

**Vermont Agency of Natural Resources  
Department of Environmental Conservation**

**Procedure for Public Notice of Untreated Discharges and  
Unpermitted Discharges to Vermont's Surface Waters**

Act 86 (2016) requires operators of wastewater treatment facilities (WWTFs), both public and private, to provide public notification of releases of sewage to Vermont's surface waters. The Act also requires the Secretary of the Agency of Natural Resources (Secretary) to publicly notice unpermitted discharges to surface waters that may pose a threat to human health or the environment. This Procedure describes these public notice requirements in more detail and sets forth a protocol for internal Agency coordination relating to the discovery and public notification of unpermitted discharges. The definitions in 10 V.S.A. 1295(a) apply to this Procedure.

**WWTF Operators – Untreated Discharge Reporting and Signage  
Requirements**

WWTF operators are required to report “untreated discharges,” as defined below, from the WWTF that reach waters of the State. The WWTF includes the treatment plant, collection systems, pump stations, and attendant facilities permitted by the Secretary for the purpose of treating wastewater.

**For purposes of this procedure, the following shall be considered an untreated discharge:**

1. Combined sewer overflows (CSO);
2. Overflows from sanitary sewers and combined sewer systems that are part of a WWTF during dry weather flows, which result in a discharge to waters of the State;
  - a. These include any discharge from a WWTF collection system that reaches waters of the State.
3. Upsets or bypasses around or within a WWTF during dry or wet weather conditions that are due to factors unrelated to a wet weather storm event and that result in a discharge of sewage that has not been fully treated to waters of the State;
  - a. These include discharges of fully treated effluent that have not received adequate disinfection characterized by one or more of the following criteria:
    - i. *E. coli* sample result of  $\geq 235$  colonies/100 ml; or
    - ii. An event (e.g. low total residual chlorine, disinfection system failure, disinfection system malfunction) that would result in an inadequate disinfection of wastewater effluent that may result in a release of effluent with an *E. coli* count of  $\geq 235$  colonies/100 ml.
4. Discharges from a WWTF to separate storm sewer systems.

**For purposes of this Procedure, the following shall not be considered an untreated discharge:**

1. A release of less than fully treated sewage that does not reach waters of the State.
  - a. A release of less than fully treated sewage that does not reach waters of the State, but is in an area or at a volume that has the potential to pose a risk to public health should be reported to the DEC's Wastewater Program.
2. With the exception of *E. coli*, an exceedance of a permitted discharge limitation.
  - a. National Pollutant Discharge Elimination System (NPDES) permit exceedances shall be reported to the Vermont Department of Environmental Conservation's (DEC) Wastewater Program in accordance with the Noncompliance Notification Condition of the NPDES Permit and on the discharge monitoring report form WR-43.
3. Discharges that reach waters of the State from surfacing or failed on-site wastewater systems, privately-owned collection systems, or laterals from individual homes illicitly piped to a surface water or to a separate storm sewer.
  - a. These discharges are considered "unpermitted discharges" and will be noticed by the Secretary in accordance with the unpermitted discharge section of this Procedure.

**The following is required of a WWTF operator upon discovery of an untreated discharge:**

1. **Post an electronic Public Alert as soon as possible but no longer than within 1 hour from discovery of an untreated discharge.**
  - a. The Public Alert shall be posted via the ANR Web event reporting system to notify the public of the untreated discharge and its location.
  - b. If an operator is working to stop the discharge in a location with no telephone or internet access, the Public Alert must be posted no later than 4 hours from discovery of the untreated discharge.
2. **Post a follow-up Overflow and Incident Report within 12 hours of discovery of an untreated discharge and notify the town health officer.**
  - a. The Overflow and Incident Report shall be submitted via the ANR Online event reporting system.
  - b. Notification shall also be provided to the town health officer. Current town health officer contact information is maintained on the Department of Health's searchable listing.
  - c. WWTFs are responsible for having an ANR Online event reporting system account. Instruction and guidance has been provided to all WWTFs.
  - d. Telephoned reports to the Wastewater Program are no longer an acceptable means of reporting untreated discharges.
  - e. In the event that the ANR Online event reporting system is not functional, notice of an untreated discharge shall be provided to the Wastewater Program via phone or email immediately.

- f. For technical support or problems related to the ANR Online reporting system, WWTFs shall contact:
  - Greg Lutchko, DEC Systems Coordinator at (802) 272-4529 or [greg.lutchko@vermont.gov](mailto:greg.lutchko@vermont.gov).

**3. Post temporary signs at any public access area(s) downstream of sewage releases and unpermitted discharges posted by the Secretary (see the unpermitted discharge section of this procedure for more information about the requirements for Municipalities in response to an unpermitted discharge).**

- a. Municipalities are responsible for posting temporary signs at public access areas downstream of:
  - a. Untreated discharges other than combined sewer overflows; and
  - b. Unpermitted discharges that the Secretary determines may pose a threat to human health or the environment.
- b. The Secretary will notify the local municipality and town health officer when it determines that an unpermitted discharge poses such a threat and post notification of the unpermitted discharge on the Wastewater Inventory reporting system.
- c. Public access area signs shall warn of the potential threat to town health that may be posed by recreating in the waters. The signs shall remain in place for 48 hours after the untreated or unpermitted discharge has stopped.
- d. Signs shall be posted at public access area(s) located within 1 mile downstream of the discharge. The Secretary shall specify a different sized geographic area for posting if necessary to protect the public health or the environment.
- e. Municipalities are expected to cooperate in posting signage if the discharge crosses a municipal boundary.

**4. Post a permanent sign at each combined sewer overflow (CSO) outfall.**

- a. Signs were provided by the Agency to WWTFs with permitted CSO outfalls. It is the municipality's responsibility to inspect, maintain and replace these signs if destroyed, removed or illegible.

**ANR Secretary – Public Notice Requirements for Unpermitted Discharges**

The following section describes the Secretary's response to an unpermitted discharge to surface waters of the State of Vermont. The local municipality is responsible for posting temporary signage at public access area(s) downstream of unpermitted discharges that the Secretary has determined may pose a threat to human health or the environment.

1. The Secretary will post a notification of other unpermitted discharges to surface waters of the State that may pose a threat to human health or the environment and that are identified by the Secretary.
2. The notification will be posted on the Wastewater Inventory reporting system no later than 4 hours from the discovery of the unpermitted discharge, except that if the unpermitted discharge is discovered between the hours of 9:00 p.m. and 5:00 a.m., the Secretary shall post the notification no later than 10:00 a.m. of that morning.

3. For purposes of this Procedure, a discharge shall be considered to have been “discovered” by the Secretary if the discharge has been confirmed by Agency staff on-site, or if the discharge has been confirmed by an official source, such as a municipal official, fire department, police department, town health officer, emergency responder, etc. and the official source has notified the Agency. Agency staff will use best professional judgement in determining if a discharge has been “discovered” for purposes of posting.
4. In determining what may pose a threat to public health or the environment for purposes of posting public notice, the Secretary may consider the following:
  - Nature of the discharge;
  - Quantity and location of discharge;
  - Size and nature of receiving water;
  - Volume of flow in receiving water vs. amount of discharge;
  - Duration of discharge;
  - Exceedances of permit effluent limitations;
  - Downstream public access areas;
  - Presence of a high *E. coli* count (> 235 colonies/100 ml) accompanied by an exceedance of normal values for either ammonia, chlorine, methylene blue active substances (MBAS) or a strong positive for optical brighteners;
  - Downstream public or private drinking water sources; and
  - Any other relevant factors in applying best professional judgment.
5. As described above, the Secretary will notify the local municipality and town health officer when it determines that an unpermitted discharge may pose a threat to human health or the environment. Once notified, municipalities are responsible for posting temporary signs at public access areas located within 1 mile downstream of the discharge. The Secretary shall specify a different sized geographic area for posting if necessary to protect the public health or the downstream of the unpermitted discharge. Public access area signs shall warn of the potential threat to public health that may be posed by recreating in the waters. The signs shall remain in place for 48 hours after the unpermitted discharge has stopped. Municipalities are expected to cooperate in posting signage if the discharge crosses a municipal boundary.
6. If there is any question as to whether or not an unpermitted discharge poses a threat, the responsible Division will err on the side of public posting of the unpermitted discharge.

### **Internal Agency Coordination Relating to Unpermitted Discharges**

There are multiple Divisions within DEC that may receive notice of unpermitted discharges to surface waters, including the Watershed Management Division, Waste Management & Prevention Division, Drinking Water & Groundwater Protection Division and the Environmental Compliance Division. Public noticing of unpermitted discharges shall follow these guidelines:

1. During normal business hours, if a Division confirms an unpermitted discharge it shall immediately refer the unpermitted discharge to the Environmental Compliance Division (ECD) by entering the incident into the BEAR database, and shall also immediately notify the Division with primary jurisdiction over the discharge. A program staff person and/or Environmental Enforcement Officer shall be assigned as lead on the incident. The Division with primary jurisdiction will be responsible for public posting online, contacting the municipality in which the discharge has occurred and, if an EEO is not assigned, conducting all necessary follow-up.
2. Outside of normal business hours, if a Division confirms an unpermitted discharge it shall refer the unpermitted discharge to ECD by contacting it immediately by email. The Division shall then enter the incident into the BEAR database the next business day. A program staff person and/or an EEO will be assigned by ECD after entry into BEAR. The Division with primary jurisdiction will be contacted by ECD and will become responsible for public posting online, contacting the municipality in which the discharge occurred and, if any EEO is not assigned, conducting all necessary follow-up.
3. The EEO and/or the Division with primary jurisdiction shall be responsible for updating the Wastewater Inventory database when it confirms that the discharge has ended. Pursuant to Act 86, the Secretary is not responsible for determining if the threat has ended, only that the discharge has ended.

Dated this 4<sup>th</sup> day of January 2017, at Montpelier, Vermont.

  
Alyssa B. Schuren, Commissioner