

S.27

AN ACT RELATING TO INCREASING THE TECHNOLOGIES THAT
MAY BE USED IN THE STATE FOR ON-SITE DISPOSAL OF
WASTEWATER

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 10 V.S.A. chapter 64 is added to read:

CHAPTER 64. POTABLE WATER SUPPLY

AND WASTEWATER SYSTEM PERMIT

§ 1971. PURPOSE

It is the purpose of this chapter to:

(1) establish a comprehensive program to regulate the construction, replacement, modification, and operation of potable water supplies and wastewater systems in the state in order to protect human health and the environment, including potable water supplies, surface water and groundwater;

(2) eliminate duplicative or unnecessary permitting requirements through the consolidation of existing authorities and, where appropriate, the use of permits by rule;

(3) allow the use of alternative, innovative, and experimental technologies for the treatment and disposal of wastewater in the appropriate circumstances;

(4) protect the investment of homeowners through a flexible remediation process for failed potable water supplies and wastewater systems;

(5) 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; and

(6) allow delegation of the permitting program created by this chapter to municipalities demonstrating the capacity to administer the chapter.

§ 1972. DEFINITIONS

For the purposes of this chapter:

(1) “Agency” means the agency of natural resources.

(2) “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.

(3) “Campground” means any lot of land containing more than three campsites occupied for vacation or recreational purposes by camping units, such as: tents, yurts, tepees, lean-tos, 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 noncommercial (no charge, no service) and commercial operations.

(4)(A) “Failed supply” means a potable water supply:

(i) that is contaminated so that it is rendered not potable; or

(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) where the source, treatment, or conveyance equipment used to provide potable water is broken or inadequate.

(B) Notwithstanding the provisions of this subdivision, a potable water supply shall not be a failed supply if:

(i) these effects can be and are remedied solely by minor repairs, including the repair of a broken pipe leading from a building or structure to a well, the replacement of a broken pump, repair or replacement of a mechanical component, or deepening or hydrofracturing a well; 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 nonrecurring 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.

(5)(A) “Failed system” means 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; or

(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 of subdivision (A) of this subdivision (5), a system shall not be a failed system if:

(i) these effects can be and are remedied solely by minor repairs, including the repair of a broken pipe leading from a building or structure to the septic tank, replacement of a cracked or broken septic tank, or replacement of a broken pump or associated valves, switches and controls; 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 nonrecurring event, and the system has recovered from the state of failure. Systems which have recurring, continuing, or seasonal failures shall be considered to be failed systems.

(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.

(6) “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 chapter 56 of this title.

(7) “Professional engineer” means an engineer licensed and in good standing by the board of professional engineering under chapter 20 of Title 26.

(8) “Secretary” means the secretary of the agency of natural resources or a duly authorized representative of the 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 this chapter in lieu of the secretary.

(9) “Subdivide” means to divide land by sale, gift, lease, mortgage foreclosure, court-ordered partition, 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.

(10) “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. In this chapter, “wastewater system” refers to a soil-based disposal system of less than 6,500 gallons per day, or a sewerage connection of any size.

§ 1973. PERMITS

(a) Except as provided in this section and sections 1974 and 1978 of this title, a person shall obtain a permit from the secretary before:

(1) subdividing land;

(2) creating or modifying a campground in a manner that affects a potable water supply or wastewater system or the requirements for providing potable water and wastewater disposal;

(3) constructing, replacing, or modifying a potable water supply or wastewater system;

(4) using or operating a failed supply or failed system;

(5) constructing a new building or structure;

(6) modifying 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;

(7) making a new or modified connection to a new or existing potable water supply or wastewater system; or

(8) changing the use of a building or structure in a manner that increases the design flows or modifies other operational requirements of a potable water supply or wastewater system.

(b) Application for a permit shall be made on a form prescribed by the secretary. The application shall be supported by such documents and information that the secretary, by rule, deems necessary for proper application review and the issuance of a permit.

(c) When a person replaces a potable water supply or wastewater system that has been permitted, or was exempt from permitting requirements, the secretary shall grant a variance from the technical standards if the supply or system cannot be replaced so that it is in full compliance with the rules adopted under section 1978 of this title, provided that the variance requested is the

minimum necessary considering the cost of the replacement supply or system in addition to the potential impacts on human health and the environment. No variance shall be granted under this subsection if the supply or system would continue to meet the definition of a failed supply or failed system, or if the replacement supply or system allows for increases in design flows.

(d) No permit shall be issued by the secretary unless the secretary receives a statement from a licensed designer certifying that the design-related information submitted with the permit application is true and correct and that, in the exercise of his or her reasonable professional judgment, the design included in an application for a permit complies with the rules.

(e) No permit issued by the secretary shall be valid for a substantially completed potable water supply and wastewater system until the secretary receives a statement from an installer or a licensed designer certifying that the installation-related information submitted is true and correct and that, in the exercise of his or her reasonable professional judgment, the potable water supply and wastewater system were installed in accordance with the permitted design and all permit conditions, were inspected, were properly tested, and have successfully met those performance tests.

(f) The secretary shall give deference to a certification by a licensed designer with respect to the engineering design or judgment exercised by the designer in order to minimize agency review of certified designs. Nothing in

this section shall limit the responsibility of the licensed designer to comply with all standards and rules, or the authority of the secretary to review and comment on design aspects of an application or to enforce agency rules with respect to the design or the design certification.

(g) If there is a dispute between the secretary and a professional engineer concerning the design prepared by a professional engineer or the judgment exercised by a professional engineer, the professional engineer may request that the disputed issues be reviewed by a licensed professional engineer employed or retained by the secretary. The secretary shall grant all such requests for review.

(h) All permits required under this section, all design and installation certifications required under this section, and all documents required by the rules adopted under this chapter to be filed in the town records shall be properly indexed and recorded in the land records pursuant to 24 V.S.A. §§ 1154 and 1161.

§ 1974. SINGLE-FAMILY RESIDENCES ON THEIR OWN INDIVIDUAL
LOTS

(a) Notwithstanding any other requirements of this chapter, the provisions of this section shall apply to a single-family residence on its own individual lot.

(b)(1) A subdivided lot containing only one single-family residence which required a subdivision permit but did not have one, or which had a subdivision permit but was not in compliance with its permit, is exempt from the permitting requirements of this chapter, provided that the lot was in existence as of January 1, 1999, and that the residence and its associated potable water supply and wastewater system were substantially completed as of January 1, 1999. This exemption shall terminate if any of the actions listed in section 1973 of this title occur after January 1, 1999.

(2) If a subdivision permit had been issued for the lot prior to January 1, 1999, the conditions of that permit concerning actions required to be taken after January 1, 1999, shall remain in effect, including conditions concerning operation and maintenance and transfer of ownership.

(3) If a residence is exempt under this subsection, the exemption contained in subsection (c) of this section shall not apply.

(c) A substantially completed single-family residence on its own individual lot, and its substantially completed associated potable water supply and wastewater system, is exempt from the permitting requirements of this chapter, provided that the lot on which the residence is located was in existence as of the effective date of this act and was exempt from the subdivision permitting requirements that existed on that date. This exemption shall remain in effect unless and until:

(1) the lot is subdivided and the resulting lots are not exempt under the applicable rules in existence at the time of subdivision; or

(2) any other action for which a permit is required under this chapter occurs after July 1, 2007.

(d) A permit shall not be required for the addition of one or more bedrooms to a single-family residence on its own lot when:

(1) the addition of bedrooms is accomplished solely through the modification of the existing residence; and

(2) the exterior of the residence is not expanded horizontally.

(e) A permit is not required for 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 from the subdivision permitting requirements that existed on the effective date of this act, provided that:

(1) a fully complying replacement area has been identified by a licensed designer and a diagram identifying the location of that area is certified by the designer and filed in the land records; and

(2) no other action for which a permit is required under this chapter occurs after July 1, 2007.

(f) Notwithstanding the language of subsections (d) and (e) of this section, if the residence has been issued a permit under this chapter, the residence shall continue to comply with that permit, until the permit is amended.

(g) Primitive camps with no interior plumbing consisting of more than a sink with water, that are used no more than three consecutive weeks per year and no more than a total of 60 days per year, shall be exempt. This exemption does not apply to seasonal camps.

§ 1975. DESIGNER LICENSES

(a) The secretary shall establish and implement a process to license and periodically renew the licenses of designers of potable water supplies or wastewater systems, establish different classes of licensing for different potable water supplies and wastewater systems, and allow individuals to be licensed in various categories.

(b) No person shall design a potable water supply or wastewater system that requires a permit under this chapter without first obtaining a designer license from the secretary, except a professional engineer who is licensed in Vermont shall be deemed to have a valid designer license under this chapter, provided that:

(1) the engineer is practicing within the scope of his or her engineering specialty; and

(2) the engineer:

(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) retains one or more licensed designers who have taken the course specified in this subdivision or passed the soils identification test, whenever performing work regulated under this chapter.

(c) No person shall review or act on permit applications for a potable water supply or wastewater system that he or she designed or installed.

(d) The secretary may review, on a random basis, or in response to a complaint, or on his or her own motion, 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.

(e) After a hearing conducted under chapter 25 of Title 3, the secretary may suspend, revoke, or impose conditions on a designer license, except for one held by a professional engineer. 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, for suspension, or for revocation. Cause for imposing conditions, suspension, or revocation shall be conduct specified under 3 V.S.A. § 129a as constituting unprofessional conduct by a licensee.

(f) If the secretary determines that a design or installation certification submitted under this chapter certified information that is untrue or incorrect, or does not reflect the exercise of reasonable professional judgment and, as a result, a potable water supply or wastewater system that has been built is in noncompliance with the rules adopted under this chapter, the person who signed the statement may be subject to penalties and required to take all actions necessary to remediate the situation in accordance with the provisions of chapters 201 and 211 of this title.

(g) In response to a complaint, or on his or her own motion, the secretary shall refer deficiencies in design or installation performed under this chapter by a professional engineer to the board of professional engineering for further investigation and potential disciplinary action.

§ 1976. DELEGATION OF AUTHORITY TO MUNICIPALITIES

(a)(1) If a municipality submits a written request for delegation of this chapter, the secretary shall delegate authority to the municipality to implement and administer provisions of this chapter, the rules adopted under this chapter, and the enforcement provisions of chapter 201 of this title relating to this chapter, provided that the secretary is satisfied that the municipality:

(A) has established a process for accepting, reviewing, and processing applications and issuing permits, which shall adhere to the rules

established by the secretary for potable water supplies and wastewater systems, including permits, by rule, for sewerage connections;

(B) has hired, appointed, or retained on contract, or will hire, appoint, or retain on contract, a licensed designer to perform technical work which must be done by a municipality under this section to grant permits;

(C) will take timely and appropriate enforcement actions pursuant to the authority of chapter 201 of this title;

(D) commits to reporting annually to the secretary on a form and date determined by the secretary; and

(E) will comply with all other requirements of the rules adopted under section 1978 of this title.

(2) Notwithstanding the provisions of this subsection, there shall be no delegation of this section or of section 1975 or 1978 of this title.

(b) As of July 1, 2007, those provisions of municipal ordinances and zoning bylaws that regulate potable water supplies and wastewater systems are superseded by the provisions of this chapter and the rules adopted under this chapter. However, to the extent that local ordinances and bylaws apply to potable water supplies and wastewater systems that are exempt from the permitting requirements of this chapter, and to the extent that those local ordinances and bylaws establish procedural requirements that are consistent with this chapter and the rules adopted under this chapter, those provisions of

existing and any future ordinances or bylaws shall not be superseded in municipalities that receive delegation under this section.

(c) Notwithstanding 24 V.S.A. § 3633(d), municipal ordinances relating to sewage systems, which ordinances were approved before July 1984 under 18 V.S.A. § 613 by the board of health, and those approved before July 1984 by the commissioner of health, shall remain in effect unless superseded.

(d) A municipality may assess fees in an amount sufficient to support municipal services provided under this section.

(e) Notwithstanding the fact that local ordinances and bylaws may have been superseded by this chapter, a permit issued under those ordinances shall remain in effect, unless and until superseded by another permit issued pursuant to the provisions of this chapter.

(f) The secretary may review municipal implementation of this section on a random basis, or in response to a complaint, or on his or her own motion. This review may include consideration of the municipal implementation itself, as well as consideration of the practices, testing procedures employed, systems designed, system designs approved, installation procedures used, and any work associated with the performance of these tasks.

§ 1977. APPEALS; STAYS

(a) A person aggrieved by an act or decision, other than an enforcement decision, of the secretary under this chapter, may appeal to the water resources

board within 30 days of the date of the act or decision. The filing of an appeal shall not stay the effectiveness of an act or decision of the secretary, unless the board so orders in accordance with board rule. The board shall hold a de novo hearing at which all parties, as determined by board rule, may appear and be heard, and shall issue an order that shall be binding on the secretary and all parties.

(b) Any party aggrieved by a final order of the water resources board pursuant to this section may appeal to the supreme court within 30 days of the date of the order. An appeal filed pursuant to this section shall not stay the effectiveness of any order of the board pending determination by the court, unless the court so orders.

§ 1978. RULES

(a) The secretary shall adopt rules, in accordance with chapter 25 of Title 3, necessary for the administration of this chapter. These rules shall include, but are not limited to, the following:

- (1) performance standards for wastewater systems;
- (2) design flow standards for potable water supplies and wastewater systems;
- (3) design requirements, including isolation distances;
- (4) monitoring and reporting requirements;
- (5) soils and hydrogeologic requirements;

(6) operation and maintenance requirements appropriate to the complexity of the system;

(7) requirements for engineering plans and specifications for potable water supplies and wastewater systems;

(8) provisions for the acceptance and approval of alternative or innovative technologies, based on performance evaluations provided by qualified organizations with expertise in wastewater systems, including the New England Interstate Water Pollution Control Commission;

(9) provisions allowing the use of a variety of alternative or innovative technologies, including intermittent sand filters, recirculating sand filters, waterless toilets and greywater disposal systems, and constructed wetlands, that provide an adequate degree of protection of human health and the environment. When alternative or innovative technologies are approved for general use, the rules shall not require either a bond or the immediate construction of a duplicate wastewater system for those alternative or innovative technologies;

(10) provisions allowing for appropriate reductions in leachfield size, depth to the seasonal high water table, or other minimum site conditions when the wastewater system design does not solely rely on naturally occurring soils to provide an adequate degree of treatment, and when those systems, combined

with the reductions, provide an adequate degree of protection of human health and the environment;

(11) provisions allowing for experimental systems;

(12) provisions regarding the licensing of certain classes of designers;

(13) provisions regarding the delegation of authority to and removal of authority from a municipality to administer this chapter;

(14) other requirements necessary to protect human health and the environment.

(b) The secretary may, by rule, establish permitting exemptions upon a determination that those exemptions are consistent with the purposes of this chapter, and are necessary for the appropriate implementation of this chapter.

(c) The secretary shall first adopt rules under this section no later than July 30, 2002.

(d) The secretary shall not adopt rules under this chapter that allow wastewater systems that serve lots created after the effective date of this act to be constructed on ground with a maximum slope in excess of 20 percent. This limitation shall not apply to replacement wastewater systems.

(e)(1) The secretary shall periodically review and, if necessary, revise the rules adopted under this chapter to ensure that the technical standards remain current with the known and proven technologies regarding potable water supplies and wastewater systems.

(2) The secretary shall seek advice from a technical advisory committee in carrying out the mandate of this subdivision. The governor shall appoint the members of the committee and ensure that there is at least one representative of the following entities on the committee: professional engineers, site technicians, well drillers, hydrogeologists, town officials with jurisdiction over potable water supplies and wastewater systems, water quality specialists, technical staff of the agency of natural resources, and technical staff of the department of health. Administrative support for the advisory committee shall be provided by the secretary of the agency of natural resources.

(3) The technical advisory committee shall provide annual reports, starting January 15, 2003, to the chairs of the house and senate committees on natural resources and energy. The reports shall include information on the following topics: the implementation of this chapter and the rules adopted under this chapter; the number and type of alternative or innovative systems approved for general use, approved for use as a pilot project, and approved for experimental use; the functional status of alternative or innovative systems approved for use as a pilot project or approved for experimental use; the number of permit applications received during the preceding calendar year; the number of permits issued during the preceding calendar year; and the number of permit applications denied during the preceding calendar year, together with a summary of the basis of denial.

(4) The annual reporting requirement shall end as of January 15, 2007.

§ 1979. HOLDING TANKS

(a) The secretary shall approve the use of sewage holding and pumpout tanks when he or she determines that:

(1) the existing or proposed buildings or structures to be served by the holding tank are publicly owned;

(2) the plan for construction and operation of the holding tank will not result in a public health hazard or environmental damage;

(3) a designer demonstrates that an economically feasible means of meeting current standards is significantly more costly than sewage holding and pumpout tanks, based on a projected 20-year life of the project; and

(4) the design flows do not exceed 600 gallons per day.

(b) A holding tank may also be used for a project that is eligible for a variance under section 1973 of this title, whether or not the project is publicly owned, if the existing wastewater system has failed, or is expected to fail, and in either instance, if there is no other cost-feasible alternative.

(c) When a holding tank is proposed for use, a designer shall submit all information necessary to demonstrate that the holding tank will comply with the following requirements:

(1) the holding tank shall be capable of holding at least 14 days of the expected flow from the building;

(2) the tank shall be constructed of durable materials that are appropriate for the site conditions and the nature of the sewage to be stored;

(3) the tank shall be watertight, including any piping connected to the tank and all access structures connected to the tank. The tank shall be leakage tested prior to being placed in service;

(4) the tank shall be designed to protect against floatation when the tank is empty, such as when it is pumped;

(5) the tank shall be equipped with audio and visual alarms that are triggered when the tank is filled to 75 percent of its design capacity;

(6) the tank shall be located so that it can be reached by tank pumping vehicles at all times when the structure is occupied; and

(7) the analysis supports a claim under subdivision (a)(3) of this section.

(d) The permit application shall specify the method and expected frequency of pumping.

(e) Any building or structure served by a holding tank shall have a water meter, or meters, installed that measures all water that will be discharged as wastewater from the building or structure.

(f) Any permit issued for the use of a holding tank will require a designer to periodically inspect the tank, visible piping, and alarms. The designer shall submit a written report to the secretary detailing the results of the inspection and any repairs or changes in operation that are required. The report also shall

detail the pumping history since the previous report, giving the dates of pumping and the volume of wastewater removed. The frequency of inspections and reports shall be stated in the permit issued for the use of the tank, but shall be no less frequent than once per year. The designer also shall inspect the water meter or meters and verify that they are installed, calibrated, and measuring all water that is discharged as wastewater. The designer shall read the meters and compare the metered flow to the pumping records. Any significant deviation shall be noted in the report and explained to the extent possible.

(g) The owner of a holding tank shall maintain a valid contract with a licensed wastewater hauler at all times. The contract shall require the licensed wastewater hauler to provide written notice of dates of pumping and volume of wastewater pumped. Copies of all such notices shall be submitted with the written inspection reports.

§ 1980. VERMONT TECHNICAL COLLEGE DEMONSTRATION

PROJECT

(a) There is established an on-site wastewater treatment and disposal project which shall be conducted at the Vermont Technical College in Randolph. The project shall be managed by the staff of the college, in conjunction with the agency of natural resources.

(b) The purpose of the project is to provide information to interested local and state officials and members of the public with respect to the range of options that have been approved by the state and that are available for on-site systems, the relative effectiveness of various approved experimental and innovative systems, and their respective strengths and weaknesses.

(c) The project shall be designed with space sufficient to accommodate the demonstration of new designs for systems, as those designs are developed, during a number of years.

Sec. 2. 3 V.S.A. § 2822(j)(3) and (4) are amended to read:

(3) ~~For subdivision permits issued under 18 V.S.A. chapter 23:~~

~~(A) per lot~~

~~(i) no sewerage connection \$185.00~~

~~(ii) with sewerage connection \$175.00.~~

~~(B) deferral of permit \$63.00.~~

~~(C) homestead exemption \$63.00 per~~

~~application.~~

~~(D) permit amendment \$63.00 per lot.~~

~~(E) time of sale remediation report \$30.00 per report.~~

(4) For potable water supply and wastewater permits issued under 10 V.S.A. chapter 61; mobile home park permits issued under 10 V.S.A.

~~chapter 153; campground permits issued under 3 V.S.A. section 2873 and~~
~~under 10 V.S.A. chapter 61 64:~~

(A) original application or permit \$175.00

amendment with technical
review for a single-family
residence on its own individual lot,
per lot, with sewerage connection

(B) original application or permit \$185.00

amendment with technical review
for a single-family residence on its
own individual lot, per lot, with
no sewerage connection

(C) original application for \$0.45 per gallon of design

other than a single-family flow of sewage or water,
residence on its own individual lot whichever is greater.

Minimum \$115.00 per
application. Not to
exceed \$25,000.00.

~~(B)~~(D) original application or permit \$0.42 per gallon of design

amendment for other than a flow for applications or
single-family residence on its amendments that ~~requires~~

own individual lot that requires
a technical review
for project with sewerage connection

require review of both
sewage and water.
Minimum \$115.00
per application. Not to
exceed \$25,000.00. \$0.27
per gallon of design flow
for applications or
amendments that require
review of either sewage or
water but not both.

Minimum of \$115.00 per
application. Not to exceed
\$25,000.00.

~~(C)~~(E) permit amendment for
other than a single-family residence on
its own individual lot that requires a
technical review

\$0.45 per gallon of
design flow for
amendments that
require review
of both sewage and
water. Minimum of \$115.00
per application. Not to
exceed \$25,000.00.

\$0.27 per gallon of design
flow for applications or
amendments that require
review of either sewage or
water but not both.

Minimum of \$115.00 per
application. Not to exceed
\$25,000.00.

~~(D)~~(F) other amendments ~~which~~ for \$37.00
a single-family residence on its own individual
lot, per lot, that require little or
no technical review.

(G) other amendments for other \$37.00
than a single-family residence on its own
individual lot that require little or
no technical review.

~~(E)~~(H) Notwithstanding the other provisions of this subdivision,
(i) when a wastewater system is subject to the fee provisions of
this subdivision and subdivision (j)(2)(A)(iv)(I) of this section, only the higher
of the two fees shall be assessed; and

(ii) when a water supply is subject to the fee provisions of this subdivision and subdivision (j)(7)(A) of this section, only the fee required by subdivision (j)(7)(A) shall be assessed.

Sec. 3. 10 V.S.A. § 1402 is amended to read:

§ 1402. DENIAL AND REVOCATION OF LICENSE

A license may be denied, suspended, or revoked, or the renewal thereof denied by the commissioner on the commissioner's own investigation and motion or upon written complaint of others, if after notice and opportunity for hearing the commissioner finds that the applicant or license holder has:

~~(1) made false statement in the application for a license or an application for renewal;~~

~~(2) obtained a license through fraud or misrepresentation;~~

~~(3) refused to complete and file any report required by this subchapter;~~

~~(4) insufficient ability to act as a well contractor; or~~

~~(5) violated rules adopted by the department to implement provisions of this subchapter~~ committed conduct specified under 3 V.S.A. § 129a as constituting unprofessional conduct by a licensee.

* * * Mobile Home Park Permits * * *

Sec. 4. 10 V.S.A. § 6205(b) is amended to read:

(b) The superior court for the county in which a violation of this chapter occurs shall have jurisdiction, on application ~~by the agency in the case of~~

~~violations of sections 6231-6235 of this title and by the department in the case of violations of sections 6236-6243 of this title, to enjoin and restrain the violation, but any election by the agency or by the department to proceed under this subsection shall not limit or restrict the authority of the state to prosecute for the offense under subsection (a) of this section.~~

Sec. 5. 10 V.S.A. § 6231 is amended to read:

§ 6231. ~~PERMIT REQUIRED;~~ RULES

(a) ~~No person shall establish or maintain a mobile home park, as defined in section 6201 of this title except pursuant to a permit issued by the agency. A person desiring to establish or expand a mobile home park, including extensions or expansions to water and sewage systems, shall make written application to the agency on forms furnished by the agency, and shall submit such supplementary data and information as the agency requires, including a site plan. The agency may by regulation requires payment of fees for a permit. The agency shall adopt rules to carry the provisions of sections 6231-6235 of this title into effect.~~

* * *

* * * Enforcement * * *

Sec. 6. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes:

(1) ~~3 V.S.A. chapter 51, relating to the certification of site technicians,
and trailer camps and tent sites;~~

* * *

(9) 10 V.S.A. chapter ~~61~~ 64, relating to potable water supply supplies
and wastewater systems;

* * *

(11) ~~10 V.S.A. chapter 153, relating to mobile home parks;~~

* * *

(14) ~~18 V.S.A. chapter 23, relating to subdivisions;~~

* * *

Sec. 7. 10 V.S.A. § 8010(e) is amended to read:

(e) Penalties assessed under this section shall be deposited in the general fund, except for those penalties which are assessed as a result of a municipality's enforcement action under chapter 64 of this title, in which case the municipality involved shall receive the penalty monies.

* * * Property Transfer * * *

Sec. 8. 24 V.S.A. § 1154(a) is amended to read:

(a) A town clerk shall record in the land records, at length or by accurate, legible photocopy, in books to be furnished by the town:

(1) deeds;

(2) instruments or evidences respecting real estate;

(3) writs of execution, other writs or the substance thereof, and the returns thereon;

(4) hazardous waste site information and hazardous waste storage, treatment and disposal certifications established under 10 V.S.A. chapter 159;

(5) underground storage tank information under 10 V.S.A. chapter 59;

(6) municipal land use permits (as defined in section 4303 of this title) or notices of municipal land use permits as provided for in subsection (c) of this section, notices of violation of ordinances or bylaws relating to municipal land use, and notices of violation of municipal land use permits;

(7) denials of municipal land use permits;

(8) permits, design certifications, installation certifications, and other documents required to be filed by the provisions of 10 V.S.A. chapter 64 and the rules adopted under that chapter;

(9) other instruments delivered to the town clerk for recording.

Sec. 9. 24 V.S.A. § 1161(b) is amended to read:

(b) For the purposes of this section, “transactions affecting title to real estate” shall include the instruments described in subsections 1154(a) and (b) of this title. Each owner of record title to the property at the time such and instrument is issued shall be listed as the grantor. The state of Vermont shall be listed as the grantee for instruments described in subdivisions 1154(a)(4) ~~and~~, (5), and (8) of this title. The municipality issuing the instrument shall be

listed as the grantee for instruments described in subdivision 1154(a)(6) of this title.

* * * Practice of Engineering by Licensed Designers * * *

Sec. 10. 26 V.S.A. § 1163(a) is amended to read:

(a) Persons exempt. Section 1162 of this title does not prohibit acts constituting the practice of engineering performed as a necessary part of the duties of:

- (1) An officer or employee of the federal government.
- (2) An officer or a full-time employee of the state.
- (3) An officer or full-time employee of a municipality.
- (4) ~~A full-time employee of the Vermont association of conservation~~

~~districts while performing work for the on-site sewage disposal program~~
Certain classes of licensed potable water supply and wastewater system designers, as designated by rule of the secretary of the agency of natural resources, who design supplies or systems with a design flow of up to 1,350 gallons per day and who are licensed under chapter 64 of Title 10.

* * *

Sec. 11. 26 V.S.A. § 1163(b) is amended to read:

(b) Other professions. Section 1162 of this title does not prohibit acts constituting the practice of any other legally recognized profession or

~~occupation, including the activity of site technicians licensed by the agency of natural resources.~~

* * * Property Transfer * * *

Sec. 12. 32 V.S.A. § 9606(c) is amended to read:

(c) The property transfer return required under this section shall also contain a certificate in such form as the secretary of the agency of natural resources and the commissioner of taxes jointly shall prescribe and shall be signed under oath or affirmation by each of the parties or their legal representatives. The certificate shall indicate:

(1) whether the transfer is in compliance with or is exempt from regulations governing ~~the subdivision of lands under section 1218 of Title 18~~ potable water supplies and wastewater systems under chapter 64 of Title 10; and

(2) that the seller has advised the purchaser that local and state building regulations, zoning regulations, ~~and subdivision regulations,~~ and potable water supply and wastewater system requirements pertaining to the property may ~~limit~~ significantly limit the use of the property.

* * * Effective Dates and Repeals * * *

Sec. 13. EFFECTIVE DATE

This act shall take effect upon passage, except that Sec. 11 of this act, which repeals reference to site technicians, shall take effect 30 months after the

effective date of rules adopted by the secretary under 10 V.S.A. § 1978(a)(12) (governing designer licenses).

Sec. 14. REPEAL

(a) 3 V.S.A. § 2873(c) (trailer camps and tent sites), 10 V.S.A. §§ 746 (establishing on-site program), 747 (describing program), 748 (municipal participation), and 749 (annual report), 10 V.S.A. chapter 61 (water supply and wastewater permits), 10 V.S.A. §§ 1265a (holding tanks), 6201(5) (definition of agency), 6232 (site plan review), 6233 (issuance of permit; revocation; appeals), 6234 (bonuses for improved facilities and layout), 6235 (basic regulations), and 6255 (failed potable water supplies and failed wastewater systems), and 18 V.S.A. §§ 1218 (authorizing subdivision regulations) and 1221b (recording and filing) are repealed.

(b) 3 V.S.A. § 2827 (site technician certification) is repealed 30 months after the effective date of the rules adopted by the secretary under 10 V.S.A. § 1978(a)(12) (governing designer licenses).

(c) 18 V.S.A. §§ 1218a (single lot subdivision), 1218b (exempt municipalities), 1218c (exempt municipalities with sewage ordinances), 1218d (exempt municipalities without sewage ordinances), and 1218e (sewer approval) are repealed as of July 1, 2007.

* * * Transition and Implementation * * *

Sec. 15. TRANSITION AND IMPLEMENTATION

(a) Provisional designer licenses. A site technician operating within the scope of his or her legal authority shall be deemed to have a provisional designer license under 10 V.S.A. § 1975. A provisional license shall remain in effect until 30 months after the effective date of rules adopted under 10 V.S.A. § 1978(a)(12), governing designer licenses.

(b) Existing rules. Notwithstanding the repeal by this act 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, the rules regarding trailer camps, tent sites, water supply and wastewater permits, mobile home parks and subdivisions shall be deemed to be rules under 10 V.S.A. chapter 64, and shall remain in effect until the effective date of the rules first adopted under that chapter.

(c) Existing permits. Notwithstanding the repeal by this act 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, potable water supplies, and wastewater systems, mobile home parks, and subdivisions shall remain in effect, except as otherwise provided in this act. These permits shall be deemed to be permits

issued under 10 V.S.A. chapter 64, and may be amended by the secretary under that chapter.

(d) Rulemaking.

(1) The secretary of the agency of natural resources may commence rulemaking under this act prior to the effective date of all of the provisions of this act.

(2) No proposed amendment to the small scale wastewater treatment and disposal rules that has been filed with the legislative committee on administrative rules prior to April 15, 2002 shall be subject to the eight-month rulemaking process limitation established by 3 V.S.A. § 843. In addition, rule proposals that are pending when this act takes effect may be revised to implement this act, even if those changes are significantly different than the proposed rules that went through the rulemaking process.

(e) Unimproved lots.

(1) An unimproved lot that was in existence as of the effective date of this act and that was exempt from the subdivision permitting requirements that existed on that date, including an unimproved lot greater than ten acres in size, is exempt from the permitting requirements of 10 V.S.A. chapter 64, provided that it is an improved lot by November 1, 2002.

(2) An unimproved lot that was in existence as of the effective date of this act, that was exempt from the subdivision permitting requirements that

existed on that date, including an unimproved lot greater than ten acres in size, and that is not an improved lot by November 1, 2002 is exempt from the permitting requirements of 10 V.S.A. chapter 64, provided that:

(A) the wastewater system meets the performance criteria of assuring that wastewater stays at least six inches below the naturally occurring ground surface, unless the system design requires otherwise, and assuring that there is no discharge to surface waters;

(B) the potable water supply and wastewater system meets the technical standards of the rules adopted under 10 V.S.A. chapter 64, except that the wastewater system may be built on ground with a slope of up to 30 percent;

(C) a licensed 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 judgment, the design of the potable water supply and wastewater system meets the performance criteria and technical standards described in subdivisions (1)(A) and (B) of this subsection;

(D) an installer or a licensed designer provides a written statement that the installation-related information is true and correct and that in the exercise of his or her reasonable professional judgment, 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;

(E) copies of the design and installation certifications are filed in the land records for the municipality in which the project is located and with the secretary, and are properly indexed and recorded pursuant to 24 V.S.A. §§ 1154 and 1161.

(3) The exemption established under subdivisions (1) and (2) of this subsection shall terminate:

(A) July 1, 2007, if the lot is not an improved lot; or

(B) for improved lots that have been improved between the effective date of this act and June 30, 2007, when any action for which a permit is required occurs after June 30, 2007; or

(C) whenever the improved lot contains a building or structure other than only one single-family residence; or

(D) whenever the lot is further subdivided and the resulting lots are not exempt under the applicable rules in existence at the time of subdivision.

(4) Definitions. As used in this subsection:

(A) "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 may not be located on the lot.

(B) “Unimproved lot” means a lot that has no building or structure on it.

(C) “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.

(f) Use of revised minimum site conditions.

(1) Until July 1, 2007, the revised minimum site conditions for the enhanced prescriptive approach and the performance-based approach set forth in the rules adopted pursuant to 10 V.S.A. chapter 64 shall not be used for wastewater systems serving lots that are created after the effective date of this act unless the wastewater system is located in a municipality that has a confirmed planning process and zoning bylaws. This limitation shall not apply to lots that are ten acres or greater in size that are created between the effective date of this act and October 31, 2002.

(2) After July 1, 2007, the revised minimum site conditions may be used in any municipality.

(g) List of approved products or components. The secretary shall maintain a list of innovative or alternative wastewater system components or products that have been approved for use, and shall update that list as new approvals are granted. Innovative or alternative wastewater system components or products that are currently approved are: at-grade systems, mound systems, recirculating

sand filters, intermittent sand filters, waterless toilets together with greywater disposal systems, the Avantex textile treatment system, Ecoflow Biofilter peat treatment system, Presby Enviro-Septic gravel-less distribution pipe, Flout floating outlet distribution box, and the Orenco Hydro-splitter mechanical distribution alternative to a distribution box.

(h) Prioritization of on-site assistance by agency personnel. In the event of limited resources, when assigning staff of the agency of natural resources to perform on-site technical review and to provide assistance in determining existing site conditions, the secretary shall give the highest priority to those wastewater systems which may use the enhanced prescriptive or performance-based minimum site conditions and to wastewater systems located in municipalities that do not have both a confirmed planning process and valid zoning bylaws.

(i) Groundwater.

(1) In implementing 10 V.S.A. chapter 64, the secretary shall assure consistency with the requirements of 10 V.S.A. chapter 48.

(2) By July 1, 2007, the secretary shall implement the provisions of 10 V.S.A. chapter 48 and complete the aquifer mapping of the state required under that chapter.

(3) By January 15, 2003, the secretary shall submit a report to the chairs of the Senate and House committees on natural resources and energy, addressing the following:

(A) the status of aquifer mapping;

(B) the status of statewide groundwater classification;

(C) the status of mapping of naturally-occurring contaminants of concern that may preclude use of an aquifer for drinking water supplies;

(D) potential obstacles and difficulties in completing the work specified in this subsection, including the resources necessary to complete the aquifer mapping by July 1, 2007, and to complete the other work required within a reasonable timeframe;

(E) potential funding sources and partners for completing the work specified in this subsection; and

(F) a reasonable timeline for implementing the work specified in this subsection, assuming that the recommended resources are provided.

(j) Monitoring.

(1) A permitted wastewater system that has been designed using the performance-based approach for minimum site conditions described in the rules adopted under 10 V.S.A. chapter 64 shall be inspected annually by a licensed designer. Within 30 days of completing the annual inspection, the designer shall submit a written report to the secretary describing the functional

status of the wastewater system. This annual inspection and reporting requirement shall terminate on July 1, 2007.

(2) The secretary shall compile data on the number and exact GIS location of wastewater systems permitted under the rules adopted under 10 V.S.A. chapter 64 that would not have been able to be permitted under the rules that existed on the effective date of this act.

(3) The secretary, in consultation with the agency of commerce and community development and the technical advisory committee, shall submit two reports to the chairs of the house and senate committees on natural resources and energy describing the performance of systems described in subdivision (1) of this subsection, and the effect on land use development patterns that results from the use of those systems. The initial report shall be submitted by January 15, 2005; the final report shall be submitted by January 15, 2007.

(k) Planning.

(1) The agency of commerce and community development and the agency of natural resources shall provide technical assistance and funding assistance, as funds are available, for the purpose of revising municipal plans and bylaws. These funds are to address the needs arising from the increase in land area that would be available for development as a result of adoption of

rules revising the minimum site conditions for on-site disposal of wastewater in Vermont.

(2) The agency of commerce and community development and the agency of natural resources, in consultation with the Vermont league of cities and towns and the Vermont association of planning and development agencies, shall develop a model groundwater protection ordinance by July 1, 2003, and shall make it available to all municipalities and, by July 1, 2007, shall develop a technical assistance program, including financial assistance as funds are available, for implementation of groundwater protection ordinances by interested municipalities.

(1) Holding tanks.

(1) Shrewsbury Library. Notwithstanding the requirements established in 10 V.S.A. § 1979(a)(1) and (3), the Shrewsbury Library shall be eligible for a permit under that section if it otherwise qualifies under that section. This eligibility shall apply as long as the building is used for a public purpose.

(2) Oakhill Children's Center. Notwithstanding the requirements established in 10 V.S.A. § 1979(a)(1) and (3), the property in the Town of Pownal to be used by the Oakhill Children's Center (currently under contract with Story Communications) shall be eligible for a permit under that section if it otherwise qualifies under that section. This eligibility shall apply, provided the building is used for a day care and children's center, and provided the

water supply meets the existing regulations for public water supply. Any permit so issued shall terminate upon the availability of the Pownal municipal sewer system.

(m) Municipal ordinances and bylaws. Between the effective date of this act and July 1, 2007, a municipality may adopt or amend a sewage ordinance or those provisions of a zoning bylaw that regulate potable water supplies and wastewater systems, only if:

(1) as adopted or amended, it contains technical standards no more stringent than the state standards in effect on January 1, 2002; or

(2) as adopted or amended, it contains technical standards consistent with those adopted under this act.

Sec. 16. Sec. 13 of No. 46 of the Acts of the 1999 Session is amended to read:

Sec. 13. CURATIVE EFFECT OF ACT

(a) If there is compliance with the conditions of the permit exemptions described in subsection 1218(d) of Title 18 or its successor, subsection 1974(b) of Title 10, the failure to obtain a subdivision permit under section 1218 or a potable water supply and wastewater permit under chapter 64 of Title 10 and the failure to record such permit or comply with the requirements of such permit shall not constitute a violation that adversely affects the marketability of title under 27 V.S.A. chapter 5, subchapter 7.

(b) This section shall retroactively apply to these exempt properties.