

The text of a July 14, 2014 email to Bruce Johnson from Paul Erlbaum:

Hi Bruce,

At Monday's selectboard meeting, Carolyn Shapiro and I were given an assignment: to determine how the state applies its groundwater reporting threshold of 20,000 gallons per day and its permitting threshold of 57,600 gallons per day. The specific question: whether those numbers of gallons were averaged over a period of time or if those figures referred to any one day in which groundwater withdrawal reached those amounts. The answers are below. Please relay this information to the Selectboard. Members of the Planning Commission may be interested as well.

Reporting threshold: Vermont's groundwater protection statute (at 10 VSA § 1417) states, "[A]ny person that withdraws more than 20,000 gallons per day, averaged over a calendar month at a single tract of land or place of business shall file a groundwater report with the secretary of natural resources on or before September 1 for the preceding calendar year." (That's my underlining, not the Legislature's.)

Permitting threshold: Vermont's groundwater protection statute (at 10 VSA § 1418) states, "[N]o person, for commercial or industrial uses, shall make a new or increased groundwater withdrawal of more than 57,600 gallons a day from any well or spring on a single tract of land or at a place of business without first receiving from the secretary of natural resources a groundwater withdrawal permit." Unlike the threshold for reporting groundwater withdrawal, the statutory permitting threshold does not expressly indicate how the gallonage should be calculated. ANR's regulations do not offer any clarification on this point.

For guidance on this question, I contacted the individual within the Agency of Natural Resources who manages groundwater withdrawal permits, Rodney Pingree. I learned from Rodney that he had already posed the same question to ANR's attorneys. The attorneys' interpretation of the statute: a permit is required if 57,600 gallons of groundwater are withdrawn on any single day; there is no averaging over any period of time. Rodney accepts that interpretation and implements the statute in that manner.

My understanding is that the figure "57,600 gallons" was borrowed from New Hampshire's groundwater protection statute. Interestingly, New Hampshire's statute is explicit about how to calculate that gallonage: "Large groundwater withdrawal means any withdrawal from groundwater of 57,600 gallons or more of water in any 24-hour period at a single property or place of business except withdrawals associated with short-term use." (... my underlining again.) Here's a link to that NH statute: <http://www.gencourt.state.nh.us/rsa/html/L/485-C/485-C-mrg.htm>

I hope this information is helpful to the selectboard in its deliberations.

With best regards, Paul Erlbaum