

NEW ON-SITE SEWAGE PROGRAM UP AND RUNNING

FIRST RULES ALREADY IN EFFECT

Following years of debate about how and when a statewide on-site sewage program should be implemented, S. 27 finally passed this session. It is a complicated bill by any estimation which:

- closes the ten-acre exemption from obtaining on-site sewage permits;
- provides for alternative and experimental systems;
- requires permits for potable water supplies; and
- provides for municipal delegation of the onsite sewage program.

Much of the law is phased in over five years to make it predictable for people to comply in situations where they may be part-way through a project or purchase of land and not expecting changes in the law. Rules to implement portions of S. 27 were adopted earlier this month, and the Agency of Natural Resources (ANR) is putting the new program in place.

The rules detail which kinds of development are exempted or grandfathered from the on-site sewage rule. They are long and complicated, and, under statute, had to be adopted by July 30 2002. This tight timeframe made incorporating input from various parties, including VLCT, difficult, and means that the rules will need to evolve over time to accommodate real-life situations.

The rules include descriptions of site conditions required and enumerate the types of systems that are permitted for general use at this time, as well as a procedure for getting new systems permitted and requirements for recording in the land records. This set of rules does not incorporate the authority for municipalities to take delegation of the new on-site sewage program. Those rules should be filed toward the end of this year.

Under provisions of the law and the rules, permits are required before:

- (1) subdividing land of any size (eliminates the ten-acre exemption);
- (2) creating or modifying a campground in a way that would affect the potable water supply or wastewater system;
- (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 so as to increase the design flow or modify 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 use of a building or structure in a manner that increases the design flows or modifies other operational requirements of a potable water or wastewater system.

Any new subdivision created or activity begun on June 14 or later requires a permit unless the project qualifies for one of the exemptions specified in the rules.

As mentioned above, rules for municipal administration of the system have yet to be introduced. A number of issues relate to municipal permitting of on-site sewage systems in S. 27 itself. Right now 135 cities and towns in Vermont have ANR-approved sewage ordinances. ***Those ordinances and bylaws remain in effect until July 1, 2007***, upon which date they will be superseded by the provisions of this law and rules adopted to implement it. (10 V.S.A. § 1976) If local ordinances and bylaws apply to systems otherwise exempt from the provisions of the state law and to the extent those ordinances and bylaws establish procedural requirements consistent with state law, those provisions will not be superseded in municipalities receiving delegation. Permits issued under municipal ordinances remain in effect until superseded by another permit, such as for repair, replacement, expansion, etc.

Between now and July 1, 2007, a municipality may adopt or amend a sewage ordinance or zoning bylaw that regulates potable water supplies and wastewater systems. In fact, a municipality without an on-site sewage ordinance may decide to adopt one under current rules in order to give itself time before relaxed site conditions (in particular) take effect within its borders. However, an amended or new sewage ordinance or zoning bylaw adopted between now and July 1, 2007 may not contain technical standards more stringent than the state standards in effect on January 1, 2002, unless the ordinance or bylaw contains technical standards consistent with those adopted under this law.

Revised minimum site conditions for enhanced prescriptive approach and performance-based approaches to systems to be established in rule, ***shall not be used*** for wastewater systems serving lots created after June 13 unless the system is in a municipality that has a confirmed planning process and zoning bylaws. This condition expires on July 1, 2007, when those relaxed minimum site conditions will be available everywhere. This condition also does not apply to lots that are ten acres or larger created between June 13 and October 31, 2002.

A municipality may submit a written request for ***delegation*** of the on-site sewage program. The ANR secretary shall delegate authority to the municipality if he or she is satisfied that the municipality:

- (1) has established a process for accepting, reviewing and processing applications and issuing permits;
- (2) hires, appoints or retains on contract a licensed designer to perform technical work;
- (3) will take timely and appropriate enforcement action;
- (4) commits to reporting annually to the secretary; and
- (5) will comply with all other requirements of the rules.

Upon delegation, only a permit from the municipality will be required. The duplicate permitting that now occurs at state and local levels will cease. The secretary may review municipal implementation of a delegated program.

State permit fees are amended in S. 27, but it is clear that municipalities delegating the program may assess their own fees. Likewise, penalties assessed as the result of municipal enforcement action are given to the municipality.

Next month's VLCT Town Fair will include a workshop addressing the new on-site sewage program. Roger Thompson, director of the program, will be one of the presenters. Please plan to attend to get answers to your questions! VLCT staff also expect to work with ANR staff and regional commissions to host workshops on the subject around the state.

- Karen Horn, Director, VLCT Legislative and Membership Services

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