

Administrative Procedures – Final Proposed Rule Filing

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT
REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Vermont Pollution Abatement Facility Operator Rule

/s/ Julia S. Moore

, on 4/27/21

(signature)

(date)

Printed Name and Title:

Julia S. Moore

Secretary, Agency of Natural Resources

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

Vermont Pollution Abatement Facility Operator Rule

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

21P-001

3. ADOPTING AGENCY:

Agency of Natural Resources

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Amy Polaczyk

Agency: Agency of Natural Resources

Mailing Address: 1 National Life Drive, Davis 3,
Montpelier, Vermont 05620-3520

Telephone: 802 490 - 6185 Fax: -

E-Mail: Amy.Polaczyk@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://dec.vermont.gov/watershed/wastewater/rulemaking>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Katelyn Ellermann

Agency: Agency of Natural Resources

Mailing Address: 1 National Life Drive, Davis 3,
Montpelier, Vermont 05620-3520

Telephone: 802 522 - 7125 Fax: -

E-Mail: Katelyn.Ellermann@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

10 V.S.A. § 1251a(a); 10 V.S.A. § 1263(d); 10 V.S.A. 1265(d)

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

The Vermont Water Pollution Control Statute, 10 V.S.A. § 1251a(a), authorizes the Secretary to adopt rules necessary for the proper administration of the Secretary's water pollution control duties. In addition, 10 V.S.A. § 1263(d)(2) (discharge permits) specifically authorizes the Secretary to require that a pollution abatement facility be operated by persons licensed under 26 V.S.A. Chapter 99 and to prescribe the class of license required. Finally, the Temporary Pollution Permit statute requires proper operation and maintenance of a pollution abatement facility as a condition of the permit. 10 V.S.A. § 1265(d).

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

This rule amendment reflects the transfer of pollution abatement facility operator licensing to the Office of Professional Regulation (OPR) (26 V.S.A. Chapter 99), updates the requirements for pollution abatement facility owners to employ licensed operators and adequate staff, and modifies and updates the pollution abatement facility classification. Most of the rule

amendment is a complete reorganization and replacement of text, but only very targeted changes have been made to the facility classification.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

This rule amendment is necessary to align the rule with the transfer of operator licensing to OPR, to incorporate guidelines for adequate staffing of pollution abatement facilities, and to update the pollution abatement facility classification, including to more accurately address indirect discharge systems.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

10 V.S.A. § 1263(d) (2) (discharge permits) specifically authorizes the Secretary to require that a pollution abatement facility be operated by persons licensed under 26 V.S.A. Chapter 99 and to prescribe the class of license required. This rule amendment incorporates the facility classification, staffing, and operator experience and knowledge to support proper operation and maintenance of pollution abatement facilities.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Municipalities, pollution abatement facilities (including wastewater treatment facilities/publicly owned treatment works and indirect discharge systems), dairies, industries, Office of Professional Regulation, consulting firms, small businesses (contract wastewater operation services), individual pollution abatement facility operators and prospective operators.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

This rule amendment is unlikely to have a significant economic impact compared to the existing rule. Overall, the rule is understood to have a net positive impact by formalizing and providing guidelines on the requirement for adequate staffing of pollution abatement facilities and therefore helping to protect the state's receiving waters. The provisions regarding adequate staffing may have a limited effect on the number of individuals employed by a given pollution abatement facility. The rule amendment also clarifies when certain industrial dairy or metal facilities may employ a chief operator with a domestic-type license

Final Proposed Coversheet

rather than an industrial-type license, potentially easing the recruitment and hiring burden for those facilities.

19. A HEARING WAS HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 3/9/2021

Time: 04:00 PM

Street Address: Virtual Hearing via Microsoft Teams with call-in option: meeting link at <https://dec.vermont.gov/watershed/wastewater/rulemaking>

Zip Code: Call in #: +1 802-828-7667; Conference ID #: 884 389 19#

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

3/23/2021

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Pollution Abatement

Final Proposed Coversheet

Wastewater

Sewage

Wastewater treatment facility

WWTF

Publicly owned treatment works

POTW

Discharge

Indirect Discharge

Operator

License

NPDES

Administrative Procedures – Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Vermont Pollution Abatement Facility Operator Rule

2. ADOPTING AGENCY:

Agency of Natural Resources

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

#14-031, Wastewater Treatment Facility Operator Certification Rule, Effective 9/25/14

Administrative Procedures – Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Municipalities, wastewater treatment facilities (including publicly operated treatment works), dairies, industries, Office of Professional Regulation, consulting firms, small businesses (contract wastewater operation services), individual pollution abatement facility operators and prospective operators.

Economic Impact Analysis

The nature of the changes proposed by this amendment will not have any general economic impacts, however, for a small number of facilities, the addition of adequate staffing guidelines may lead to additional staffing costs, and the provision around employing a domestic licensed operator at an industrial metal or dairy facility (with Secretary approval) may lead to minimal adjustments on staffing costs.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

The Rule amendment will not change the impact on public education, schools, school districts, or taxpayers.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

N/A - this rule amendment does not change the impact on school districts.

6. IMPACT ON SMALL BUSINESSES:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

This Rule amendment is not anticipated to have a significant impact on small business, but the amendment does formalize an existing Agency practice allowing the Secretary to make a case-by-case determination that a facility with minimal treatment processes does not require a licensed operator and the amendment also clarifies when certain industrial dairy or metal facilities may employ a chief operator with a domestic-type license rather than an industrial-type license, potentially easing the recruitment and hiring burden.

7. SMALL BUSINESS COMPLIANCE: *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

Such an evaluation is not appropriate as this rule amendment does not change the cost of compliance with existing Agency rule.

8. COMPARISON:

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

The Rule has and will continue to have a net positive impact on the State by helping to ensure that the State's wastewater treatment facilities are operated and maintained properly and by encouraging individuals to get more education and training.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

Having considered the range of affected parties, and the minor changes that may have a negligible impact on staffing of facilities, this economic analysis provides the Agency's best assessment of the economic impact of this rule amendment based on the information available.

Administrative Procedures – Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

This rule amendment will have a negligible impact the emission of greenhouse gases. There may be a minor reduction of transportation emissions based on certain industrial metal/dairy facilities being able to employ an operator with a domestic-type license and possibly shorter commute (§ 4-301(f)).

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

This rule amendment is expected to improve the classification, staffing, operation, and management of pollution abatement facilities, which has the potential to improve consistency of compliance with discharge permits and groundwater and surface water quality

Environmental Impact Analysis

standards, which are intended to protect the broad range of designated uses of groundwater and surface waters.

5. **LAND:** *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

This rule amendment is not expected to significantly impact land.

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

This rule amendment is expected to improve the classification, staffing, operation, and management of pollution abatement facilities and therefore benefit receiving waters and water-based recreation in the state.

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

This rule amendment is not expected to significantly impact the climate in the state.

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

9. **SUFFICIENCY:** *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*

Having considered the potential benefits to water quality and water-based recreation from this rule, and the negligible changes with respect to other environmental considerations, this analysis provides the Agency's best assessment of the environmental impact of this rule amendment based on the information available.

Administrative Procedures – Public Input

Instructions:

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

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Agency of Natural Resources

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

Public hearing

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

Prior to filing with ICAR, the Agency shared a draft proposed rule with a group of pollution abatement facility operator stakeholders and received input; these individuals also worked on the previous (2014) amendment of this rule. The Agency also shared the draft and held a meeting with representatives of the Office of Professional Regulation.

The Agency sent targeted emails to representative stakeholders and held a public hearing for input during the public comment period.

5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

Office of Professional Regulation;

All active wastewater operators;

Public Input

All municipalities with wastewater treatment facilities;

All industries permitted and required to employ licensed operators;

Businesses, consulting firms, and individuals providing contracted services to a permitted facility required to be operated by licensed operators;

Organizations (interested parties) may include: Green Mountain Water Environment Association (GMWEA), Vermont Rural Water Association (VRWA), New England Interstate Water Pollution Control Commission (NEIWPC), US Environmental Protection Agency (US EPA), New England Water Environment Association (NEWEA), New England Water Works Association (NEWWA), Vermont League of Cities and Towns (VLCT), and Earth Water Specialists (EWS).