

ON-SITE MEETING HOSTED BY ADDISON COUNTY RPC 10/10/01

COMMENTS, QUESTIONS AND RESPONSES AS TAKEN BY NOTETAKER

Public questions and comments are in *italics*

1. Comment: *Please take feedback by e-mail.*

Answer: Justin Johnson of DEC will take comments at: [justinj@dec.anr.state.vt.us](mailto:justinj@dec.anr.state.vt.us)

2. Q: *Please post the comments on the Web.*

A: We will do that. The Web address is  
<http://www.anr.state.vt.us/dec/regulate.htm>

3. Q: *Will all the systems approved by the New England Interstate Water Pollution Control Commission need to go through the innovative approval process?*

A: We will accept the performance claims that are approved by third parties such as NEIWPCC. The specific use on a site will be approved on a project by project basis.

4. Q: *Who will do the innovative reviews? The regional office folks or*

*Waterbury? Roger alone? That is a big job and you need more staff to do it than Roger.*

A: The reviews and approvals will be done in Waterbury to make sure they are consistent. We need authorization by the Legislature in order to add more staff.

5. Comment: *Systems with treatment systems with highly treated wastes do not need replacement areas. It is sometimes hard to find the primary system area and the replacement system is unnecessary because the systems are not apt to fail.*

A: These systems must last a long time. We can review the data in this area and modify it if appropriate in the future.

6. Comment: *There should be a de minimis increase in flow for large projects which does not require a permit revision, maybe 1%.*

7. Q: *What will the fees be in the new rules?*

A: The fees changed last year and are not proposed to be amended by these rules. They can only be changed by the legislature. Agencies are on a three year rotation to revise fees. We may need to ask for a special request this year because our request last year was for a budget depending on receipts of \$3.8 million. Fees were only adjusted to allow receipts of \$3.0 million. That is not connected to this rule.

8. Q: *Is this rule a law?*

A: No, this is a proposed rule. It will be reviewed by the Legislative Committee on Administrative Rules and then be adopted by the Agency. S.27 is a statute that addresses some of the same issues that is in the legislature for action this spring. The Senate passed it last session.

9. Q: *How soon will there be approvals of innovative systems?*

A: There have already been three approved. More are soon to come.

10. Comment: *It appears that pre-1969 lots are being regulated.*

A: No. Pre-existing lots are still exempt. Subdivision is the trigger for needing a permit for those lots.

11. Q: *What happens to existing lots with non-state approved designs for systems?*

A: Pre-existing lots do not require permits; they can use the designs. New lots or permitted lots, including 10 acre lots created after Sept. 1, 2002 cannot use them unless they meet the new standards. Undeveloped 10 Acre lots will also need a permit.

12. Q: *Why two rules?*

A: The rules essentially go together. The one closing the 10 acre exemption (Rule#1) will move slightly faster than the one with the technical standards (Rule#2). Rule#2 will be delayed slightly so that if S.27 consolidates the statutes and allows for additional items such as municipal delegation, it can be modified before it is adopted. We expect Rule#1 to be

adopted in late February or early March. Rule#2 by May or June, in time for the new construction season.

13. Comment: *The 10-acre exemption should NOT go first. Taking this action will poison the well at the legislature for any work on the issues in S.27.*

A: This action is not intended to inflame the Legislature in any way. The Agency has been trying to close the exemption in concert with new technical standards for many years. Formerly we believed that it had to be done by a legislative action. We now realize that we can do it by rule and are therefore moving forward promptly. We are, at the same time, bringing forward the updated technical standards, which the Legislature has always asked to see before the exemption is closed. We have done what we said we would do, and are hoping that the Legislature will assist us by approving statutory amendments that will also improve the on-site program.

13. Q: *Why is closing the 10 acre exemption such a big deal?*

A: The closing of the 10-acre exemption is necessary for several reasons. First and foremost it is a public health issue. VT is only one of two states in the nation that do not regulate all wastewater and potable water supply systems. The 10-acre exemption was formulated on the premise that a large lot with a system in the middle would not jeopardize neighboring lots. In actuality people are creating spaghetti lots with development crowded together on road frontages without the appropriate separation distances to protect water supplies. There is also an equity issue of the 10 acre lot owner not having to meet any regulations and being able to site a system which threatens the supply of the neighbor on a smaller lot who has to meet the health standards.

Q: *Why have you waited so long then? A lot of land has been wasted in large lots.*

A: We have been working on this for 10 years. Hopefully we can make progress this year.

14. Q: *Will this encourage smaller lots?*

A: We certainly hope so. That is one of the reasons for proposing the new standards.

15. Comment: *The Legislative Committee on Administrative Rules can vote not to accept the Rule, and the Agency can still adopt it...albeit at their peril.*

A: That is true. However, we are bringing the draft rule to the Legislative Committees on Natural Resources and discussing it with them during this public comment period, to get their feedback also.

Q: *If you have a permit, do you need to get an engineer to add a bedroom to your house?*

A: The permit needs to be revised. A site technician can do the work, including using approved innovative systems in the design, if the size of project is within the authority of a site technician to design now (single lot subdivisions less than 600 gpd).

17. Comment: *There needs to be a definition of "modification".*

18 Comment: *There should be a package deal for both rules.*

19: Comment: *There is not really a health threat from 10 acre lots, it is only theoretical, not real.*

20. Comment: *The last thing we need is more state bureaucracy in hard times. It is not necessary to do this now.*

21. Q: *Isn't the definition of a bedroom too broad? What if I have a computer room that meets the definition of a bedroom? Will I have to change my permit?*

22. A: the number of bedrooms determined current permits. If you add a bedroom, the permit will have to be revised. Bedrooms are the standard method of determining permitted flows. We will not be going out to check if you are using five bedrooms in a 3-bedroom house. The permit will be filed on the land records so that people buying the house will know that they are buying only a 3 bedroom house, even if you have been using it as a 5 bedroom one. They will know that the septic system is designed to only handle three bedrooms. S.27 brought pre-existing lots under this jurisdiction. These rules do not cover pre-existing lots.

23. Comment: *There are title problems when the permit and the sale agreement do not agree on the size of the house in bedrooms.*

Q: *How many septic systems are there in VT? How many fail annually.*

A: We believe there are about 40,000 systems in VT. About 5% or 1500 fail annually. Fail means pool on the surface of the ground, discharge to surface waters, or contaminate a potable water supply.

25. Q: *Will installers be licensed?*
- A: Not in these rules. We need Legislative approval to require installers to be licensed. We will require them to certify their work. This will give us some ability to make them accountable for their work.
- Q: *How many failed systems actually cause someone to be sick? It doesn't seem to be a real problem. No one is reporting this information.*
- A: It is very hard to link failure of individual systems to specific illnesses since people do not tend to test their water supplies when they get gastrointestinal illnesses. The Health Department has epidemiological studies which demonstrate the need for safe drinking water supplies.
- 27Q. Q: *Isn't pooling on the surface not a problem, because it just evaporates anyway?*
- A: Pooling on the surface is not acceptable due to the health risk from human contact. While there will be some evaporation on hot dry days, the evaporation actually occurs from capillary action and plant uptake more than direct evaporation. This type of evaporation can still go on without the need to expose the sewage on the surface.
28. Q: *Do pre-existing lots need a permit to fix a failed system?*
- A: No.
- 29: Comment: *My family used a privy from the late 1800s to 1950. They used privy waste to grow their garden and had wonderful results. These people all lived to be in their 80s. The health risk from these systems is very overstated.*
30. Comment: *The permits for public buildings should be filed on the public records as subdivision permits have to be. It is a real problem for title attorneys not to be able to find this information.*
- A: The rule will require all permits to be filed on the land records.
- Comment: *Please move the date for this requirement back to 2001.*
31. Q: *How can we get the data on the old permits that are not in land records?*
- A: Currently you will continue to visit the regional offices and search the records. Eventually we hope to have the old data scanned and available to

be searched electronically on the Web. This will take a considerable amount of resources to accomplish.

32. Comment: *Right now people use the 10 acre "out" even when they could meet the rules, for whatever reason, such as in towns whose permit standards are the equivalent of the state rules. How will you get the word out that it will be easier to meet the rules?*

A: We will be providing information in several ways, such as brochures, workshops, on the Web etc.

33. Comment: *Closing the 10-acre exemption will not be necessary if 2 acres will suffice. The marketplace will drive that. Why do we need to close it in the rules?*

A: We believe that people will continue to use it regardless, if it is available. We are focusing on improving the technical standards so that if a lot is suitable for building so that the public health is protected, the rules will allow it and a permit will make sure that the standards are followed.

34. Comment: *The recent need for TMDLs and phosphorus limitations on municipal facilities will increase the cost for these facilities and they may not be able to expand to accept new connections. What are you doing to see that this does not fuel development in rural areas?*

A: We are looking at capital construction assistance and promoting assistance in downtown centers.

35. Q: *How will you incorporate the systems demonstrated at the Small Flows Workshop last month into these rules?*

A: They will be incorporated through the innovative system review and general use approval process.

34. Q: *What are the planning requirements for the municipalities to qualify to use the revised site conditions during the first 5 years after rule adoption?*

A: At a minimum the town must adopt a sewage ordinance that incorporates the new state standards. The other requirements are:

- a. have a planning process confirmed by the applicable Regional Planning Commission
- b. have zoning bylaws

- c. have subdivision regulations or other regulations that incorporate standards for transportation construction, flood management, and soil and erosion control, and provisions that encourage growth centers while limiting growth in surrounding open areas.

35. *Comment: An employee of the old on-site sewage program only approved permits for houses where he wanted them to be built and denied projects if he didn't like them. This is just the State trying to get more taxes and institute state-wide zoning. We want to see a track record of the new projects being built before you close the 10-acre exemption.*

A: We understand that there have a lot of problems in the past and that people are concerned about us going forward with the new technical standards and closing the 10 acre exemption, because it eliminates an “out” from any review by the State. In some ways it may promote sprawl and in others discourage sprawl. The Towns need to make individual choices on how to handle that issue. We believe the rules are a good faith effort to incorporate good science into the approval of on-site wastewater and potable water supplies.

36. *Q: When will the long-range plan for phosphorus reduction in Lake Champlain actually reduce the phosphorus in the Lake by 25%?*

A: We do not have the answer to that right now. I will get the answer and get back to you.