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Title 10: Conservation And Development

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. (Added 2001, No. 133 (Adj. Sess.), § 1, eff. June 13, 2002.)

§ 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 has been found to exceed the standard set by the Secretary in rule for one or more of the following contaminants:

(I) total coliform;

(II) nitrates;

(III) nitrites;

(IV) arsenic; or

(V) uranium;

(ii) that the Secretary affirmatively determines as not potable, due to the presence of a contaminated site, a leaking underground storage tank, or other known sources of groundwater contamination or naturally occurring contaminants, and that information has been posted on the Agency of Natural Resources' website; or

(iii) the Secretary affirmatively determines to be failed due to the supply providing an insufficient quantity of water to maintain the usual and customary uses of a building or structure or campground, and that information has been posted on the Agency of Natural Resources' website.

(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 that 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 affirmatively determined by the Secretary to be a failed supply, and that information has been posted on the Agency of Natural Resources' website.

(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.

(D) A wastewater system may be determined to be a failed system by the completion of a site visit that identifies one or more of the conditions set forth in subdivision (A)(i) of this subdivision (5).

(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 26 V.S.A. chapter 20.

(8) "Secretary" means the Secretary 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 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. (Added 2001, No. 133 (Adj. Sess.), § 1, eff. June 13, 2002; amended 2007, No. 32, § 2, eff. May 18, 2007.)

§ 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, in the exercise of his or her reasonable professional judgment, the design-related information submitted with the permit application is true and correct and 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, in the exercise of his or her reasonable professional judgment, the installation-related information submitted is true and correct and the potable water supply and wastewater system:

(1) were installed in accordance with:

(A) the permitted design and all permit conditions; or

(B) record drawings and such record drawings are in compliance with the applicable rules, were filed with the Secretary, and are in accordance with all other permit conditions;

(2) were inspected;

(3) were properly tested; and

(4) have successfully met those performance tests.

(f)(1) 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.

(2) The Secretary shall issue a permit for a new or modified connection to a water main and a sewer main or indirect discharge system from a building or structure in a designated downtown development district upon submission of an application under subsection (b) of this section that consists solely of the certification of a licensed designer, in accordance with subsection (d) of this section, and a letter from the owner of the water main and sewer main or indirect discharge system allocating the capacity needed to accommodate the new or modified connection. However, this subdivision (2) shall not apply if the Secretary finds one of the following:

(A) The Secretary has prohibited the system that submitted the allocation letter from issuing new allocation letters due to a lack of capacity.

(B) As a result of an audit of the application performed on a random basis or in response to a complaint, the system is not designed in accordance with the rules adopted under this chapter.

(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.

(i) Notwithstanding section 1-407 of the State Wastewater System and Potable Water Supply Rules, effective August 16, 2002, a lot that contained two single family residences, as of January 1, 1999, but did not have the State permit required at that time is eligible for a permit for the subdivision of improved lots under subdivision 1-407(a)(2) of those rules, provided that the subdivision of the lot would only create a boundary between the two single family residences and thereby place each residence on its own lot.

(j)(1) When an applicant for a permit under this section proposes a water supply or wastewater system with isolation distances that extend onto property other than the property for which the permit is sought, the permit applicant shall send by certified mail, on a form provided by the Secretary, a notice of an intent to file a permit application, including the site plan that accurately depicts all isolation distances, to any landowner affected by the proposed isolation distances at least seven calendar days prior to the date that the permit application is submitted to the Secretary.

(2) If, during the course of the Secretary's review of an application for a permit under this section, the location of a water supply or wastewater system permit is revised and the isolation distances of the revised system extend onto property other than the property for which the permit is sought, the permit applicant shall send by certified mail a copy of any revised plan to any landowner affected by the isolation distances.

(3) If, after a permit has been issued under this section, a water supply or wastewater system is not installed according to the permitted plan and the record drawings submitted under subsection (e) of this section indicate that the isolation distances of the system as constructed extend onto property other than the property on which the system is located, the permittee shall send by certified mail a notification form provided by the Secretary with a copy of the record drawings showing all isolation distances to any landowner affected by the isolation distances.

(4) A permit applicant or permittee subject to the requirements of subdivisions (1) through (3) of this subsection shall certify to the Secretary that the notices and information required by this subsection have been sent to affected landowners and shall include in the certification the name and address of all affected landowners. If the Secretary approves a

permit application under this section, the permit shall not be issued to a permit applicant subject to the requirements of subdivision (2) of this subsection until seven calendar days after the permit applicant certifies to the Secretary that the notice required under this subsection has been sent to affected landowners. (Added 2001, No. 133 (Adj. Sess.), § 1, eff. June 13, 2002; amended 2003, No. 13, § 2, eff. May 6, 2003; 2003, No. 121 (Adj. Sess.), § 71, eff. June 8, 2004; 2007, No. 32, § 3, eff. May 18, 2007; 2009, No. 145 (Adj. Sess.), § 1, eff. June 1, 2010; 2011, No. 117 (Adj. Sess.), § 5, eff. Sept. 1, 2012; 2013, No. 147 (Adj. Sess.), § 12, eff. June 1, 2014.)

§ 1974. Exemptions

Notwithstanding any other requirements of this chapter, the following projects and actions are exempt:

(1)(A) All buildings or structures, campgrounds, and their associated potable water supplies and wastewater systems that were substantially completed before January 1, 2007 and all improved and unimproved lots that were in existence before January 1, 2007. This exemption shall remain in effect provided:

(i) no action for which a permit is required under this chapter or the rules adopted under this chapter is taken or caused to be taken on or after January 1, 2007, unless such action is exempt under one of the other permitting exemptions listed in this section or in the rules adopted under this chapter; and

(ii) if a permit has been issued under this chapter or the rules adopted under this chapter before January 1, 2007 that contained conditions that required actions to be taken on or after January 1, 2007, including conditions concerning operation and maintenance and transfer of ownership, the permittee continues to comply with those permit conditions.

(B) If a permit or permit amendment is required because the potable water supply or wastewater system has failed, the Secretary may issue a permit that allows for a variance in accordance with the standards contained in section 1973 of this chapter, the rules adopted under this chapter, and the rules adopted under chapter 56 of this title.

(C) An owner of a single family residence that qualified on January 1, 2007 for the exemption set forth in subdivision (1)(A) of this section shall not be subject to administrative or civil penalties under chapters 201 and 211 of this title for a violation of this chapter or rules adopted under this chapter when the owner believes the supply or system meets the definition of a failed supply or failed system provided that the owner:

(i) conducts or contracts for an inspection of the supply or system;

(ii) notifies the Secretary of Natural Resources of the results of the inspection;

and

(iii) has not taken or caused to be taken any other action after January 1, 2007 for which a permit would be required under this chapter or the rules adopted under this chapter.

(2) 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.

(3) [Repealed.]

(4) The installation or use of a water treatment system for a potable water supply where the treatment system is designed to:

(A) reduce or eliminate water hardness;

(B) reduce or eliminate properties or constituents on the list of secondary standards in the Vermont water supply rules;

(C) reduce or eliminate radon, lead, arsenic, or a combination of these; or

(D) eliminate bacteria or pathogenic organisms, provided that the treatment system treats all of the water used for drinking, washing, bathing, the preparation of food, and laundering.

(5) The installation or use of a water treatment device, provided that the installation or use is overseen by the Secretary as a part of a response action due to contamination or the threat of contamination of a potable water supply by a release or threat of release of a hazardous material or any other source of contamination.

(6) The increase in flow to an existing wastewater system as a result of the use of an exempt water treatment system under subdivisions (4) and (5) of this section.

(7) The subdivision of an unimproved or improved lot or campground where the subdivision results from a transfer of property for a highway or other transportation project that is authorized under the State's enacted Transportation Program or is an emergency project within the meaning of 19 V.S.A. § 10g(h), regardless of whether the State or the municipality has commenced any condemnation proceedings in connection with the project.

(8) From the permit required for operation of failed supply under subdivision 1973(a)(4) of this title for the use or operation of a failed supply that consists of only one groundwater source that provides water to only one single family residence. (Added 2001, No. 133 (Adj. Sess.), § 1, eff. June 13, 2002; amended 2007, No. 32, § 4, eff. May 18, 2007; 2009, No. 54, § 85, eff. June 1, 2009; 2009, No. 3 (Sp. Sess.), § 11(d); 2009, No. 161 (Adj. Sess.), § 33, eff. June 4, 2010; 2015, No. 40, § 18; 2017, No. 161 (Adj. Sess.), § 7.)

§ 1975. Designer licenses

(a) The Director of the Office of Professional Regulation, after due consultation with 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) A person shall not design a potable water supply or wastewater system that requires a permit under this chapter without first obtaining a designer license from the Director of the Office of Professional Regulation, 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) to design a soil-based wastewater system, 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;

(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) [Repealed.]

(d) The Secretary or the Director of the Office of Professional Regulation 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) [Repealed.]

(f) If a person who signs a design or installation certification submitted under this chapter certifies a design, installation, or related design or installation information and, as a result of the person's failure to exercise reasonable professional judgment, submits design or installation information that is untrue or incorrect, or submits a design or installs a wastewater system or potable water supply that does not comply with the rules adopted under this chapter, the person who signed the certification may be disciplined by the Director of the Office of Professional Regulation and be required to take all actions to remediate the affected project 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. (Added 2001, No. 133 (Adj. Sess.), § 1, eff. June 13, 2002; amended 2007, No. 32, § 5, eff. May 18, 2007; 2015, No. 156 (Adj. Sess.), § 9, eff. Jan. 1, 2017.)

§ 1976. Delegation of authority to municipalities

(a)(1) The Secretary may delegate to a municipality authority to:

(A) implement all sections of this chapter, except for sections 1975 and 1978 of this title; or

(B) implement permitting under this chapter for the subdivision of land, a building or structure, or a campground when the subdivision, building or structure, or campground is served by sewerage connections and water service lines, provided that:

(i) the lot, building or structure, or campground utilizes both a sanitary sewer service line and a water service line; and

(ii) the water main and sanitary sewer collection line that the water service line and sanitary sewer service line are connected to are owned and controlled by the delegated municipality.

(2) 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, that 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 that 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;

(E) will only issue permits for water service lines and sanitary sewer service lines when there is adequate capacity in the public water supply system source, wastewater treatment facility, or indirect discharge system; and

(F) will comply with all other requirements of the rules adopted under section 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. (Added 2001, No. 133 (Adj. Sess.), § 1, eff. June 13, 2002; amended 2015, No. 57, § 22a.)

§ 1977. Appeals

Appeals of any act or decision of the Department under this subchapter shall be made in accordance with chapter 220 of this title. (Added 2001, No. 133 (Adj. Sess.), § 1, eff. June 13, 2002; amended 2003, No. 115 (Adj. Sess.), § 44, eff. Jan. 31, 2005.)

§ 1978. Rules

(a) The Secretary shall adopt rules, in accordance with 3 V.S.A. chapter 25, necessary for the administration of this chapter. These rules shall include 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.

(15) Provisions authorizing the use by a residential dwelling of surface water as a source of a potable water supply permitted under this chapter.

(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 June 13, 2002 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 Natural Resources.

(3) The Technical Advisory Committee shall provide annual reports, starting January 15, 2003, to the Chairs of the House Committee on Corrections and Institutions and the Senate Committee on Institutions. 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) [Repealed.]

(f) The Secretary may adopt emergency rules as necessary to assure that the implementation of this chapter does not have an undue adverse effect upon the marketability of title to real estate. (Added 2001, No. 133 (Adj. Sess.), § 1, eff. June 13, 2002; amended 2001, No. 149 (Adj. Sess.), § 95, eff. June 27, 2002; 2009, No. 33, § 83; 2011, No. 139 (Adj. Sess.), § 7, eff. May 14, 2012; 2015, No. 154 (Adj. Sess.), § 1.)

§ 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 the construction and operation of 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)(1) The Secretary shall approve the use of sewage holding and pumpout tanks for existing buildings or structures that are owned by a charitable, religious, or nonprofit organization when he or she determines that:

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

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

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

(2) Before constructing a holding tank permitted under this subsection, the applicant shall post a bond or other financial surety sufficient to finance maintenance of the holding tank for the life of the system, which shall be at least 20 years.

(3)(A) A permit issued under this subsection shall run with the land for the duration of the permit and shall apply to all subsequent owners of the property being served by the holding tank regardless of whether the owner is a charitable, religious, or nonprofit organization.

(B) All permit conditions, including the financial surety requirement of subdivision (2) of this subsection (b), shall apply to a subsequent owner.

(C) A subsequent owner shall not increase the design flows of the holding and pumpout tank system without approval from the Secretary.

(c) 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.

(d) 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 design 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.

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

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

(f) 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.

(g) 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.

(h) 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. (Added 2001, No. 133 (Adj. Sess.), § 1, eff. June 13, 2002; amended 2013, No. 151 (Adj. Sess.), § 1.)

§ 1980. Vermont Technical College demonstration project

(a) There is established an on-site wastewater treatment and disposal project that 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. (Added 2001, No. 133 (Adj. Sess.), § 1, eff. June 13, 2002.)

§ 1981. Surface water source; potable water supply

The Secretary shall approve the use of a surface water as the source of a potable water supply under this chapter if the following conditions are satisfied:

- (1) the building or structure using the surface water as a source is a single-family residence occupied by the owner of record;
- (2) only one single-family residence shall be served by a potable water supply using a surface water as a source;
- (3) a single-family residence with a potable water supply using a surface water as a source shall not be used as the site of a home occupation that employs persons other than family members and is visited by the public in a manner or duration that would presume the need for use of a potable water supply;

(4) a professional engineer shall design the potable water supply using a surface water as a source, including a treatment system for the surface water;

(5) only surface waters that meet criteria adopted by the Secretary by rule are eligible as the source of a potable water supply permitted under this chapter; and

(6) the applicant or permit holder shall comply with other criteria and requirements adopted by the Secretary by rule for potable water supplies using a surface water as a source. (Added 2015, No. 154 (Adj. Sess.), § 2, eff. July 1, 2017.)

[Section 1982 effective July 1, 2019.]

§ 1982. Testing of groundwater sources

(a) Definition. As used in this section, "groundwater source" means that portion of a potable water supply that draws water from the ground, including a drilled well, shallow well, driven well point, or spring.

(b) Testing prior to new use. Prior to use of a new groundwater source as a potable water supply, the person who owns or controls the groundwater source shall test the groundwater source for the parameters set forth in subsection (c) of this section.

(c) Parameters of testing. A water sample collected under this section shall be analyzed for, at a minimum: arsenic, lead, uranium, gross alpha radiation, total coliform bacteria, total nitrate and nitrite, fluoride, manganese, and any other parameters required by the Agency by rule. The Agency by rule may require testing for a parameter by region or specific geographic area of concern.

(d) Submission of test results. Results of the testing required under subsection (b) shall be submitted, in a form provided by the Department of Health, to the Department of Health and, when required by the Secretary pursuant to a permit, to the Secretary.

(e) Rulemaking. The Secretary, after consultation with the Department of Health, the Wastewater and Potable Water Supply Technical Advisory Committee, private laboratories, and other interested parties, shall adopt by rule requirements regarding:

(1) when, prior to use of a new groundwater source, the test required under subsection (b) of this section shall be conducted;

(2) who shall be authorized to sample the source for the test required under subsections (b) and (c) of this section, provided that the rule shall include the person who owns or controls the groundwater source and licensed well drillers among those authorized to sample the source;

(3) how a water sample shall be collected in order to comply with the requirements of the analyses to be performed; and

(4) any other requirements necessary to implement this section.

(f) Marketability of title. Noncompliance with the requirements of this section shall not affect the marketability of title or create a defect in title of a property, provided water test results required under this section are forwarded, prior to the conveyance of the property,

to the Department of Health and, when required by the Secretary pursuant to a permit, to the Agency. (Added 2017, No. 161 (Adj. Sess.), § 4, eff. July 1, 2019.)