

Water Supply Division

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Regulation of Consecutive Water System pre-public meeting held on June 4, 2007
in the Chapel Conference Room Waterbury, VT 9:30 -11:30 am

MEETING MINUTES

Attendees:

Water System Representatives: Laurie Adams, Burlington; Steve Barrett, Brattleboro; Paul Clifford, Rutland City; Jason Hewitt, St. Albans; Karen Horn, VLCT; Roger Hunt, Milton; George Lague, Swanton; Sandy Miller, Milton; Terry Morse, Bennington; Jay Nadeau, CWD; Allen Robtoy, St. Albans; Alan Shelvey, Rutland City; and Michael Welch, St. Johnsbury.

Water Supply Division (WSD) Representatives: Eric Blatt, Alex Elliott, Jean Nicolai (Scribe and facilitator), Ellen ParrDoering, Gary Schultz, Tim Raymond, and David Webb.

1. Gary Schultz, Acting Water Supply Division Director – Purpose and goals

The purpose of the meeting is to obtain some initial input to lay the foundation to:

- a. Initiate the process to study the regulation of consecutive water systems at the request of ANR Secretary George Crombie. The WSD was asked to study the regulation of consecutive water systems using a public forum and convene a workgroup to make recommendations as to how ANR would regulate consecutive public water systems. Recommendations need to be made to the Secretary by September 30, 2007.
- b. Follow through on the commitments made at the January 18, 2007 meeting in Montpelier to hold an open public forum and form two workgroups to develop policy on: 1) how and when the WSD would regulate a new line extension as a consecutive water system and 2) regulation of existing consecutive water systems.

WSD representatives convened this smaller group of water systems prior to holding the public meeting to briefly discuss the above issues and solicit input as to how the division should approach the public input process. Public input will be solicited at the public meetings and therefore no policy decisions would be made at this pre-meeting.

2. Background information

- a. The following handouts were provided at the meeting (all four documents attached)
 - (1) WSD 12/11/95 Practice - *Policy Regarding When a Public Community Water System is Determined to be Consecutive*. A comment was made that the document was confusing because it included both the word practice and policy.
 - (2) WSD 1/25/06 Guidance-*Jurisdictional Guidance for Community Water Systems*

The WSD developed the *Jurisdictional Guidance for Community Water Systems* which includes 7 criteria that establish the basic operational responsibilities (“control”) that a parent system needs to assume to avoid creation of a consecutive system. The division welcomes any feedback regarding the guidance document.

(3) WSD 1/25/06 *Wholesaler-Consecutive Agreement Checklist*

(4) Part B of the Safe Drinking Water Act which includes the exemption criteria which outlines when federal regulations do not apply to a public water system.

- b. How WSD currently regulates consecutive systems
 - i) Tim Raymond, Operations Section Manager, gave a brief overview how WSD currently regulates consecutive systems and discussed the consecutive system agreements between the wholesaler and consecutive system.
- c. Impact of D/DBP Stage 2 Rule – Ellen Parr Doering, Compliance and Certification Manager briefly reviewed the requirements and impact of this rule.
- d. Federal exemption criteria (see attached) – Alex Elliott, ANR Legal Division reviewed the federal exemption criteria which outlines when federal regulations do not apply to a consecutive public water system.

Even if a system is exempt from the federal primary drinking water regulations it is still considered a public water system. It is unclear if the federal exemption criteria applies to the Disinfectant/Disinfection By-product Rules (D/DBP). WSD still needs clarification from EPA. The federal exemption does apply to all new and existing consecutive systems. The other New England States and New York in some way have adopted and apply the federal exemption. NH plans to propose new legislation to provide some oversight of consecutive systems. Vermont has not adopted the exemption and would need to make a rule and/or statute change to do so.

It was noted that item (3) *Does not sell water to any person* of Part B of the Safe Drinking Water Act exemption criteria may be an issue if not clearly defined for Vermont. In some cases, such as mobile home parks, the wholesaler bills to a master meter. Sub-metering to smaller lines should not be considered selling. In Vermont the Public Service Board regulates certain privately-owned facilities and considers sub-metering as selling as in the case of some mobile home parks. Municipalities are not privately owned and therefore are exempt from Public Service Board jurisdiction. Vermont would need to define selling water if it were to adopt the federal exemption.

- 3. Brainstorming session of how VT should regulate consecutive systems. Problems for regulating/not regulating existing consecutive systems and new line extensions.

With regards to new line extensions, municipalities require new systems to meet the municipality’s local construction standards and specifications. A wholesale system may not want to take over a line extension which crosses town/village lines or is located in a privately owned development. Municipalities need to consider who owns the real estate and if any easements need to be obtained prior to agreeing to take over any system. Municipalities may not want to take on the responsibility for water system testing for the connected system nor

take over any infrastructure. Some thought the WSD requiring the wholesale system and developer of a new line extension to enter into an agreement to avoid regulation as a consecutive system to be a waste of time. The group felt that it would be relatively simple to develop a policy for absorbing new line extensions into the wholesale system construction. The group agreed to meet again to draft a framework for how and when the Water Supply Division would regulate a new line extension as a consecutive water system. We will use the draft framework to kick off the public meeting to be held for all water systems and other interested parties.

Existing systems in poor condition must be upgraded prior to the municipality taking over the system and some of the same issues listed above for new line extensions apply for existing systems.

Through the Drinking Water State Revolving fund (DWSRF) money is available to fund consolidation of existing systems, which can include: obtaining land easements or land purchase and also providing legal services to promote system consolidation. Concern was expressed about the difficulty and cost of obtaining the necessary permanent easements to enable takeover of water lines on private property. It was suggested that the WSD explore use of DWSRF Set-Aside funds previously allocated (but not yet spent) for a consolidation study and instead set up a contract with an attorney to perform this service. This might be feasible since WSD currently contracts out similar legal work for certain DWSRF-funded privately-owned water systems.

We could fund upgrades for existing systems, but it was noted that several systems exist which have not yet been identified as consecutive systems so therefore, the money source would be depleted rapidly. Also noted was that small water systems do not have the capacity to seek such funding and need assistance to fill out the paper work, apply, etc. The Water Supply Division provides assistance to help small systems through the process.

The question was raised about consecutive system customers paying the same water rates as non-consecutive systems, and if they do, do they receive the same level of service or benefit? In some cases municipalities apply a lower water user rate to the consecutive system because the consecutive system maintains their own line and provides a level of service directly to their customers. In other cases, the consecutive system is billed at the same rate as wholesale system users, but may not receive the same benefit as the wholesale system customer.

The group briefly discussed the warranty period for new developments hooking on to a municipality. It was noted that the WSD has the authority to regulate some entity during this time period and would regulate the wholesale system if the connection was to be absorbed into the wholesale system. The warranty period gives the municipality a period of time to determine if there is any defective work and to have the developer make necessary changes prior to turning over ownership of the infrastructure. There was discussion as to whether the municipality takes over ownership of the consecutive during the warranty period.

4. Next steps for public process to include:

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Hold two public meetings and form 2 workgroups: 1) to discuss the regulation of existing consecutive water systems and 2) to discuss regulation of new line extensions.

The group agreed to hold another meeting to draft the framework to be used as a starting point for the line extension discussion. This meeting will be held on Friday June 22, 9:30 -11:30 am in the Chapel Conference Room at the Waterbury State Complex.