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Senate Committee on Natural Resources and Energy  
State House  
Montpelier, Vermont

Subject: S.212 potable water supply and wastewater system connections, draft 4.1, 1/30/26

Dear Committee:

I am a resident of Montpelier and a civil engineer with experience in water and wastewater systems. In the years 2021 through 2023 I opposed removing DEC's regional engineers from the permitting process for municipal connections. That and other information led to Section 25 of Act 47 (2023), which required ANR to provide a report on the WW permits. The report is available at <https://legislature.vermont.gov/assets/Legislative-Reports/Act-47-Report-Municipal-Water-Wastewater-Connections-Permitting-Housing.pdf>

The report found that the DEC WW permitting program has benefits. The report recommends

1. Repeal full delegation authority currently granted to the Agency of Natural Resources (ANR); and modify existing partial delegation to provide authorizing language for proposed Local Technical Review (LTR) program; and
2. Creation of a general permit allowing qualified municipalities to conduct local technical review of water and wastewater connections without redundant State review while maintaining statewide consistency and accessibility of data and records.

Draft 4.1 addresses many of the issues I had noted in the original bill. Some of these comments relate to text retained from the original version. The rest of the comments relate to text new to draft 4.1.

**Pages 4 and 8. Engineer's are not licensed by the Director of the Office of Professional Engineering.**

Licensed designers receive their licenses through 26 V.S.A. chapter 97, Potable Water Supply and Wastewater System Designers. Section 5005 exempts qualified professional engineers.

I see a difference between "a designer licensed under this chapter" and "a licensed designer." (p. 4, lines 16 and 17.

**§ 1975. Designer licenses**

(a) The Director of the Office of Professional Regulation, after due consultation with the Secretary, shall establish and implement a process to license and periodically renew the licenses of designers of potable water supplies or wastewater systems, establish different classes of licensing for different potable water supplies and wastewater systems, and allow individuals to be licensed in various categories.

(b) A person shall not design a potable water supply or wastewater system that requires a permit under this chapter without first obtaining a designer license from the Director of the Office of Professional Regulation, except a professional engineer who is licensed in Vermont shall be deemed to have a valid designer license under this chapter, provided that: . . . [followed by the requirements for an engineer to be deemed to have a valid designer license].

My professional engineer's license has an endorsement that I am "Compliant with ANR's Designer License (I-313)". I had to show the Board of Professional Engineering that I met the requirements. Thus I believe I am not a "designer licensed under this chapter" [64]. I am "deemed to have a valid designer license" because I have an endorsement from the Board of Professional Engineering on my license.

I believe that the term "licensed designer" includes professional engineers because those of us who meet the provisions are deemed to be licensed designers. I believe that the term "licensed under this chapter" excludes professional engineers because the endorsement that provides my "deemed designer's license" comes from the Board of Professional Engineering.

**Recommendation:** Change "designer licensed under this chapter" to "licensed designer" in the two locations where "designer licensed under this chapter" occurs: p. 4 line 16 and page 7 line 8.

**Pages 4 and 5. Also pages 2, 8, and 10. The proposed manual will be providing standards that do not match the purpose of the general permit.**

Lines 19 and 20 on page 4 are about the standards for determining the capacity of a "public water system" or a "pollution abatement facility". That is a problem. Those terms do not match the purpose of the general permit. The general permit is for connections to a "potable water supply" and to a "wastewater system". Chapter 64 defines both of those terms, as shown on pages 2 and 3 of S.212. The definitions include all components whose capacity will need to be checked when considering a connection to either type of system. No one knows what components are contained in the undefined terms of "public water system" or "pollution abatement facility".

The defined terms include the components that need to be checked for capacity. A pollution abatement facility typically refers to the treatment facility itself. A pollution abatement facility does not include the pipes and pumps and other components needed to bring the wastewater to the abatement facility or to discharge the effluent.

Capacity also includes the ability to treat raw water to potable quality and wastewater to the required standards.

**Recommendations:**

- Modify the sentence on lines 19 and 20 to be:

The manual shall include standards for determining or defining the capacity of each component of a public water system potable water supply or pollution abatement facility wastewater system for purposes of approving a potable water supply or wastewater system connection to either system. Capacity also includes the ability of treatment facilities to treat the raw water to potable standards or the wastewater to the effluent permit requirements.

- Consider whether you want to use "public" or "potable" in three other locations:

line 6 on page 2.

line 2 on page 8

line 2 on page 10

**Pages 4 and 5. Terms of the general permit.**

Proposed section 1973(k)(1) requires the Secretary to adopt a general permit.

(k)(1) The Secretary shall adopt a general permit for both potable water supply and wastewater system connections that require a permit under this chapter.

Draft 4.1 has added a few conditions for the general permit. However, DEC has at least three other general permits. The statutory requirements for those permits are in 10 V.S.A. section 1264(g) and (h). Those requirements can be adopted for S.212.

In addition, I think S.212 should make it clear that

- The permit will be issued as part of the WW series of permits. This is to help title attorneys and others to track down the connection permits.

- The rules for the general permit will be part of chapter 1 of the Environmental Protection Rules. The rules that apply to connections are now in chapter 1. Thus I would expect to find the rules for the delegation of technical review of connections in the chapter 1 rules.

Recommendations:

- Use the language from §1264(g) and (h) to provide suitable additional requirements for this general permit
- Specify that the general permit shall be part of the WW series of permits
- Specify that the rules shall be part of the EPR chapter 1 rules.

**Page 5. ANR should not have unfettered liberty to create general permits.**

Section 1973(k)(2) authorizes "The Secretary may adopt general permitting programs for other activities that require a permit under this section."

Draft 4.1 modifies sec. 1973 (k)(1), the general permit for connections. The modifications were made because (k)(1) had no guidance on what the permit must contain and what it may not contain. At the same time, draft 4.1 does the opposite for possible additional general permits. Draft 4.1 leaves the ability for ANR to create other general permits with no guidance about any of their contents.

ANR has at least three other general permits as noted in the section on "Terms of the general permit." Statutes authorizing those three general permits contain guidance and requirements for those permits. Thus it is inappropriate for S.212 not to provide guidance or conditions in §1973 (k)(2).

Recommendation: Remove the proposed section 1973(k)(2) from the bill.

**Page 7. Requirements on the capabilities for a municipality to be eligible for delegation.**

This portion of the bill is weak on guidance and conditions to determine if a municipality is qualified to perform the technical review. As pointed out, the municipality will need to determine whether the capacity of each component handling the flow due to the connection is adequate.

The provision on capacity uses undefined terms for the components that need to have the capacity determined.

Recommendation: Amend the proposed section 1976(a)(2) as follows:

(2) If a municipality submits a request for delegation of authority under this subsection, the Secretary shall delegate authority to the municipality to implement and administer provisions of this chapter governing municipal potable water supply and wastewater system connections, provided that the municipality:

(A) is qualified to perform the technical review as determined by the Secretary, including:

(i) The municipality is not under any orders to correct deficiencies in the system(s) to which the connections will be made. [NOTE: "order" is not the only mechanism used to indicate or correct deficiencies in the supply and system. The broader set of mechanisms should be included here.]

(ii) The municipality has a specified position(s) to perform the technical review. If in-house, the job description of the position(s) will include the duties of the technical review and will require the position(s) to be held by an individual with the qualification required by the current chapter 1 of DEC's Environmental Protection Rules.

(iii) The municipality has a specified position(s) with duties that include performing the administrative activities of co-ordinating with DEC;

(B) receives authorization from the municipal legislative body to administer a program for review of potable water supply and wastewater system connections;

(C) meets any other requirement for the delegation program as adopted by the Secretary in writing;

(D) ~~will only may issue municipal permits and will apply for the general permit for connections of water service lines and sanitary sewer service lines when there is adequate capacity in each component of the public water system potable water supply, or wastewater treatment facility, wastewater system or indirect discharge system; that will handle the flow due to the connection,~~ and  
(E) complies with the requirements for connection and all requirements of the Agency's rules adopted under section 1978 of this title.

### **Page 8. Determining adequate capacity**

Section 7.1.1 of the Act 47 report points out that

Capacity means different things to different entities. Capacity to serve is different from overall system capacity and is different from allocation. Capacity is also not calculated the same between municipalities. Municipalities and developers would benefit from a universal definition and understanding of "capacity" and a system to track both water supplies' and wastewater systems' capacity.

Draft 4.1 does not address the meaning of capacity. Rather draft 4.1 leaves that to the Secretary. Section 1976(a)(2)(D) uses the term "adequate capacity" without any attempt to explain what that means. Adequate capacity is not the difference between current flows and physical capacity of components to handle flows.

Determining adequate capacity has several steps.

- determine the design flow of each existing connection.
- determine the flow required to be handled by each component of the system (e.g. treatment facility, piping, pump station). [NOTE: The rules allow reductions from the sum of all design flows, because not all connections will contribute their design flow at the same time.]
- determine the maximum flow that can be handled by each component.

Available capacity in each component is then the difference between the maximum flow that can be handled by that component and the flow already required to be handled by that component.

Capacity is adequate if the flow from the proposed connection is less than the available capacity.

Recommendations: Require that the capacity of each component handling flow due to the proposed connection must be adequate by amending §1976(a)(2)(D) (p. 8, lines 1 through 3) to read:

(D) will only issue permits for water service lines and sanitary sewer service lines when there is adequate capacity in ~~each of the components of the public water system potable water supply, wastewater treatment facility or wastewater system, or indirect discharge system.~~ [NOTE: including "indirect discharge system" is redundant because it is included in the definition of wastewater system.]

### **Recommendations.**

I have provided recommendations with each section of these comments. I ask that you find these recommendation to have merit and that you incorporate them into S.212.

Sincerely,  
Thomas Weiss, P.E.