ALTERNATIVE/EXPERIMENTAL WASTEWATER TREATMENT TECHNOLOGIES TECHNICAL REVIEW COMMITTEE (TRC)

The meeting was held at the South Kingstown Town Hall

October 1, 2008

Draft

Present: Russ Chateauneuf, Noel Berg, Tim Stasiunas, Joe Frisella, George Loomis, Dave Burnham, Dennis Vinhateiro, Ken Anderson, Susan Licardi

Others Present: Deb Knauss (DEM); John McDonough (Scituate Surveys); Marc Nyberg (Marc N. Nyberg and Associates); Mike Raimondi (Scituate Surveys); unidentified observer

Call to Order: 8:40 AM

Materials Distributed:

- Draft Agenda for this meeting
- Draft Minutes of 8/22/08 meeting
- List of draft criteria for Class I design of A/E technologies for repairs

Minutes of August 22, 2008

On page 4 delete the "e" from the end of Tim's name.

Motion: Susan made a motion to accept the minutes with the noted correction.
Second: George seconded the motion.
Discussion: There was no discussion.
Vote: All who were present at the August 22 meeting voted in favor of the motion.

Proposed Expansion of Class I Design Authority

This topic "title" on the draft agenda (also this section title, in the interest of consistency with the draft agenda) is not accurate, with consideration that the issue under consideration is expansion of design authority of a *subset* of demonstrably qualified Class Is.

As the January 1, 2008 OWTS Rules require nitrogen removal technology in critical resource areas, opportunities for reducing associated costs for affected homeowners have been considered. This includes consideration of expansion of the design authority of Class I designers who satisfy as yet to be determined criteria, to include design of nitrogen removing systems for repairs. The General Assembly demonstrated support for a similar option, as evidenced by the House and Senate Bills that were introduced in the last session. The bills proposed establishment of a new license class. DEM has reservations about development of a new license class: administration of designer licensing and associated exams is very involved and time consuming.

The Senate committee was interested in the discussion of the issue that had occurred at the TRC meetings and will continue to follow TRC discussion of it.

Russ directed the group's attention to the draft list of criteria and emphasized that this would have to be implemented by promulgation of Rules, as there currently exists no regulatory provision for qualifying a subset of designers for specific expansion of design authority. He noted that the eligibility criteria are intended to be developed so that additional and re-developed equivalent courses could be added in the future.

Discussion of the draft list of eligibility criteria for expanded Cl-I design authority:

Training

Suggestions

- Delete "Training" from the title of the document since it addresses more than training.
- Line items a. and b. beneath "Training" should be edited to require documentation of "satisfactory completion" rather than of "attendance".

George stated the New England Onsite Wastewater Training Program (NEOWTP) could develop an exam for OWT 105 (A/E Overview). INSP100 and INSP200 already incorporate an exam, OWT 130 Hands on Techniques for Component Installation does not lend itself to evaluation of attendees' mastery of the subject matter by exam and the Soils class listed is taught by Mark Stolt. George suggested that the NEOWTP course on pumps and controls is suitable for inclusion on the list.

Is the ability to identify the cause of failure adequately covered by the elements on the draft list? Troubleshooting classes are not offered by NEOWTP; there is some effort underway nationally to develop such a class. If such a new course or any other is developed, it should be required of *all* designers; it is not appropriate to require more of Cl-Is, as an element of any proposed expansion of design authority of some eligible subset, than of Cl-II and IIIs.

Line item 3, Plan: There is a range of quality and detail in the plans that are submitted to DEM by Cl-Is and a tighter standard will have to be established for this proposal.

Suggestions:

Require a minimum scale and North arrow.

Discussion:

- Russ expressed reluctance to require these elements; as long as the location of the proposed system is clear using measured distances to fixed features, it would be acceptable. He noted that DEM staff always do site inspections on repairs. He added that DEM does 1,000 – 1,300 repairs annually and that most of these are submitted by Class Is.
- The distinction between "approximate North" and a "North arrow" was discussed, clarifying that only a surveyor can establish a North arrow.
- Approximate North could be established using tax assessors' maps or a compass.
- If a designer cannot execute these elements (established minimum scale and approximate North) on a plan, that person should not be designing A/E systems.
- Locus map should be required

Item C, the requirement that the proposed system meet all regulatory setbacks is a different standard than that placed on the Cl-II and IIIs. It is current practice in Rule to relax standards for repair applications, in some cases to effect an improvement in conditions at the site.

Objections:

1. This proposal is a tearing down rather than a building up of professionalism. PLS has a minimum standard of North arrow and scale drawing and anything less is not protective of public health and environment.

   Counter:

   - Requiring A/E in critical resource areas is advancement; this proposal seeks to reduce homeowners' financial burden.

     Counter:

     - There is no guarantee that cost will be less when designed by Cl-I and if DEM wants to save homeowners money that application fees be waived.
2. Requiring the Class I who designs the system to be the one who installs it eliminates an opportunity for oversight by another set of eyes. This could increase the likelihood of an error being carried through.

   Counter:

   - DEM has the authority to require inspections of installations.
   - Professionalism and integrity cannot be ensured by regulatory language.

3. Any additional design authority given to Cl-Is is a violation of law; activities are specified to the professions of survey and engineering by the two professions' governing statutes. Board of registration (survey) has sent a letter to the DEM Director announcing the intention to prosecute any Cl-I who submits a plan to DEM demonstrating the practice of surveying and the Board for engineers is developing a similar letter for submission to the DEM Director.
4. Why is this issue before the TRC?

   Reply:

   - The A/E list specifies for each technology listed, the design classes that may specify the technology in a design plan. These are decisions that have been made in the past by the TRC. Additionally, the General Assembly expressed an interest in the consideration that had been give this issue by the TRC and asked DEM for a TRC advisory opinion.
   - It was requested that DEM provide proof that the TRC had in the past been involved in the issue of which design classes may specify technologies in design plans.
   - It was also requested that DEM provide description of the original charge of the TRC.

DEM retaining authority to require Cl-II or III is currently allowed in Rule and at times this is done.

Item 6, two-year eligibility

Purpose of limited term on the assignation of this authority is intended to protect against lengthy lapse of practice, ensuring some level of continued involvement with the subject technology/technologies. The specific term is open for discussion.

- This seems like an additional burden placed on these Cl-Is that is not placed on Cl-II and IIIs, who only need to have license renewal fees and continuing education properly documented to be able to design within their authority.
- A process of reauthorization, rather than re-application may make more sense. If a Cl-I has designed and installed six A/E systems over the two-year term, it seems odd to require submission of a sample plan when, for example, six design plans submitted as repair construction permit applications are on file at DEM.
- It was suggested that there might be a "review Process" involving the panel that works with DEM to consider designer performance issues and disciplinary actions when necessary. There could be three decisions: "re-authorized"; "on-probation" for specified deficiencies; and "denied". Russ noted that this panel is not at this time involved in the license renewal process.
- In either case, re-application or review for re-authorization, the courses required, need only be taken once and there is no time restriction on when the classes were taken.

Item 8, Approval is subject to immediate termination upon demonstration of unsatisfactory performance. It was asked what specifically, is terminated. Russ responded the authority to design A/E, although this has not been reviewed by legal staff. He noted that legal staff might view the Cl-I A/E design authority as a "privilege" which could result in approval to take immediate action to terminate it. It was recommended that "immediate suspension" be used rather than "termination", as suspension includes a subsequent review or evaluation, at the conclusion of which a decision would be made concerning the re-authorization, perhaps with terms, or termination of the authorization to design A/E. Russ stated that the terms would likely be additional training.

Regulatory setbacks

The Critical Resource Areas are sensitive areas for septic system design and impacts. These critical applications require expertise to assess the failure situation and make the necessary corrections.

Counter:

On a repair on a 5,000 sf lot, once drinking water wells are located, there is one place to install the BSF and regardless of who submits the proposed design to DEM, it would be approved, as there is only one option for a repair at such an encumbered property.

Public Comment

Mike Raimondi of Scituate Surveys, PLS, DEM Cl-II and Cl-IV

- Oversight is a critical quality control element. Requiring the Cl-I who prepares the A/E design to also perform the installation eliminates the opportunity for another party to identify errors that the designer and even DEM during plan review, may have missed.

John McDonough of Scituate Surveys, PLS, DEM Cl-II and Cl-IV

- Presented a plan prepared by his business, explaining that they identified a five-foot "bust" discrepancy on the location of the property line of the subject property; the deeds' (subject property and abutting property) descriptions conflicted with the survey dimensions. Both the owner of the subject property and the abutter were unaware of the actual locations and contours of the property lines. A Cl-I does not have the expertise to perform a survey and catch problems like these that could result in a system being installed on the wrong property. Scituate Surveys always performs a Class 1 survey on repairs, as all OWTS.

Harry Miller of Alpha Associates, PLS and DEM Cl-II

- Alpha does a Class 1 survey for all repairs. DEM is setting Cl-I designers up for lawsuits as the Board of Registration for Professional Land Surveyors has announced to DEM their intent to prosecute any Cl-I who is engaged in the practice of land surveying.

Marc Nyberg of Marc N. Nyberg and Associates, PLS, DEM Cl-II and Cl-IV

- He uses the same standard for repairs as for new construction. He knows a lot of surveyors who perform a survey of their OWTS sites and a few who do not. Performs a soil evaluation on every repair.

With regard to the objections of the PLS community concerning the practice of land surveying by Cl-Is associated with the design of A/E systems, it was noted that in 1968, an installer could go to a state field office with an application signed by a homeowner for repair of an ISDS. Primary question is: are there Cl-Is capable of doing this type of design work?

Old Business

DEM posted to the web the policy regarding leachfield options with advanced treatment systems in critical resource areas. The document is in circulation within the OWTS program at DEM for clarification and will be reposted at the conclusion of this process.

For the next meeting George will look at demo project files for projects incorporating PSNDs and summarize the spacing decisions that were made on these sites as support for further consideration of modification of the design protocol for these leachfields. DEM, any history on failures of these?

For the next meeting:

1. DEM to provide a better-developed list of plan requirements and proposed criteria for acceptable plan quality.
2. DEM propose conditions for renewing/re-authorizing Cl-I design of A/E
3. DEM provide proof (minutes) that the TRC had in the past been involved in the issue of which design classes may specify technologies in design plans.
4. DEM provide description of the original charge of the TRC.
5. DEM provide information on failures of reduced spaced PSNDs.
6. DEM to re-send the Barnstable County report to TRC members for review in preparation for discussion at the next meeting.

The meeting adjourned at 11:40 AM.

The next meeting was scheduled for November 7, 2008 at 8:30 at the South Kingstown Town Hall in the Council Chambers.