not a public water supply regulated under chapter 56 of Title 10; and
  - (D) the wastewater system that failed was not subject to the Vermont Indirect Discharge Rules; and
- (23) premises used solely for the storage or display of unoccupied or uninhabited mobile homes;
- (b) Persons who wish to take advantage of any of the permit exemptions listed above are strongly encouraged to document compliance with the conditions of the exemption and record and index such documentation in the land records for the municipality where the lot, building or structure, residence, campground, mobile home park, potable water supply, or wastewater system is located in order to avoid delays in closings for real estate transactions or financing.

**§1-405 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.

**§1-406 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, other than a single family residence on its own lot, that 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 or proposed potable water supply or wastewater system serving the project;
- (2) the wastewater system has not failed;
- (3) the potable water supply has not failed; and
- (4) a chemical and bacteriological test of the potable water supply demonstrates compliance with the drinking water standards adopted by the Secretary.

**§1-407 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 is in non-compliance with the permit existing 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 exempt from the permit requirements of this Subchapter, 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 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 improved 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.

**§1-408            Permitting Standards for Potable Water Supplies**

- (a) All buildings or structures and campgrounds that 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 Subchapters 3 and 5 of these Rules and 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.
- (c) All buildings or structures shall have at least one (1) lavatory.
- (d) The Secretary may waive some or all of the requirements of this section for buildings or structures, other than single family residences on their own lots, and for campgrounds if he or she determines that the imposition of the requirements would be unreasonable due to the briefness or infrequency of occupancy of a particular building or structure, or class of building or structure, or due to the availability of a nearby potable water supply. Notwithstanding the Secretary's waiver:
  - (1) If the owner or operator of a building or structure, or a campground, elects to have a potable water supply, and/or water delivered through a piped system, and/or a lavatory, even though the requirement(s) have been waived, any such supply, piping and lavatory must comply with the requirements of subsection (a) of this section; and
  - (2) Any waiver granted under this section shall not supercede any other federal, state or local laws concerning potable water supplies, piped systems, and lavatories for employees or the general public in particular buildings or structures, or classes of buildings or structures, nor shall it supercede labor agreements.

**§1-409            Permitting Standards for Wastewater Systems**

- (a) All buildings or structures and campgrounds that 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 5 of these Rules unless otherwise specified in these Rules.
- (b) All buildings or structures other than single family residences shall have at least one (1) conventional toilet. All single family residences shall have at least one (1) toilet.
- (c) The Secretary may waive some or all of the requirements of subsections (a) and (b) of this section for buildings or structures, other than single family residences on their own lots, and for campgrounds if he or she determines that the imposition of those requirements would be unreasonable due to the briefness or infrequency of

occupancy of a particular building or structure, or class of buildings or structures, or due to the availability of a nearby wastewater system. Notwithstanding the Secretary's waiver:

- (1) If the owner or operator of a building or structure, or a campground, elects to have a wastewater system and/or a conventional toilet, even though the requirement(s) have been waived, then any such system and toilet must comply with the requirements of subsection (a) of this section; and
  - (2) Any waiver granted under this section shall not supercede any other federal, state or local laws concerning wastewater systems and toilets for employees or the general public in particular buildings or structures, or classes of buildings or structures, nor shall it supercede labor agreements.
- (d) Wastewater systems that discharge sewage to manure pits are prohibited under these Rules.
- (e) 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 or structure, or campground connected to that system.
- (f) 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 or campground 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.
- (g) 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.

#### **§1-410 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 a 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 5 of these Rules may be waived for existing public schools if the system design includes sufficient safety factors to protect the primary area.

**§1-411 Special Permitting Standards for Campgrounds**

- (a) In addition to meeting the potable water supply and wastewater system permitting standards described in sections 1-408 and 1-409 of this Subchapter, 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 campsite shall be dry, clean and well drained during normal weather conditions.
  - (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. Dependent campsites are all campsites that do not have individual water and sewer connections and all campsites used for camping units without interior plumbing.
  - (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 campsites have individual sewer connections or the campground consists entirely of tent sites (which excludes all use by camping units with interior plumbing). 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 dependent campsites each.