

RECOMMENDED EDITS TO 10 V.S.A. § 1973 AS IT RELATES TO DR 23-1011

**VERMONT NATURAL RESOURCES COUNCIL, LAKE CHAMPLAIN COMMITTEE, AND
CONSERVATION LAW FOUNDATION**

March 31, 2023

Title 10 : Conservation And Development

Chapter 064 : Potable Water Supply And Wastewater System Permit

§ 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

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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 or if the system is located near a Class A, Class B1 or Outstanding Resource Water.

(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, except for systems located near Class A, Class B1 or Outstanding Resource Waters. Such systems shall be reviewed independently by the Agency and shall include a site specific analysis, including a cumulative impact analysis, to ensure that the Class A, Class B1, or Outstanding Resources Waters are protected against degradation as required by Section 29A-105 of the VWQS. 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.)