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The New Subsurface Rules

The new Subsurface Wastewater Disposal Rules, 10-144 CMR 241 became effective on August 3, 2015.

The following is a summary of some significant changes that should be on your radar.

Section 2(E) Existing Systems:

This section was edited and “cleaned up” to make it easier to understand and to provide tools for Site Evaluators when faced with a system being proposed for reuse that has been unused for an extended period of time.

- The rules do not include any time limits for reuse. The logic employed is that a system currently not in use that is complete and would likely function properly if reused can be reused. It shouldn't matter if the system has been unused for a month, a year or several years.
- To be reused a system must be “legally existing”, which is the Town's call. If a system was installed without a permit, it doesn't exist. It's the Town's responsibility to determine how to proceed. They may entertain an “after-the-fact” application, or they may determine that the system must be removed and replaced. That's the risk someone takes if they install a system prior to getting an appropriate permit. If the LPI is agreeable to an after-the-fact application current First Time or Replacement criteria must be met as appropriate.
- To be reused the design flow proposed must not exceed the system's capacity, except as allowed in Section 9, Expansions. Any expansion in Section 9 that requires additional capacity must be applied to the existing system.
- To be reused the existing system cannot be malfunctioning.
- The new rules give S.E.'s tools for determining that a system is “complete and likely functional”. They include demonstration of a valid permit, verification by inspection that the system is complete and the issuance by the LPI of an after-the-fact permit, or the design and recording of a replacement system that is recorded with the deed like an expansion. Once recorded the design would have no expiration date. The system must be installed should the existing system fail. New wells on abutting properties that would prevent the replacement system being installed are prohibited (notification of abutters is required, just like expansions).
- Expansion criteria formerly found in Section 2 have been relocated to Section 9, Expansions.

Section 4(E) Design Flows for Dwelling Units:

The major change to this section is the inclusion of “in-law apartments”

- The definition section now includes a definition for in-law apartments.

- The design flow for an in-law apartment is 120 gpd.
- An in-law apartment is considered one bedroom for expansion purposes in Section 9.

Section 4(I) Primitive and Limited Disposal Systems:

This section now includes language clarifying that a port-a-potty is not an alternative toilet and is not allowed as a permanent alternative toilet.

Table 4(F) Minimum Permitting Conditions:

Several errors were corrected in this table and language added to footnotes for clarification.

Section 7(C) Criteria for Approval:

This section now includes clarification regarding the Department's review of First Time Variances. The Department will focus on potential impacts to groundwater, natural resources and wells when evaluating variance requests. Approvals may require changes to the proposal to mitigate identified risks.

Section 9(C) Design Criteria for Expanded Systems:

The design criteria formerly found in Section 2 has been moved here, and we've resurrected our old friends "Major" and "Minor" expansions.

Section 12 Wetlands and Waterbodies:

This section is totally new. The intent was to move all of the criteria for working adjacent to a wetland or waterbody into one section, and to edit the requirements to be compliant with DEP requirements.

It is highly recommended that Site Evaluators familiarize themselves with this section.

- Subsection 12 (A) details and clarifies permit requirements and responsibilities.
- Subsection 12 (B) details the standards for working with different types of wetlands and waterbodies. It is organized differently than in the past. Waterbodies/Course that require a 75 foot disturbance free buffer are listed first, then those that require a 25 foot disturbance free buffer, followed by those with no buffer required, and finally how to handle stream crossings when required.
- Section 12 (C) details erosion control requirements.

To summarize, this section is organized to help lead a Site Evaluator through the process of identifying and then dealing with protected natural resources and to ensure compliance with applicable DEP regulations. The first subsection explains permit requirements, the second identifies resources and the standards that are applicable, and last sections details erosion control requirements. Taken together the section leads the designer from the permits required, the criteria for design, and the requirements for proper installation.

The rules took a long time to complete. The Department is very grateful to all the folks that took the time to help with this redraft. Now the Seasonal Conversion Rules are on-deck.