

**Agency of Natural Resources
Department of Environmental Conservation**

Water Supply Division

MEMORANDUM

To: George Crombie, Secretary, Agency of Natural Resources
Through: Justin G. Johnson, Acting Commissioner, DEC
From: Gary Schultz, Acting Director, Water Supply Division, DEC
Date: September 28, 2007
Subject: Regulation of Consecutive Public Water Systems
cc: Jean Nicolai and Eric Blatt, WSD

The Water Supply Division solicited public input to discuss how the division presently regulates and should regulate in the future existing consecutive water systems and new water line extensions that have the potential to become new consecutive water systems. Two meetings were held in June with representatives from a cross section of municipalities, public water systems, consulting engineers and consecutive systems. The division held a public meeting in July and solicited volunteers for two workgroups held in August to develop recommendations to the Secretary as to how the division should regulate existing consecutive systems and whether it should permit the formation of new ones, and if so, how they should be regulated.

Some objectives that evolved during the course of developing the recommendations that follow were to arrive at an approach that simultaneously reduces the cost of operating consecutive public water systems without eroding public health protection and enables a reduction in the number of individual systems regulated by the state. We believe that implementing the recommendations will achieve all of these objectives.

The following individuals participated in the workgroup meetings:

1. Water System Representatives: Mike Mandigo, Stowe Water Dept.; Jim Fay, Jay Nadeau, and Mike Barsotti of CWD; Alan Shelvey, City of Rutland; Tom Nesbitt, Stantec; Rob Werley and Richard Menge, Town of Hartford; Alec Tuscany, Village of Waterbury; Shaun Fielder, VWRA; Allen Robtoy, City of St. Albans; J. Robert Audette, MHP owner; Representative Albert (Sonny) Audette, Roger Dickinson, Lamoureaux and Dickinson; and Roger Hunt, Milton.
2. Water Supply Division (WSD) Representatives: Gary Shultz, Eric Blatt, Jean Nicolai, Tim Raymond, Greg Bostock, Ellen Parr Doering, Ashley Lucht, and David Webb.

Gary Schultz, Acting Division Director and ANR Attorney, Alex Elliott provided final review of the workgroup recommendations.

A. Recommendations for how the ANR DEC Water Supply Division should regulate existing consecutive water systems.

The task force has developed a recommendation involving the federal exemption for consecutive public water systems with certain provisions. Discussion of this recommendation first requires an understanding of the term consecutive **community public water system** – a community system with a network of at least 500 linear feet of in-ground potable water distribution piping which receives all of its water from another public water system(s), and which does not have any collection and treatment facilities. It should be understood that residences connected to in-ground distribution piping (not owned by the parent system) with less than 500 linear feet are classified as customers of the parent system and the parent system is thus considered responsible for compliance with all of the drinking water regulations in the operation and maintenance of such residential areas.

In a similar fashion, non community facilities are not considered consecutive public water systems, but rather, customers who are governed by the wholesale/parent system's rules and regulations, like any other customer of that system, unless the state mandates treatment, thereby making that system a non-community consecutive system. Once again, the parent system is responsible for compliance with the drinking water regulations for operation and maintenance of the non community facility.

Currently the division's regulatory requirements for consecutive systems include at a minimum: monitoring for coliform bacteria, lead and copper, disinfection by-products and chlorine residual; issuance of public notices and consumer confidence reports; obtaining the services of a certified operator; having an operations and maintenance manual; having routine sanitary survey inspections; obtaining a permit to operate; and compliance with the design and construction standards of the Appendix A of the Vermont Water Supply Rule, Chapter 21.

The following proposed recommendations exempt the consecutive system from these regulatory requirements but include a provision to ensure public health protection of their customers through a partnership with the wholesale/parent system. In essence, the consecutive system would move under the umbrella of the wholesale/parent system.

Four criteria need to be met to qualify for the federal exemption, which simply means that federal primary drinking water regulations do not apply to an exempted public water system. The four federal criteria are:

- (1) The system consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
- (2) The system obtains all of its water from, but is not owned or operated by, a public water system to which the federal primary drinking water regulations apply;
- (3) The system does not sell water to any person; and
- (4) The system is not a carrier which conveys passengers in interstate commerce.

The task force recommends that Vermont adopt these four criteria, and create an additional criterion requiring that an agreement be executed between the systems establishing the respective operational and maintenance responsibilities of the parties. The agreement would be evidenced or documented by a letter issued by the wholesale/parent water system to the WSD confirming that an agreement is in place; the WSD would not need to review nor approve the agreement itself. The contents of the agreement would be solely within the discretion of the parties. Once all five

of the criteria were met, the consecutive system would be exempt from complying with the state and federal drinking water regulations. However, the regulated wholesale/parent water system would be required to include the exempted PWS in its water quality sampling plans, and required to take responsibility for public notice and consumer confidence reports for the consecutive system.

It would be left to the wholesale/parent and exempted consecutive systems to abide by their agreed upon responsibilities. Exempted water systems would be governed by the parent system's rules and regulations, like any other customer of that system. The wholesale/parent system would be responsible for complying with the directives of the Agency of Natural Resources Secretary to address deficiencies within the exempted consecutive system if the deficiencies posed a public health hazard or significant public health risk (This standard is the same standard used to determine whether a full operating permit can be legally issued). Absorbing existing consecutive systems is voluntary on the part of the wholesale/parent system.

It should be noted that inclusion of the consecutive into the overall system sampling plan does not necessarily mean that water quality samples must be taken within the exempted PWS, but rather, the regulated wholesale/parent system must take that "part" of its system into consideration when developing/revising its sampling plans. Sampling would be conducted based on the combined water systems' sampling plan and the distribution system's vulnerability to drinking water contaminants.

If all five exemption criteria are met, the Water Supply Division (WSD) would register the water system as an exempted public water system. The WSD would notify both the wholesale/parent and consecutive systems of the changed status of the consecutive and only maintain some minimal information about the consecutive in the WSD records. In the future, if the consecutive system cannot meet one or more of the exemption criteria, the system would lose its exempt status. This would include a rescission of the parent-consecutive agreement. Needless to say, if a consecutive system cannot meet all five criteria, the WSD will continue to regulate the existing consecutive as a public water system in accordance with all applicable state statutes and regulations. We believe that the regulatory burden facing an exempted consecutive system for failure to abide by its agreement with the parent system is sufficient incentive to avoid such from happening.

B. Recommendations for how the ANR DEC Water Supply Division should regulate new waterline extensions

The construction of a new waterline extension of 500 linear feet or more serving (more than one building and) 25 or more people on average per day would only be permitted if one of the following criteria is met.

- (1) The wholesale/parent system supplying water takes ownership or full operational responsibility over the proposed distribution piping and appurtenances. The new users on the line extension would thus be considered customers of the wholesale/parent system. The new line extension and connected infrastructure would not be independently regulated by the WSD and would be regarded by WSD as part of the parent water system.
- (2) The wholesale/parent system supplying water does not take ownership or full operational responsibility of the distribution line, but instead the consecutive system meets the federal exemption criteria, plus enters into an agreement with the developer to establish respective operational and maintenance responsibilities. In this case, the consecutive system would

be classified as an exempt public water system, with the parent system responsible for water quality sampling, public notice and consumer confidence reporting. As with the pre-existing exempt consecutives, the new exempt consecutive public water systems would be registered with the WSD. Note: Depending on the outcome of discussions with EPA regarding technical, financial and managerial capacity requirements for new public water systems, approval may or may not be contingent on making a capacity determination. (See paragraph C. (3) below.)

- (3) The wholesale/parent system supplying water does not take ownership or any operational responsibility of the line extension, in which case, the developer demonstrates to the WSD that the current and future owners of the new distribution line and public community water system will have the technical, managerial, and financial capability (Capacity) to operate the infrastructure as a regulated consecutive public water system. If the consecutive system is determined to have Capacity, the WSD will regulate it as a consecutive public water system. However, if it is determined that the proposed consecutive will not have Capacity, the WSD will not permit the project. The intent is to avoid the proliferation and permitting of new privately owned consecutive water systems (as opposed to municipal consecutives systems which might need to exist).

To facilitate wholesale/parent system takeover of new line extensions/distribution lines and appurtenances, a new design requirement would be added for projects. Design of new facilities would be required to conform to applicable municipal water use ordinance design standards in addition to the Vermont Water Supply Rule - Chapter 21, Appendix A.

New line extensions permitted under criterion 3 above are considered new consecutive public water systems, and as such, will be assigned a WSID number and recorded in SDWIS.

C. Actions to be taken to implement the recommendations

- (1) Amend Vermont law by modifying the requirement in 10 VSA Chapter 56 §1673(c) to eliminate the need for an exempted public water system from having to obtain an operating permit, and from having to employ a certified operator to operate the system.
- (2) Add enabling language to 10 VSA Chapter 56 §1675 or the Water Supply Rule to include applicability of municipal water use ordinance design standards for new construction that falls under the jurisdiction of the water supply construction permit program.
- (3) The Water Supply Division will contact EPA to find out if the requirement to perform a Capacity review for new public water systems was meant to apply to exempted consecutive public water systems.
- (4) For purposes of determining if a consecutive system meets criterion 3 of the federal exemption, the WSD needs to define *selling water* for Vermont and solicit EPA review of the proposed language to ensure consistency with EPA's sub-metering policy.