

April 12, 2021

Rep. Amy Sheldon, Chair
Vermont House Committee on Natural Resources, Fish, and Wildlife
State House
Montpelier, VT
By Email

RE: S.101 Written Testimony

Chair Sheldon and Committee Members,

This written testimony is in support of S.101, specifically sections 10 and 11 that grant municipalities with regulated water and wastewater utilities the authority to issue permits for connections to their systems without also requiring state permits for the same connections.

The purpose of S.101 is to encourage affordable housing development in compact development areas, essentially areas served by regulated municipal water and sewer utilities. These utilities are regulated by the state through permits under the Clean Water Act and the Safe Drinking Water Act, and their operations are reviewed by DEC including submission of monthly reports and periodic on-site inspections.

DEC also regulates individual connections to the utility's distribution and collection systems, including mandatory technical standards and state permits. Nearly all of the utilities also require local permits for these connections, for obvious reasons. Given that the utilities are responsible for the operation and maintenance of their systems they have a clear vested interest in ensuring full compliance with state and local requirements.

Sections 10 and 11 of S.101 would remove the requirement for duplicate permits as long as the utility imposes standards at least as stringent as those required by the state and issues its own permits. This would reduce the cost and time imposed on developers without any increased risk to public health or the environment. These costs are not insubstantial. Rutland's DPW typically issues approvals within a week or two for fully complying projects, but the DEC approval almost always takes the full 30 days allowed under the rule. And DEC will not even look at the application until after the City has issued its "Ability to Serve" letter, essentially the local permit itself.

DEC does not track the capacity of the water supply or wastewater treatment plant to accommodate the increased demand – that responsibility rests with the utility. So, other than imposing cost and time on the developer, the state relies entirely on the municipality to affirm that the additional demand will not result in a permit violation for the treatment system. DEC enforces the overall treatment capacity limits through their permits on the water and wastewater treatment plants themselves.

In addition, DEC does not certify that the connection design is in compliance with their rule. The responsibility for that certification rests with the licensed engineer or designer who prepared the application. Enforcement of compliant designs is done through DEC's power to issue, suspend, or revoke those professional licenses.

In sum, DEC offers no added value or protection of public health or the environment by requiring duplicative permitting for these connections.

Concerns have been raised by some that wastewater utilities sometimes have unpermitted discharges, and allowing new connections increases that risk. This argument makes no sense. First of all, to my knowledge DEC has never denied a connection permit on this basis, so the suggestion that if they no longer issued these permits pollution would uncontrollably explode is ridiculous.

But the argument also fails on its own foundational assumption. Based upon my experience as a former mayor, DEC commissioner, and commissioner of public works for the City of Rutland, it is safe to assume every regulated wastewater system everywhere will from time to time experience some form of untreated discharge. There is no possible way any utility can monitor on a real-time basis every lineal foot of their collection system. Failing that, weather events, accidents, 'flushable wipes', and FOG – fats, oil and grease – will foul pipes and pumps and cause backups, that, on occasion, result in an untreated discharge. Since every system is prone to these discharges, following this logic, no new connections should ever be allowed to any municipal system, completely reversing the very purpose of S.101.

The other stated concern is associated with combined sewer overflows. CSOs are different in that they are not the result of a failure, but of the system functioning exactly as designed. CSOs only happen where the collection system serves the dual purpose of transmitting wastewater and stormwater to the treatment plant, and there are 11 of these systems, including most of the largest ones, in Vermont. CSOs are not caused by wastewater; they occur when stormwater flows exceed the hydraulic capacity of the collection or treatment infrastructure, thereby threatening backups into buildings and onto streets. The excess stormwater and wastewater are allowed to discharge directly to receiving waters in order to prevent these backups and thereby protect public health.

Additional investment is being planned and implemented to minimize and manage CSOs. Rutland has already invested more than \$20 million in this effort, and tens of millions more will be required. But CSOs are caused by stormwater – not wastewater. The idea that permitting a sewer connection for a new three-bedroom home would somehow increase the likelihood or duration of a CSO event is ridiculous.

In addition, as I have testified and documented on multiple occasions in the past, combined sewer systems, which by definition will always be prone to CSOs, do a far better job of protecting water quality than separated systems, even including the untreated CSO discharges. This is because substantial volumes of stormwater are treated at the plant in addition to the wastewater. Stormwater, as I am sure you are all aware, carries nearly all of the same pollutants as wastewater, although in different concentrations. Treating the stormwater as though it is

wastewater ensures that when it is returned to the environment it meets far more stringent standards than any current or proposed Vermont stormwater discharge regulation.

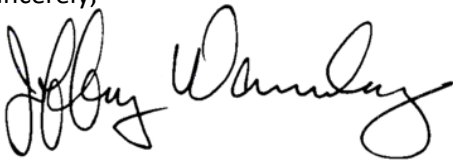
Eliminating CSOs can only be done by eliminating combined sewers, and if we did that water quality would decline dramatically. There is therefore no water quality benefit from either eliminating the risk of CSOs or eliminating the ability utilities to issue permits for new wastewater connections.

Others have pointed out that current law allows municipalities to apply for permission to issue state permits. This provision was passed at my insistence while serving as Commissioner of Environmental Conservation under Governor Douglas, and it has proven to be an abject failure. In the nearly two decades since only two municipalities have used this, and it is not because others do not want to. It is because the administrative requirements are so onerous it is completely unworkable.

In summary, the state's interest is protected by the permitting, inspecting and regulating the utilities themselves. If the discharge from the treatment plant meets all permit requirements, and the utility permits and regulates connections to the system properly, on what conceivable basis does the state need to review and approve each individual connection again? Only when a utility is unwilling or unable to review and issue local connection approvals should the state assume this responsibility.

Duplicative and delayed permitting has created a nightmare for applicants and municipalities, and Rutland alone has dozens of examples. ANR, the Senate, the League, and affected municipalities support these provisions in S.101, and I urge you to do so as well.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Wennberg". The signature is fluid and cursive, with the first name "Jeffrey" written in a smaller, more compact script than the last name "Wennberg".

Jeffrey Wennberg

Copy: Amada Horrocks, Committee Staff
Karen Horn, VLCT
Tom Dipietro, Bob Fischer, GMWEA