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January 10, 2022

House Committee on Natural Resources, Fish, and Wildlife
State House
Montpelier, Vermont

Subject: S.101 Housing choice and opportunity in smart growth areas

Dear Committee:

The Wastewater and Potable Water Supply Permit program is not a barrier to housing in municipalities with water and sewer systems. I have provided a report that refutes assertions that you received last year that the program is a barrier.

I researched Wastewater and Potable Water Supply Permits in four municipalities in relation to municipal permits. Here is a report that documents my research. I applied my experience in planning, permitting, and design in evaluating the information that I found.

I am sending this now because S.101 is still on the action calendar in the Senate. And because Senate Economic Development, Housing, and General Affairs held a hearing on S.101 last week. I do not make any predictions on future action in the Senate. I sent that committee a version of this report on January 4.

This revised report includes information from the Vermont Fire Safety Division. I had requested that information too late to be included in the original report.

If this issue comes back to you, I hope that this letter and report help you decide to keep the proposed municipal registration proposal out of S.101 (and out of any other legislation).

Thank you for taking the time to read this letter and the report.

Sincerely,
Thomas Weiss, P. E.

Encl. Report

Wastewater and Potable Water Supply Permits
In Relation to Other Permits
Revised January 10, 2022
Thomas Weiss, P. E.

Summary

This research shows that the Wastewater and Potable Water Supply permit program was not a barrier to housing that connects to municipal water and sewer systems. Permitting of 16 projects in four municipalities was evaluated. Costs for WW permits are not large, particularly compared to costs of other permits. There are no project delays attributable to the WW permitting program. Retaining this permitting at the State has benefits.

Introduction

Assertions were made during the 2021 legislative session that having the State issue Wastewater and Potable Water Supply Permits in municipalities with both water and sewer is a barrier to housing. The asserted barriers are that the State permitting is time-consuming, expensive, duplicative, and provides no value to the individual. Those who made the assertions never attempted to prove their case. This research refutes those assertions.

The research involved a limited sample of sixteen wastewater and potable water supply permits in four municipalities that have both water and sewer systems. Most of the selected permits are within the last five years, to evaluate recent experience. All projects involve housing. Some are all housing, others are mixed use. Some are new construction, most are renovations of existing buildings. The municipalities are:

Montpelier, because it is where the investigator lives. (five projects)

Northfield, because it is near where the investigator lives. (two projects)

Brattleboro, because it testified to the legislature about recent, successful housing projects. (four projects)

Rutland City, because testimony from there supported the registration process. (five projects)

The research started at the permit pages of the Agency of Natural Resources. The Wastewater and Potable Water Supply Permits are in the series beginning with "WW". Two to five recent WW permits were selected from each municipality, depending on the numbers of their housing projects. This site provided information on dates of applications and approval. It provided fees for the permits. The search site is at <https://anrweb.vt.gov/DEC/WWDocs/Default.aspx> .

Telephone calls and visits to the offices handling zoning and building permits and allocations provided dates and fees for municipal permits. A request to the Fire Safety Division was made too late to be in the original report.

Information on the permits is summarized in Tables 1 through 4. The permits for each property are arranged by order of the date that the WW permit was issued. The WW permit is highlighted by shading. All dates after the WW permit was issued are also shaded.

Costs

It is surprising that assertions have been made that the cost of the WW permit is an impediment to new housing.

On the contrary, the cost to the applicant for the WW permit is a few hours time and an application fee that generally is small for each unit.

Preparing the application

The preparation time for a WW permit is used to assemble information prepared for other permits. This should amount to no more than a few hours of time. It is inappropriate to allocate the cost of developing the information to the WW permit. Even if the WW permit is eliminated, the cost of developing that information is not eliminated.

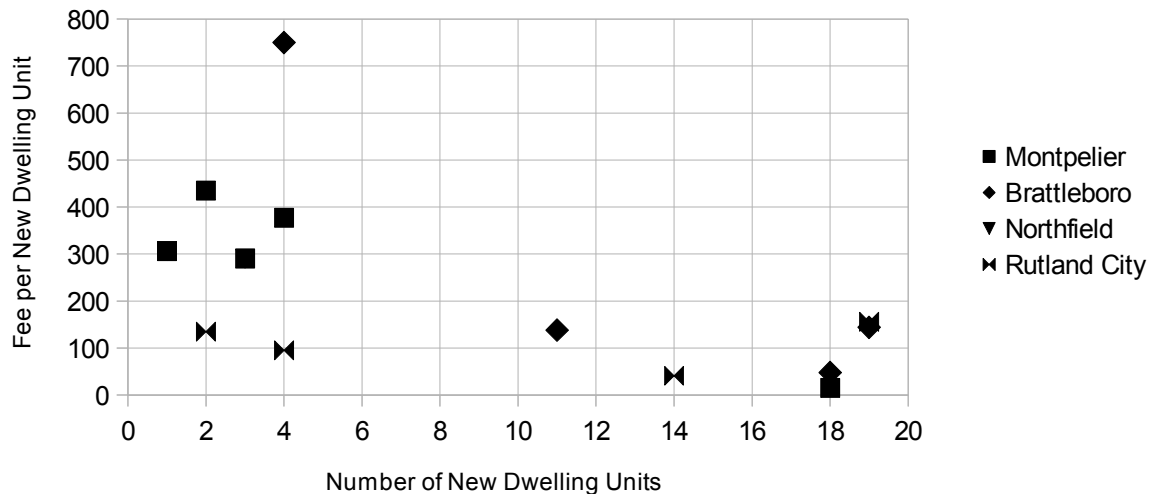
The information for an application is contained in Appendix A of Chapter 1 of the Environmental Protection Rules. Chapter 1 is "Wastewater System and Potable Water Supply Rules".

Application fee

Application fees for WW permits are small, particularly in comparison with costs of other permits and with overall project costs.

The application fees for the sixteen WW permits ranged from \$270 to \$3,000. The fees per new dwelling unit are shown in the chart. Some of these projects have both residential components and commercial components. The fee per new unit is a calculation that adjusts the fee to account only for the residential portion of the fee. The adjustment is based on the ratio of residential flow to total flow.

WW Permit Fees per New Dwelling Unit



Notes

1. There are a total of 16 projects. Montpelier, Northfield, and Rutland City are all superposed at 1 unit. Montpelier and Northfield are superposed at three units. Brattleboro and Rutland City are superposed at 19 units.
2. Some projects have both residential and non-residential portions. Fees per new dwelling unit are proportioned based on the ratio of the residential flow to the total flow.
3. Fees per unit are calculated based on the new units in the project. The fee assessed for the WW permit in most cases is based on the total flow (existing units and new units) served by common services. One example is the unit fee of \$750 at four new units in Brattleboro. The fee assessed by DEC is for the flow of 13 units (4 new and 9 existing) flowing through one water service and one sewer service.

Time

It is inappropriate to make blanket assertions that the WW permit program delays projects.

This research shows that the WW permit program does not lead to project delays. This is shown by an analysis of the sixteen projects. The analysis did find that the WW permit program corrected a project that proposed a water service too close to a sewer service.

All four municipalities issue zoning permits. Some issue building permits; others rely on the construction permits of the Department of Public Safety's Fire Safety Division. Some issue connection permits, others wrap them into the zoning permit.

Dates of the municipal permits are provided in tables 1 through 4. The table cells with the WW permits are shaded. All dates after each WW permit was issued are shaded also. The shading highlights events after the WW permit was granted.

Montpelier The WW permit program did not delay any of the five projects in Montpelier. Table 1 explains why.

Brattleboro

The WW permit program did not delay three of the projects in Brattleboro. In the fourth project, there is insufficient information to determine if the project was delayed and whether the WW permit program might have contributed to a delay. Table 2 explains why.

The WW permit did not delay one of the projects, having been issued two years before the zoning permit.

The other three WW permits were issued one to three months after the zoning permits. It is not known whether these applicants consider the WW permits to have delayed the projects. Other choices by the applicant might have allowed the WW permits to have been issued before the zoning permits, without delaying the zoning permits. This is not to imply that the applicant made wrong choices or inappropriate choices in the order and timing of planning and design and submitting applications. Rather, choices in scheduling affect the timing of permits. And those choices can affect the perception that a specific permit is causing a delay.

Northfield

The WW permit program did not delay either of the two projects in Northfield. Table 3 explains why.

Rutland City

The WW permit program did not delay any of the five projects in Rutland City. Table 4 explains why.

The WW permit did not delay three of the projects.

The other two WW permits were issued one to two months after the later of the zoning or building permit. It is not known whether these applicants consider the WW permits to have delayed the projects. Other choices by the applicant might have allowed the WW permits to have been issued before the zoning permits, without delaying the zoning permits. This is not to imply that the applicant made wrong choices or inappropriate choices in the order and timing of planning and design and submitting applications. Rather, choices in scheduling affect the timing of permits. And those choices can affect the perception that a specific permit is causing a delay.

Duplicative; Value to Individual; Future Value

These assertions are best considered as a whole. This research found the WW permit program provides value.

The WW program provides a single repository for permits and the supporting documents.

The program provides a uniformity of permitting. Uniformity was one of the reasons why the Wastewater and Potable Water Supply permits were transferred to the State. This uniformity will be lost if some municipalities choose registration and others do not. The proposed registration process has different requirements than does the WW permit program. For example, the WW permit program requires the permit to be filed in the land records. The proposed registration program only requires a certification of completion to be filed in the land records.

The proposed registration program means that records for some projects will be maintained by the State. Records for other projects will be maintained by the municipalities.

One of the projects had requested an incorrect allocation from the municipality. The municipality allocated the amount requested. The same incorrect flow was included in the application for the WW permit. The review by the regional engineer caught that error. In addition the State review found that the water service needed to be in a different location because it was proposed to be too close to the sewer service.

Recommendation

Retain Wastewater and Potable Water Supply permitting at the State for all projects involving connections to municipal water and sewer projects.

Table 1
Montpelier Projects

Montpelier, 32 - 42 Main Street: Renovations to an existing commercial property into 18 affordable apartments and commercial space for 19 employees. The WW permit fee is for a minor project. The permitted flows are: wastewater 2748 gpd; water 2687 gpd. There is no delay attributable to the WW permit program, because the WW permit was processed within the time frame of the zoning permit.

permit	permit number	application date	permit issued	permit fee
allocation	none	May 22, 2017	May 25, 2017	none
WW permit	WW-5-7424	May 31, 2017	June 20, 2017	\$270.00
zoning	Z2017-0070	June 9, 2017	July 27, 2017	\$4,025.00
building	B-2018-0008	January 12, 2018	January 17, 2018	\$33,993.00
connection	none	June 4, 2018	after June 19, 2018	\$15,600.00

19 Pearl Street: Subdivide residential lot. The permitted flows are: wastewater 420 gpd; water 720 gpd (half for the existing dwelling and half for the new lot, all residential). There is no delay attributable to the WW permit program, because the lot had not been sold more than one year later.

zoning	Z-2019-0014	February 22, 2019	April 15, 2019	\$350.00
allocation	none	March 6, 2021	April 21, 2020	none
WW permit	WW-5-8222	April 27, 2020	April 30, 2020	\$306.25

55 East State Street: add three units (in the garage and barn) to the existing 4 on the same lot. The permitted flows are: wastewater 1470 gpd; water 2520 gpd. Allocations to the new units are 630 gpd (wastewater) and 1080 (water). There is no delay due to the WW permit program, because there is still no zoning application.

allocation	none	February 3, 2021	March 19, 2021	none
WW permit	WW-5-8529	March 2, 2021	May 10, 2021	\$870.00
zoning		no application		
building		no application		

Montpelier, 116 Towne Hill Road: Add a second unit to the previously approved, unbuilt, dwelling. The flow is all residential: wastewater 420 gpd; water 720 gpd. There is no delay due to the WW permit program, because the permit was issued one day after the zoning permit.

allocation	none	March 26, 2021	April 12, 2021	none
zoning	Z-2021-0029	April 12, 2021	June 14, 2021	\$700.00
WW permit	WW-5-8581	May 14, 2021	June 15, 2021	\$870.00
connection	PW-0021- 2021	June 14, 2021	July 14, 2021	\$2,060.00
building	B-2021-	July 12, 2021	July 22, 2021	\$4,081.50

38 Elm Street: renovate a mixed use building to add 4 more apartments (a total of 6). The permitted flows are the same for wastewater and water: residential 1260 gpd; commercial 1245 gpd. There is no delay attributable to the WW permit program because the applicant withdrew the application.

zoning	Z-2021-0003	January 9, 2021	January 22, 2021	\$630.00
flood	R-2021-0001	January 11, 2021	January 22, 2021	\$25.00
building	B-2021-007	January 11, 2021	February 17, 2021	\$741.00
allocation	none	> February 17, 2021	March 1, 2021	none
connection	none	March 1, 2021	March 19, 2021	\$2,900.00
WW permit	WW-5-8541	April 1, 2021	withdrawn April 20	\$3,000.00

Table 2
Brattleboro projects

15 - 17 Elm Street: Create four apartments (a total of 7 bedrooms) in the barn. The fee for the WW permit is based on 13 units: the existing 9 (a total of 11 bedrooms) and the new 4. All 13 units will be served by one sewer connection and one water connection. The permitted flows are for all 13 units: . The permitted flows are the same for wastewater and for water: 2520 gpd. There is no delay attributable to the WW permit program, because the application for the zoning permit was submitted two years after the WW permit was issued.

permit	permit number	application date	permit issued	permit fee
allocation	none	unknown	October 2, 2017	\$4,405.80
WW permit	WW-2-5589	April 25, 2018	June 4, 2018	\$3,000.00
zoning	2020-146	June 19, 2020	November 2, 2020	\$1,556.16
fire safety	4562326364	October 16, 2020	October 26, 2020	\$80.00

4 Elliot Street: Convert office spaces to 11 apartments (2025 gpd) and to a salon, 2 stores, a cafe, and a restaurant (1971 gpd). This is the only Brattleboro project with the allocation requested after the zoning permit. The WW permit might have been issued months earlier if the applicant had made different choices of timing in submitting applications. Thus, there is no delay attributable to the WW permit program.

zoning	2019-96	July 1, 2019	July 18, 2019	unknown
allocation	none	unknown	July 23, 2019	\$35.00
fire safety	438037	July 8, 2019	August 15, 2019	\$1,600.00
WW permit	WW-2-5947	September 4, 2019	October 11, 2019	\$3,000.00

32 Fairground Road: Assisted living facility with 18 units. The permitted flows are the same for wastewater and water: 1995 gpd. The applicant knew the service line sizes (which require knowing the flows) on September 20, 2019. The allocation might have been requested shortly after that, with the allocation being authorized three months earlier than actually happened. Thus, the WW permit might have been issued no later than the zoning permit. Because of choices made by the applicant, there is no delay attributable to the WW permit program.

service application	2019-149 (Form R)	September 20, 2019	part of zoning	part of zoning
allocation	none	unknown	December 4, 2019	\$8,933.00
zoning	2019-149	October 11, 2019	December 17, 2019	\$8,378.80
WW permit	WW-2-0807-4	December 16, 2019	January 27, 2020	\$870.00
Act 250	2W1322-1	April 3, 2020	May 27, 2020	\$27,685.48
fire safety	449326	April 20, 2020	May 26, 2020	\$32,636.00

47 Flat Street: Convert a warehouse into 19 affordable apartments (3220 gpd) and office space (300 gpd). The permitted flows are the same for wastewater and water: 3520 gpd. The project originally proposed using the existing four floors of the warehouse. The project was revised in 2020 to insert a fifth floor, which would have increased the flows. The application for the WW permit was submitted three weeks after the allocation was authorized. The Vermont Division of Fire Safety had received no permit application as of January 5, 2022. It is unlikely that the WW permit delayed the project. Thus, there is no delay attributable to the WW permit program.

zoning (4 fl.)	2020-61	June 18, 2020	July 17, 2020	unknown
allocation	none	January 25, 2021	February 1, 2021	\$35.00
zoning (5 fl.)	amendment	October 13, 2020	February 23, 2021	\$225.00
WW permit	WW-2-6397	February 22, 2021	March 30, 2021	\$3,000.00
fire safety		no application		

Table 3
Northfield projects

258 Union Street: Construction of a 3-unit apartment where a duplex had been removed two years earlier. The permitted flows are: wastewater 630 gpd; water 405 gpd. A revised allocation was needed due to an incorrect flow in the allocation request and in the application for the WW permit. The regional engineer caught the mistake and requested a new authorization of allocation. The application for the WW permit was submitted three months after the initial allocation was authorized. The application for the WW permit could have been submitted so that the permit was issued no later than the zoning permit. Thus, choices by the applicant led to the two months between the issuing of the zoning permit and of the WW permit. Thus, there is no delay attributable to the WW permit program.

permit	permit number	application date	permit issued	permit fee
allocation	none	unknown revised: after May 10	January 8, 2018 unknown	
zoning	02-03222018	January 19, 2018	March 22, 2018	\$545.00
WW permit	WW-5-7640	April 19, 2018	May 15, 2018	\$870.00

128 Jarvis Lane: Construction of a 3-bedroom single family residence. The permitted flows are: wastewater 210 gpd; water 360 gpd. The WW permit was issued five months before the zoning permit. Thus there is no delay attributable to the WW permit program.

allocation	none	June 15, 2020	June 16, 2020	
WW permit	WW-5-8404	October 19, 2020	October 26, 2020	\$306.25
public works	none	June 15, 2020	March 31, 2021	\$1,500.00
zoning	2021-11	February 26, 2021	March 31, 2021	\$175.00

Table 4
Rutland City projects

26 Watkins Avenue: Convert school to 6 apartments and build 8 new apartments. The permitted flows are: wastewater 1960 gpd; water 2100 gpd. There is no fee for the first WW permit because the applicant was the school system. The fee for the second permit is from the fee schedule then in effect. The withdrawn WW application was to move the location of one of the services and the City preferred the original location. The application for the WW permit was submitted 1 1/2 months after the allocation was granted and seven months after the zoning appeal was denied. The WW permit was issued before the Act 250 permit. Thus, there is no delay attributable to the WW permit program.

zoning	13-027z	August 14, 2012	November 5, 2012	unknown
zoning	appeal of 13-027z	May 6, 2013	denied May 13, 2013	unknown
allocation	none	unknown	October 23, 2013	\$7,840.00
WW permit	WW-1-2554 WW-1-2554-1	December 6, 2013 July 21, 2014	February 10, 2014 withdrawn	\$0.00 580.00
Act 250	1R0995 (minor)	January 18, 2014	February 21, 2014	\$13,241.53
building	14-086	March 24, 2014	April 21, 2014	\$2,069.84

Table 4 (continued)
Rutland City projects

25 - 29 Center Street: Add four apartments and commercial renovations in an existing commercial building. The permitted flows are: wastewater 1360 gpd; water 1600 gpd (residential 700; commercial 900). The WW permit was the last applied for, after the other permits had been issued. Different choices of timing by the applicant might have enabled the WW permit to be issued before the zoning permit. Thus, there is no delay attributable to the WW permit program.

zoning	17-091z	June 22, 2017	June 22, 2017	unknown
building	17-149	June 15, 2017	July 7, 2017	unknown
zoning	18-040z	October 25, 2017	October 25, 2017	unknown
allocation	none	unknown	October 31, 2017	unknown
WW permit	WW-1-3021	November 3, 2017	November 29, 2017	\$870.00

120 Crescent Street: Build a new 3-bedroom single family home. The permitted flow is 420 gpd. The application for the WW permit was not submitted until one week after the last of the other permits was issued. Different choices of timing by the applicant might have enabled the WW permit to be issued before the zoning permit. Thus, there is no delay attributable to the WW permit program.

zoning	19-121z	June 24, 2019	June 24, 2019	unknown
allocation	none	unknown	July 9, 2019	\$0.00
building	19-201	"see zoning"	July 11, 2019	unknown
WW permit	WW-1-3213	July 18, 2019	August 22, 2019	\$306.25

67 Grove Street: An after-the-fact WW permit for conversion of commercial and two apartments to four apartments. Thus, there is no delay attributable to the WW permit program.

zoning	07-070z	March 1, 2007	March 27, 2007	\$7.00
zoning	09-010z	August 13, 2008	August 28, 2008	unknown
allocation	none	unknown	July 29, 2019	unknown
WW permit	WW-1-3218	August 2, 2019	September 27, 2019	\$270.00

10 Lincoln Avenue: Convert a school building to 19 apartments and subdivide the lot. The permitted flow is 2675 gpd for wastewater and for water, of which 15 gpd are for an office. The WW permit was issued one week after the building permit. Thus, there is no delay attributable to the WW permit program.

permit	permit number	application date	permit issued	permit fee
allocation	none	unknown	October 19, 2020	unknown
zoning	21-063z	October 30, 2020	November 13, 2020	unknown
building	21-116	December 16, 2020	December 28, 2020	unknown
WW permit	WW-1-0241-1	November 23, 2020	January 4, 2021	\$3,000.00
Act 250	1R1020 (minor)	November 18, 2020	January 11, 2021	\$30,895.00