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See attached file.

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The engineering section of the Wastewater Regulations (18 AAC 72), is dated and in need of an update. This section of the regulations has not been updated in many years. An update of 18 AAC 72 provides an opportunity to address many outstanding issues and the current organization of the Department. However, there are many interconnections with other state and local regulations and polices, which increase the risk of unintended consequences.

In order to identify potential ramifications to the proposed update, I offer the following comments:

1. **Increase of Regulatory Scope:** The update is presented as a regulatory reorganization, clarification, and an expansion of permit by rule. However, the update is much more comprehensive than that. While there are some reductions in regulatory authority, the regulations represent an overall increase in Department requirements and regulatory scope.
 - a. The separation distance between a wastewater holding tank was clarified to be 100 feet. This clarification increases the separation distance from the current distance of 75 feet, which has been in affect for decades. A statement was included that wastewater holding tanks pose just as much risk if not more than a septic tank. Holding tanks are serviced regularly (monthly or more often), unlike septic tanks. This would limit risk of surface contamination. Holding tanks are often installed in areas where the is no permeability and no ability to use an absorption field. This would limit any potential risk to the ground water. No information was provided that documented that this decades old separation distance had resulted in ongoing contamination issues.
 - b. The expansion of permit by rule codifies much of the work that is already covered by department agreements (with AWWU and MOA), and includes departmental policies on service lines (authored by Lynn Kent). It would be interesting to see an analysis of current plan review submittal numbers, and how many current submittals would no longer be required.

In the public hearing the Department indicated that they had no ability to track plan submittals and no knowledge about the number of plans in the queue or the average review times. Each office has a submittal area (drawer) where submittals are placed prior to review. It would seem like these could be counted, and the receive date noted, to provide some basic information on the current ability of Department to provide plan review services. A simple spreadsheet could be used to track plan submittals. A large, comprehensive database isn't needed for basic information. Accounting for submittals would seem like a worthwhile task.

2. **New regulations are subjective and require engineering judgement.** The new regulations endow substantial authority to the Department to review engineering submittals on a case-by-case basis and make a determination based on plan review provisions, conditions, engineering standards, and possibly recommendations from a technical review committee.

- a. It seems that the Department still has one staff located in each main office (four staff), with 2 total licensed engineers, to complete wastewater plan reviews (in addition to other tasks). A custom, case-by-case review is extremely time consuming and an expansion of duties. It would seem that the Department currently has hundreds of wastewater plan reviews in the queue, with some review times exceeding months. Providing more custom reviews, based on less documented criteria will take more time. These reviews will be based on the engineering judgement of a reviewer, and will be less predictable due to their basis on Department standards that can be easily changed. These reviews will put a higher burden on the technical and engineering ability of a very limited number of statewide wastewater staff. Staff have limited opportunity to interact with consultants, extremely limited opportunity to participate in professional conferences, and participate in minimal, if any, fieldwork.

When these regulations were first promulgated there was a much higher number of engineers in the Department. In the past, the Commissioner was an engineer, the head of Regional Offices were engineers, District Offices Managers were engineers, and there were many more engineers on staff. This provided many checks and balances within the Department which helped prevent technical isolation and ensured predictability in addressing technical issues. These checks and balances are gone. An oversight committee (18 AAC 72.007) is an excellent opportunity to address existing issues with regulatory oversight, even without the proposed expansion in regulatory scope, and the associated higher level of technical responsibility that will be required of limited staff. However, a review committee couldn't be relied on for day to day activity. It would be interesting to see how much delay there would be in a plan review submittal, if it had to wait for the finding of technical oversight committee before moving forward.

The DEC wastewater group has shrunk substantially over time. The new delegation of authority section (18 AAC 72.110) lists criteria which indicates an entities capability to take over regulatory oversight. It is not immediately apparent that the DEC wastewater group meets these criteria.

3. **New Regulations will result in increased cost to the public.** The "Additional Regulation Notice Information" indicates that these regulations will not result in increased costs. However, no analysis of this was provided. Any reduction in effort that may be realized appears to be more than offset by less clear/predictable regulatory requirements, subjective reviews, as well as new requirements. Additional review time results in additional cost to the public.

The cost of implementation section of the 'Additional Regulation Notice Information' indicated that the operating cost and capital costs are expected to be \$0 for FY2022. This appears to have been explained by the belief that there will be no change from the current budget. There was no analysis provided regarding the current budget, current workload, and the current level of service provided by the Department.

4. **The proposed changes eliminate public notice of Department requirements, and makes the plan review process much more subjective and less predictable.** Many of the proposed regulations appear to have been written to make it easier to impose subjective criteria in the regulatory review process, without completing the public notice process. Public notice is

required to ensure that the Department provides transparent, accountable service. Public notice for engineering requirements would seem particularly important in this instance, due to the limited number of engineers in the Department. Although time consuming, public notice is an important part of public service.

In addition to being in conflict with requirements for public notice, some of the proposed changes directly contradict existing regulations, and provide opportunities for confusion to the public.

One of the points of clarification is to remove the language from 18 AAC 72 that references how far in advance submittals must be provided to the State. However, 18 AAC 15.020 requires the submittal of plan review information at least 30 days before commencing construction on sewerage system, or at least 60 days before commencing construction on municipal sewerage system. The department routinely cannot provide plan review service that meets these deadlines. Removing this language from the regulations does not improve clarity. Since most of the public does not realize that administrative requirements are addressed in 18 AAC 15, they would have no idea of the submittal time frame. This appears to be an effort to address issues associated with lengthy Department reviews.