

Department of Environmental Conservation
Water Investment Division

Memorandum

To: Julie Moore, Secretary, ANR

From: Neil Kamman, Director, WID
Eric Blatt, Director of Engineering, WID

CC: John Beling, Commissioner, DEC
Billy Coster, Director of Planning, Agency of Natural Resources Office of Planning

Date: 3/28/2023

RE: Applicability of certain provisions of the ANR/DEC Municipal Pollution Control Priority System Rule, to newly constructed soil-based village wastewater systems.

The purpose of this memo is to clarify the Department's policy on the provisions of the DEC Municipal Pollution Control Priority System Rule (Vermont DEC Environmental Protection Rules, Chapter 2) affecting the Department's funding and financing of new soil-based wastewater treatment systems permitted to discharge solely under the Wastewater and Potable Water Supply Rules and Indirect Discharge Rules. This memorandum clarifies limitations imposed by the Rule for funding of new soil-based systems in order to achieve the policy objectives of the Rule, which include the prevention of scattered development and its negative impacts on natural resources. The memo includes specific reference to the new village wastewater systems being supported by American Rescue Plan Act (ARPA) funds granted by DEC, and is accompanied by guidance to be used by program staff in applying the rule.

The Department, in accordance with Administration policy (as evidenced by efforts from 2018 to present by the Interagency Village Water and Wastewater Committee and the Collaborative Funders Working Group), supports the development of new soil-based wastewater treatment systems for municipalities with designated centers. These wastewater treatment systems support the transformation of Vermont's small population centers, and are critical to long-term growth and prosperity, supporting housing, small business, and livable, workable town centers. In order to focus the Division's efforts on municipalities where an appropriate level of planning has been undertaken to avoid undesirable runaway development, the Division's efforts towards development of soil-based systems has been focused on village centers, as designated by the Downtown Board of the Agency of Commerce and Community Development (ACCD).

With nearly \$35M in ARPA funding for wastewater systems allocated to a number of designated villages, the recipient municipalities now have the opportunity to decide how to optimize this investment to support their municipal plans for smart growth. The construction of a new wastewater system presents opportunities for new and infill development and redevelopment in village centers that do not currently have community-scale wastewater services. Construction of new wastewater systems allows for growth within village centers, but can also set the stage for connections for users outside of the boundaries of those areas. When done poorly, ad-hoc connections outside the village center areas can produce sprawl. Accordingly, when the Chapter 2 Rule was promulgated in 2017, provisions were included that

limit eligibility of Clean Water State Revolving Loan fund (CWSRF) loans and related subsidy, such as municipal pollution control grants, to those instances where the extension or new system was designed to serve only an ACCD-approved designated village center, unless certain criteria are met. These criteria, referred to as “demonstrations” in the Rule, require that extension of service to areas outside the designated center boundary is only eligible for funding when necessary to alleviate a documented water quality concern, for which the extension is the least-cost solution.

However, the Rule also contains language specifically exempting new soil-based systems permitted to discharge solely under the Wastewater and Potable Water Supply Rules and Indirect Discharge Rules from these demonstrations. The DEC recently received legislative inquiry regarding this apparent inconsistency. Specifically, the questions posed were 1) are connections between the designated center and adjacent neighborhood planning area boundary and the downgradient treatment and disposal area along the sewer line corridor that is outside that boundary eligible for funding without making the required demonstrations under the rule; and, 2) are connections outside of the designated center and adjacent neighborhood planning area boundary more broadly eligible for funding without making the required demonstrations under the Rule?

In analyzing these two scenarios, the Department balanced language in the rule at Section 210(a)(4), which requires the Department to “ensure there are appropriate controls on Agency of Natural Resources (ANR) funded publicly owned treatment works . . . to prevent scattered development and its negative impacts . . .” against the language of Section 210(c), which exempts new soil-based wastewater systems from the funding preclusions and demonstrations. As part of its analysis, the Department reaffirmed its policy that municipalities obtaining designations from ACCD in accordance with the requirements of 24 V.S.A. Chapter 117 have development regulations in place in those designated areas that satisfy the provisions of Section 210(a)(4).

With an increasing number of municipalities pursuing new soil-based wastewater systems permitted solely under the Wastewater and Potable Water Supply Rules and Indirect Discharge Rules, clarity on this matter is needed. The attached Guidance is designed to supply this clarity. Under the Guidance:

- Funding granted to municipalities from ARPA monies appropriated to DEC in the SFY 22 and 23 budgets for the purpose of constructing a new wastewater treatment system can be used for the costs of treatment and disposal (including treatment and disposal infrastructure constructed outside the designated center) and for collection system construction that serves the designated center area and its adjacent neighborhood planning area;
- Should a municipality wish to finance a more expansive collection system outside of the designated center and its adjacent neighborhood planning area, or finance initial connections between the designated center and the downgradient treatment/disposal area, the municipality can borrow from the CWSRF for that purpose;
- Should a municipality need additional subsidy from the CWSRF in the form of loan forgiveness, municipal pollution control grants, or other mechanisms administered by DEC, that subsidy is only available to those municipalities that have obtained an expanded village center designation or a neighborhood development area designation for those expanded areas by such time as the first CWSRF loan payment becomes due. A municipality that has not obtained an expanded village center designation may be eligible for the funding

identified in this paragraph if they can make the demonstrations required under Sections 310 (b)(2) and (3) of the DEC Municipal Pollution Control Priority System Rule.