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July 28, 2016

RE: Changes to Combined Sewer Overflow Rule

Dear Representative French and Members of the Committee,

The Agency has made the following changes to the Combined Sewer Overflow Rule in response to public comments and based upon the Agency's final review of the Rule. The response summary included with this rulemaking package further explains the reasons for these changes.

§ 34-104 Authority. The Agency added 10 V.S.A. § 1295 as additional authority. This section of law was adopted this past legislative session to provide for notice to the public of CSO discharges as well as other untreated discharges to waters of the State.

§ 34-201(1) Definitions. The Agency modified the definition of "5-year design storm" by adding "having a theoretical 5-year recurrence interval" and striking "or a 20% probability of happening in any year" to more accurately reflect what the 5-year design storm is.

§ 34-201(4) Definitions. The Agency added the definition of "collection system," which is consistent with 10 V.S.A. § 1295.

"Collection system" means pipelines or conduits, pumping stations, force mains, and all other attendant facilities used to collect or conduct sewage or stormwater, or both sewage and stormwater.

§ 34-201(12) Definitions. To more accurately reflect the types of municipalities in Vermont, the Agency added the word "village" to the definition of "municipality," which is consistent with the definition of "municipality" in the federal Clean Water Act.

§ 34-201(19) Definitions. The Agency added the words "and attendant facilities" to the definition of "wastewater treatment facility" to be consistent with 10 V.S.A. § 1295.

§ 34-301(b) Applicability. The word "Policy" was inadvertently left in the Rule. It has been struck and replaced with the word "Rule."

§ 34-402(8) Minimum Controls. Minimum control number eight regarding public notification of CSOs was amended to be consistent with 10 V.S.A. § 1295, adopted this past legislative session. The original substantive provisions of that subsection were struck; a new section was added to the



Rule, § 34-404, which complies with the notification requirements of 10 V.S.A. § 1295; and a cross reference to that section was added to minimum control eight.

§ 34-402(9)(A)(i) Minimum Controls. The Agency has modified the precipitation monitoring requirements to allow municipalities greater flexibility in how they conduct precipitation monitoring. The changes will allow a municipality to use a physical precipitation monitoring system (i.e. rain gages) or, with approval from the Secretary, an alternative monitoring system (e.g. a virtual monitoring system that generates data based on modeling, etc.). The changes are as follows:

(A) The municipality shall define through monitoring, modeling, and other means, as appropriate, the sewer system, the response of the system to a range of precipitation events that encompasses the 5-year design storm, the characteristics of the overflows, and the water quality impacts that result from CSOs. To comply with the foregoing requirement, the municipality shall, at a minimum:

(i) ~~Physically establish~~ Establish and maintain a precipitation recording stations monitoring system. ~~These stations shall be located to record depth of precipitation specific to the collection system drainage area of each of the CSO outfalls. The network may consist of both new and existing stations, but~~ The system must be designed in such a manner as to provide unique precipitation amounts specific to individual CSO subcatchments. Such a network system does not necessarily demand a gage precipitation recording device for each CSO outfall. Precipitation measurements shall be of liquid depth to the nearest 0.01 inches, continuous at a five minute interval over the duration of flow monitoring a storm event, and indexed to time and date. ~~When~~ If establishing a physical precipitation recording stations monitoring system, the municipality shall work to minimize impacts of wind and surrounding trees and buildings that may hinder the ~~catch efficiency of the rain gage accuracy of precipitation recording stations.~~ If a municipality proposes to use a system other than a physical precipitation monitoring system, the municipality shall get prior approval from the Agency.

§ 34-402(10) and (11) Minimum Controls. In response to strong opposition to minimum controls (10) and (11), which are not required by federal law, the Agency struck those minimum controls, which *previously* read:

(10) Prohibition of the connection of new sources of stormwater or wastewater to any CSS if such connection would result in a net increase of stormwater or wastewater to the CSS; and

(11) Immediate notification to the Agency and local health officer of sewage backing up into buildings or discharges of raw sewage onto the ground surface from surcharging manholes or pump stations. If there are documented, recurrent instances of sewage backups or discharges of raw sewage onto the ground surface, the municipality shall, upon receipt of written notification from the Agency, prohibit further connections within the service area of the backup that would increase the frequency or volume of the surcharges/backups.

§ 34-403(3)(G) Long Term Control Plan. The Agency added “providing for disinfection of CSOs at the outfall” as an alternative that municipalities may consider when evaluating CSO control alternatives. Note, this is a non-exhaustive list, so municipalities may also consider alternatives that are not enumerated.

§ 34-403(4) Long Term Control Plan. To comply with federal law, the Agency has added a provision to the Long Term Control Plan section regarding “sensitive areas.” This provision ensures full compliance with EPA’s 1994 CSO Control Policy, which the State must comply with under federal law (33 U.S.C. §1342(q)(1)), and was inadvertently omitted:

(4) The LTCP shall include a detailed list of the selected CSO control projects necessary to bring the CSOs into compliance with the VWQS and a timeline for implementing the projects. The projects shall be prioritized based on the relative importance of adverse impacts upon water quality, including impacts on designated uses. When prioritizing projects, the municipality shall give the highest priority to bringing overflows to sensitive areas into compliance with the VWQS. For purposes of this section, "sensitive areas" means designated Outstanding Resource Waters, designated National Marine Sanctuaries, waters with threatened or endangered species and their habitat, waters where primary contact recreation occurs, public drinking water intakes or their designated protection areas, and shellfish beds.

§ 34-403(5) Long Term Control Plan. While the Agency struck minimum control (10), the Agency wished to maintain the intent behind the control, which was to ensure the CSO problem is not made worse. Therefore, the Agency added the following to the Long Term Control Plan requirements:

(5) The LTCP shall ensure that new sources of stormwater and wastewater to the CSS do not increase the volume, frequency, or duration of CSO events through implementation of control measures, such as making reductions in existing sources of stormwater or wastewater to the CSS, creating or increasing storage capacity within the collection system, or other measures approved by the Secretary. The municipality shall report annually in the report required by 34-402(9)(B) of this Rule on the steps it has taken in the prior year to address this requirement.

§ 34-403(6) Long Term Control Plan. While the Agency struck minimum control (11), the Agency wished to maintain the intent behind the control, which was ensure people are not exposed to raw sewage. Therefore, the Agency added the following to the Long Term Control Plan requirements:

(6) If there are documented, recurrent instances of sewage backups or discharges of raw sewage onto the ground surface, the LTCP shall include measures to address these occurrences and prevent them from happening in the future.

§ 34-403(8) Long Term Control Plan. To more accurately reflect what the 5-year design storm is, the Agency struck the sentence, "This means there is a 20% probability that rainfall depths for a given duration will be exceeded in any given year, and therefore a 20% probability of CSOs occurring in any given year."

§ 34-404 Notification Requirements. This entire section was added to be consistent with the public and Agency notification requirements of 10 V.S.A. § 1295.

Please let me know if you have any questions about the foregoing changes.

Sincerely,



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Department of Environmental Conservation