

Chapter 175
Allocation of Sewer Capacity
Adopted 3-27-1989

- § 175-97. Definitions
- § 175-98. Determination of sewer allocation
- § 175-99. Notice of determination
- § 175-100. Waiver of provisions
- § 175-101. Subsequent determination of allocation
- § 175-102. Review of determination
- § 175-103. Increased usage prohibited
- § 175-104. Usage prior to determination of allocation
- § 175-105. Permit required, application procedure
- § 175-106. Issuance of permit
- § 175-107. Standards to be applied
- § 175-108. Permit conditions
- § 175-109. Conditions for allocation
- § 175-110. Permit expiration, extension
- § 175-111. Filing priority
- § 175-112. Extensions
- § 175-113. Fees
- § 175-114. Effects on other town ordinances
- § 175-115. Connections to nonpublic sewer lines and within Fire District No. 1.
- § 175-116. Alpine pipeline customers
- § 175-117. Effect on successors in title
- § 175-117.1. Private lines to city facility
- § 175-118. Violations and penalties; other remedies
- § 175-119. Severability
- § 175-120. When effective

Sewer Rates
Sewage Disposal Charges

- § 175-121. Definitions
- § 175-122. Town costs
- § 175-123. Meter
- § 175-124. Establishment of rates
- § 175-125. Alpine pipeline customers
- § 175-126. Due dates
- § 175-127. Defective meters
- § 175-128. No meter
- § 175-129. Automatic reduction in town business rate and new town business rate

- § 175-130. Interim arrangements as to unmetered service.
§ 175-131. Interpretation
§ 175-132. Sewage disposal charge to retire bonded Indebtedness incurred for construction of town sewer lines.
§ 175-133. Severability

§ 175-97. Definitions.

As used in this Part 4, the following terms shall have the following meanings:

ADMINISTRATIVE OFFICER — The person appointed by the Board of Sewage Disposal Commissioners to administer this Part 4.

BOARD — The Board of Sewage Disposal Commissioners of the Town of Rutland pursuant to 24 V.S.A. § 3614.

CITY FACILITY — The City of Rutland sewer system and the city wastewater treatment facility.

CITY/TOWN AGREEMENT— The agreement dated January 18, 1984, between the City of Rutland and the Town of Rutland, providing for the disposal of sewage by the town and its property owners utilizing the city facility, and any amendments, extensions, or replacement of or to that agreement.

DEVELOPMENT — Any change or expansion in use of property or any building or structure thereon, any construction, reconstruction, conversion, alteration or enlargement of any building or structure and any other activity on property resulting in an increased demand for sewage disposal services.

PUBLIC SEWER — A sewer line of the Town of Rutland which conveys sewage, directly or via other lines, to the city facility.

SEWER ALLOCATION — The amount of sewage which a property owner may discharge to the public sewer or to any other sewer line within the Town of Rutland for ultimate disposal in the city facility under the terms of the city/town agreement. A "sewer allocation" shall be expressed in terms of gallons per day averaged over a calendar month.

STRUCTURE— Any assembly of materials for occupancy or use.

TOWN SEWAGE DISPOSAL ORDINANCE— An ordinance of the Town of Rutland pertaining to the use of the public sewers and the city sewage disposal system, adopted June 27, 1987, and any amendments thereto or replacements thereof Any term defined in

that ordinance shall have the same meaning when used in this Part 4, and the definitional section of the "Town Sewage Disposal Ordinance" is incorporated herein by reference.

§ 175-98. Determination of sewer allocation.

Except as hereafter provided, after a building or structure has been connected to the public sewer for at least twelve (12) months, its sewer allocation shall be based upon its average water usage over the twelve (12) months just prior to the date of determination thereof by the town. Average water usage shall be calculated by dividing the total gallonage utilized over such twelve-month period by three hundred sixty (360) days.

The quotient rounded up to the nearest one hundred (100) gallons per day shall be the property's sewer allocation, notwithstanding any greater amount specified in any prior approval or permit for connection to or use of the public sewer or any greater sewer capacity approval. For purposes of the foregoing determination, portions of any twelve-month period, which have elapsed prior to the effective date of this Part 4, shall be counted. However, notwithstanding the foregoing, in the event that the flows allowed in any previously issued town or state permit or approval are less than those determined by such twelve-month averaging procedure, the flows in such permit or approval shall control and establish the sewer allocation.

§ 175-99. Notice of determination.

The owner of a building or structure shall be given written notice of the determination of the sewer allocation for such owner's building or structure determined by the Board in accordance with § 175-98 above. Thereafter, an owner desiring to utilize for such building or structure more than the sewer allocation specified in the notice shall apply for a permit for such additional sewer allocation pursuant to Article XVII of this Part 4.

§ 175-100. Waiver of provisions.

The Board may waive or modify in whole or in part the provisions of this Article in circumstances where it determines that a particular twelve-month history is not representative of a building or structure's sewer utilization, because of interruption of usage, leaks, infiltration, seasonal fluctuations or otherwise or in circumstances where strict application of this Article would result in an inequitable situation.

§ 175-101. Subsequent determination of allocation.

The Board may at any time after a building or structure has been connected to the public sewer for twelve (12) months determine or re-determine the sewer allocation of such building or structure, based upon average water usage for the twelve-month period just prior to the date of determination or redetermination. In such event, the owner shall be given notice pursuant to § 175-99 above.

§ 175-102. Review of determination.

A property owner who receives a notice determining such owner's sewer allocation under this Part 4, may have such determination reviewed by the Board by filing a written request for review with the Rutland Town Clerk within t h i r t y (30) days of the date the town gives the notice of determination of sewer allocation. The Board shall, upon the filing of such a request for review, proceed promptly, upon notice to the property owner and hearing, to determine the sewer allocation to which such owner is entitled. The sewer allocation shall be established as of the date of determination under this Part 4. If a request for review is not filed as prescribed in this section, the determination specified in the Board's notice of sewer allocation shall be binding on such property owner.

§ 175-103. Increased usage prohibited.

Upon determination of an owner's sewer allocation, whether by a written notice of determination with no review request having been filed as provided above or upon determination by the Board in a review proceeding, such determination shall be deemed to amend any permit or approval of an owner to use or discharge sewage to the public sewer from a building or structure for a greater amount, and such property owner shall not, without a permit issued pursuant to Article XVII of this Part 4, discharge more sewage from such building or structure than the amount specified in such determination.

After a determination of sewer allocation has been made, an increase in sewage flow without a permit, caused by any development, shall be deemed a violation of this Part 4. Whether there has been such an increase in flows shall be established by comparing gallons per day averaged over a calendar month with the number of gallons per day in such determination of allocation. However, an increase in flows where no development has taken place, caused by normal, temporary or seasonal fluctuations or leakage, shall not be deemed a violation.

§ 175-104. Usage prior to determination of allocation.

Nothing contained herein shall be construed as permitting the discharge of sewage in excess of the amount permitted in any approval or permit during any period of time before a determination has been made under this Article.

**Article IX
Sewer Allocation Permit**

§ 175-105. Permit required, application procedure.

An owner desiring to utilize the public sewer for a new use or to service a new building or structure or to meet demand for sewage disposal services caused by any development shall first apply to the Board for a sewer allocation permit to do so. A separate application shall be filed for

each use, building or structure involved. Such permit application shall be made on a form approved by the Board, or if no form has been approved, then application shall be made by letter.

No application shall be accepted unless signed by all owners of the property involved. Such application shall be accompanied by the prescribed fee and shall include the following information:

- A. A brief description of the building or structure for which sewer services are requested, its location, its proposed use and, if the application is for increased flows, a description of the proposed development.
- B. The amount of new or increased sewer flows requested, stated in gallons per day as averaged over a calendar month.
- C. The method by which such sewer flows were calculated.
- D. The biochemical oxygen demand and other constituents of such flows and their concentrations if anything other than bathroom waste is involved.
- E. Such other information as the Board may require in order to properly evaluate the application.

§ 175-106. Issuance of permit.

When the application is complete, the Board shall, after notice to the property owner and an opportunity to be heard, issue with conditions or deny the permit application. A separate permit shall be issued for each use, building or structure and shall state the maximum sewer allocation for such use, building or structure, expressed in gallons per day as averaged over a calendar month. In the event of a denial, the reasons shall be stated in writing.

§ 175-107. Standards to be applied.

The Board shall apply the following standards in determining whether a permit should issue:

- A. Whether the application is complete and properly executed by the property owner(s).
- B. The sewer allocation for which application is made shall not exceed the amount reasonably necessary to provide adequate sewer service for the use, building or structure or development proposed.
- C. The amount of sewer allocation for which application is made shall not, in combination with other users, the amounts in other approvals and permits previously issued and the amounts involved in then-pending permit applications filed prior to the property owner's application, cause the town's capacity in the city facility to be exceeded.

D. The proposed sewer allocations or any construction related to it shall not cause the town to violate any of the terms or conditions of the city/town agreement.

§ 175-108. Permit conditions.

The Board may grant a permit for a lesser sewer allocation than that applied for and attach such reasonable conditions to any permit as may be necessary, so that the proposed sewer allocation will be in compliance with the standards, terms and conditions of this Part 4 and will not be detrimental to the public health, safety and welfare.

§ 175-109. Conditions for allocation.

Whether or not stated on a permit, a sewer allocation shall be subject to the terms and conditions of the city/town agreement, and actual connection to the use of the public sewer shall be in compliance with the Town Sewage Disposal Ordinance and all other town policies and ordinances, rates and rules now or hereafter in effect and redetermination of the amount which may be used pursuant to Article XVI of this Part 4. A separate building sewer permit is required under the Town Sewage Disposal Ordinance.

§ 175-110. Permit expiration; extension.

- A. A sewer allocation permit shall expire and become null and void at the expiration of twelve (12) months from the date of issuance by the Board, unless within that time the property owner commences utilization of the public sewer for the use, building or structure involved in such permit. If a permit expires because of failure to commence such usage, then the property owner shall, before using the public sewer for such use, building or structure, submit a new permit application, with the supporting documentation and information required by § 175-105, and any required fees, the granting or denial of which shall be subject to all the terms of this Part 4.
- B. A permit may be extended by the Board for an additional twelve-month period from expiration of the original twelvemonth period if:
- (1) Written application for an extension is made to the Board before expiration of the first twelve-month period; and
 - (2) The Board determines that the property owner continues to have a bona fide intention to complete the project, that the owner during the first twelve-month period has diligently pursued the development of the project and that there is a reasonable expectation that the owner begin utilization of sewer services pursuant to the permit by the end of the extension period.
- C. If by the end of the second twelve-month period, utilization of the public sewer has not commenced for the use, building or structure involved in such permit, then the permit shall expire and become null and void, unless again extended as provided hereafter, and the owner shall, before

using the public sewer for such use, building or structure, submit a new permit application, in the same manner as required by Subsection A above.

D. A sewer permit may be extended upon written application made before expiration of the second twelve-month period or any further extension period if:

- (1) The Board determines that the owner is still diligently pursuing the project; and
- (2) The owner has not been able to commence utilization because the owner is in litigation before administrative bodies or courts relating to the obtaining of necessary permits for the project. Any extension granted under this subsection shall not be for more than one (1) year, and further extensions may be granted for one-year periods if Subsection D(1) and (2) are met.

E. A permit may be extended upon written application made to the Board before expiration of the second twelve-month period or any further extension period, if the Board determines that there has been a substantial start on construction. Such extension shall be for such additional time and on such conditions as may be equitable.

F. The Board, after notice to the property owner and hearing, may, at any time during the initial twelve-month period or any extension thereof, revoke a permit if it determines that utilization of sewer services for the use, building or structure involved in the permit has not commenced and that the property owner has abandoned development of such use, building or structure. The Board shall not revoke any permit without first giving the property owner at least fifteen (15) days' notice of the time and place at which the Board shall hold its hearing.

G. "Commencement of utilization" of the public sewer, as used in Subsections A through F above, means active commencement of use of the public sewer for a use, building or structure which is substantially complete and able to be used or occupied for its designed purpose.

§ 175-111. Filing priority.

Each permit application shall be considered in the order of its filing priority.

Miscellaneous Provisions

§ 175-112. Notices.

A. Any notice required to be given under this Part 4, shall be deemed to have been given when deposited in the United States Mail, registered, or certified mail, return receipt requested, addressed:

- (1) To the property owner at such owner's address as carried on the books of the town for sewer and water billing purposes or, if at the time of notice such owner is not a user of town sewer and water, then

(2) To the address shown on the property owner's permit application or such other address as the property owner may, in writing, designate in connection with such application.

B. In the event that a property owner who has applied for a sewer allocation transfers title; notice shall be deemed given if given to such successor in title.

§ 175-113. Fees.

The Board may prescribe reasonable fees for the filing of any request for review or permit application.

§ 175-114. Effect on other town ordinances.

Nothing contained in this Part 4 shall be deemed to relieve a property owner of the obligation to comply with the Town Sewage Disposal Ordinance[^] or any other ordinance or regulation of the town or the Board. The permit requirements in this Part 4 are supplemental to the permit requirements in the Town Sewage Disposal Ordinance.

§175-115. Connections to nonpublic sewer lines and within Fire District No. 1.

A. This Part 4 of the Code of the Town of Rutland shall not apply to property owners within the Town of Rutland Fire District No. 1 connected to fire district sewer lines.

B. This Part 4 of the Code of the Town of Rutland shall be applicable to any property owner within the town discharging to any sewer line which is not a public sewer, or which does not discharge into the public sewer, where such discharge is destined for ultimate disposal in the city facility under the terms of the city/town agreement, in the same manner as this Part 4 applies to a person connected to or desiring to connect to and discharge to the public sewer. Any such person shall be subject to the redetermination provisions of Article XVI of this chapter and must apply for a sewer allocation permit under Article XVII of this chapter, and all provisions pertaining thereto shall apply. This subsection, however, is subject to the next succeeding section as it pertains to Alpine Pipeline customers.

§ 175-116. Alpine Pipeline customers

The Route 4 east corridor of the town, containing those properties which are proximate to and best serviced by the Alpine Pipeline (the "Alpine Pipeline area"), is hereby allocated seventy-six thousand (76,000) gallons per day of the town's capacity in the Rutland City Treatment Plant, inclusive of capacity presently committed by the Alpine Pipeline Company. Such allocation is subject to the following:

A. Property owners who presently own units of capacity acquired by them or their predecessors in title from the Alpine Pipeline Company ("Alpine") representing the right to

discharge wastewater to the pipeline shall not, as to the number of gallons per day of wastewater represented by such units of capacity, be subject to the provisions of Article XVI of this chapter, pertaining to reductions of allocation.

B. Property owners in the Alpine Pipeline area who may hereafter acquire from Alpine units of capacity or other ^ rights to discharge wastewater to the Alpine Pipeline or whose wastewater flows exceed the flows represented by the units of Alpine capacity they presently own, shall, with regard to such future units of capacity or rights and such additional wastewater flows, be subject to all sections of these regulations in the same manner as any other property owners of the town as if connecting to a public sewer; provided, however, that until the time when such seventy-six-thousand-gallon per day allocation to Alpine is exhausted, permit applications from property owners in the Alpine Pipeline area shall be considered in the order of their filing priority with regard to the difference between such seventy-six thousand (76,000) gallons and the capacity presently committed by Alpine, and until such time a separate priority list shall be maintained as to applications from such property owners.

C. Property owners who connect to the Alpine Pipeline shall be subject to the Town Sewage Disposal Ordinance to the same extent as other property owners of the town, and the town shall have the same rights of enforcement and other remedies as if such property owners were connected to the public sewer; provided, however, that the requirement for a building sewer permit under the Sewage Disposal Ordinance shall not be required. This provision shall not be construed to prohibit Alpine from imposing stricter standards than are contained in the Town Sewage Disposal Ordinance.

D. The term "property owner," as used in this section, shall include the heirs, legal representatives, successors and assigns of a property owner.

E. Notwithstanding the foregoing, the town shall not be required to issue a permit for an application filed under Subsection B above to the extent the discharge applied for would exceed the difference between the town's available capacity in the Rutland City Treatment Plant and amounts involved in Alpine units of capacity previously committed and in allocations or approvals previously issued by and/or presently pending before the Board.

F. The terms "presently," "previously," "hereafter" and "future," as used above, shall mean and refer to the time of, before and after the effective date of the above amendments, as applicable.

§ 175-117. Effect on successors in title.

A. Any rights of a property owner under this Part 4 or any permit issued under this Part 4 shall inure to the benefit of such owner's successors in title. Any obligations imposed on a property owner by this Part 4 or by a permit issued under this Part 4 shall bind such owner's successors in title.

B. The Board shall keep a file on each owner pertaining to determinations and permits issued under this Part 4, which shall be available for inspection by the public at reasonable times during business hours.

§ 175-117.1. Private lines to city facility.

A building or structure connected to a private line which conveys sewage, directly or indirectly via other lines, whether public or private, to the city facility shall be deemed to be connected to and utilizing the public sewer, and such building or structure and the owner thereof shall be subject to this chapter as if discharging to a town line.

§ 175-118. Violations and penalties; other remedies.

A. A person who, without a permit issued under this Part 4, utilizes the public sewer for a new use, building or structure or to meet demand for sewage disposal services caused by any development; or increases sewer flows over the maximum amount specified in a sewer allocation permit or any notice of determination issued or referred to under Article XV by reason of any development; or violates any provision of this Part 4 or the terms of any permit, approval or order of the Board or the Selectmen, shall be fined not more than five hundred dollars (\$500.) Each week a violation continues shall constitute a separate offense.

B. The town may resort to any legal remedy to enforce this Part 4 or the terms of any permit, approval, or order, including actions for injunctive relief.

§ 175-119. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this Part 4 or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Part 4 or any part thereof.

§ 175-120. When effective.

This Part 4 shall become effective sixty (60) days after the date of its adoption.

Sewer Rates Sewage Disposal Charges

§175-121. Definitions.

As used hereafter, the following terms shall have the following meanings:

BASIC RATE — The rate per one hundred (100) cubic feet of sewage disposed of into the facility, which from time to time is charged by the City of Rutland to the Town of Rutland pursuant to the Municipal Sewage Disposal Agreement. The basic rate is currently one dollar and five cents (\$1.05) per one hundred (100) cubic feet, but the rate shall increase or decrease with changes in the rate charged by the city to the town, without further amendment of these sewage disposal charges.

FACILITY— The City of Rutland Sewage Disposal System as defined in Paragraph 2 of the Municipal Sewage Disposal Agreement.

MUNICIPAL SEWAGE DISPOSAL AGREEMENT — The agreement between the City of Rutland and the Town of Rutland dated January 18, 1984, relating to disposal of sewage from within the town into the facility.

TOWN SEWER USE ORDINANCE — An ordinance of the town entitled "Town of Rutland Ordinance Relating to Use of the City of Rutland Sewage Disposal System," together with all amendments, now or hereafter adopted. **USERS** — There shall be three (3) categories of users, coinciding (subject to § 175-131 herein) with the classifications in the agreement between the city and the town, as follows:

A. Regular. This category shall include all town residential property for not more than four (4) families and all town nonbusiness uses, which shall mean and include a public or quasi-public use, including but not limited to a school, library, church, hospital or medical center but only to the extent such is not a permanent office for medical practitioners, museum or gallery not offering items for sale, government use for local, county, state or federal government, any use which qualifies for exemption from real estate taxes under Vermont law and any other use not primarily for the production of income or profit through commercial, industrial or other business activities.

B. Town business. This category shall mean all businesses, including retail, commercial, industrial, service, professional or otherwise, located and existing within the town as of the date of the Municipal Sewage Disposal Agreement, and which as of that date were served by Rutland City Sewer.

C. New town businesses. This category shall mean all businesses as defined in Subsection B above, not served by Rutland City Sewer on the date of the Municipal Sewage Disposal Agreement. New businesses shall include new construction, conversion of residential or other use described in Subsection A above to business, expansion of business existing on the date of the Municipal Sewage Disposal Agreement through capital improvements which increase sewage disposal facilities or requirements or other activity involving the initiation or expanded operation of any business utilizing the facility as of the date of the Municipal Sewage Disposal Agreement.

§ 175-122. Town costs.

The town incurs costs of its own in administering the furnishing of sewer services pursuant to the Municipal Sewage Disposal Agreement, which the Board finds are covered by a charge of ten percent (10%) of the rates charged herein, [but excluding the ad valorem charge of twenty percent (20%) required by § 175-124C hereafter].

§ 175-123. Meters.

Except as set forth hereafter, the sum to be paid to the town for sewage disposal services utilized by a town property owner shall be based upon the quantity of water used on such property owner's premises, determined by a meter attached to the property owner's water supply prior to commencement of service. Metering shall be subject to the following provisions;

- A. The town will provide and install on each premises proposing to discharge sewage to the facility a water meter and such other items that are necessary for its operation, to such specifications as the town shall decide, including, if the town deems necessary, outside meter readers.
- B. If such meter is greater than five-eighths (5/8) inch by three-fourths (3/4) inch, the property owner shall pay the town an amount equal to the town's costs of purchasing and installing such water meter and equipment within thirty (30) days following rendition of a bill by the town. If such meter is five-eighths (5/8) inch by three-fourths (3/4) inch or less, the town will bear the cost of purchase and installation.
- C. Where abnormal structural or plumbing conditions exist, if the town deems it necessary, the town may require the owner to provide at the owner's expense the necessary structural or plumbing alterations so that the town may make a normal meter connection.
- D. Title to the water meter, outside meter reader and all accessory parts shall remain in the town and shall not pass to the owner of any premises in which the same shall be installed.
- E. Except as provided in Subsection F below, the town will maintain and repair the town's water meter and all accessory parts at its expense; however, the town shall not be liable for damage to the meter or accessory parts caused by the owner or by persons on the owners premises or by fire, theft or other casualty, and the costs incurred by the town for replacement or repair caused or made necessary by such damage shall be paid by the owner within thirty (30) days of rendition of a bill by the town.
- F. Notwithstanding Subsection E above, if any town water meter on the premises of a business or other structure is greater than five-eighths (5/8s) inch by three-fourths (3/4) inch, then the town will do the work, maintain and repair such meter and its accessory parts, but the property owner shall reimburse the town for all its costs of maintenance and repair, as well as for costs incurred by the town for repair or replacement of a meter or equipment damaged by the

owner or by persons on the owner's premises or by fire, theft or other casualty. Such reimbursement shall be made within thirty (30) days of rendition of a bill by the town.

G. The town shall have the right, for its agents and employees, upon reasonable notice to the owner, or at regular quarterly intervals, of access at reasonable times to the premises for the purpose of meter installation, inspection, meter reading, maintenance, and repair.

H. Any charges billed pursuant to this section shall be a lien on the owner's property and may be enforced against the property to the same extent as other sewage disposal charges under 24 V.S.A. 3612.

I. Nothing contained herein shall be construed as imposing any obligations on the town to pay for replacement, repair, or maintenance with regard to existing meters which are not the property of the town.

§ 175-124 ESTABLISHMENT OF RATES

Each property owner shall pay for sewage disposal services based upon the quantity of water used, at the following rates:

A. Each regular user: the basic rate plus ten percent (10%) Thereof.

B. Each town business: five (5) Times the basic rate, plus ten percent (10%) thereof on the first one million (1,000,000) cubic feet per quarter, and the basic rate plus ten percent (10%) thereof on any amount over one million (1,000,000) cubic feet per quarter.

C. Each new town business: five (5) times the basic rate plus ten percent (10%) thereof on the first one million (1,000,000) cubic feet per quarter, and the basic rate plus ten percent (10%) thereof on any amount over one million (1,000,000) cubic feet per quarter.

(1) In addition, the owner of each new town business shall pay an ad valorem sum equal to twenty percent (20%) of the real estate taxes for such new town business, annually, on the same dates that Town of Rutland real estate taxes are due, commencing with the real estate tax bill due in September 1989. This additional charge is imposed to comply with Paragraph 17(c)(1) of the Municipal Sewage Disposal Agreement. Pursuant to Paragraph 17(c)(6) of that agreement relating to the effect of tax stabilization, if for any reason the real estate taxes assessed against a new town business are stabilized by the town, such amount shall be computed based upon the taxes which would have been assessed had such real estate been taxed without regard to such stabilization.

(2) The ad valorem sum equal to twenty percent (20%) of the real estate taxes for a new town business shall be applied in a manner consistent with the requirement that such amount be collected under Paragraph 17 of the Municipal Sewer Disposal Agreement.

D. Surcharge.

(1) Any person who shall discharge or cause to be discharged any wastewater to the facility in violation of § 175-85F of the Town Sewer Use Ordinance shall pay a surcharge, in addition to the rates set forth in Subsection A, B and C herein, calculated as follows:

(a) If such wastewater has a five-day biochemical oxygen demand in excess of two hundred twenty (220) milligrams per liter (mg/l), then for each mg/l of in excess of two hundred twenty (220) mg/l, eighteen and eight-tenths cent (\$0,188) per one hundred (100) cubic feet of water consumed in the quarter such violation occurs.

(b) If such wastewater has a chemical oxygen demand (COD) in excess of four hundred fifty (450) mg/l, then for each mg/l in excess of four hundred fifty (450) mg/l, four and five-tenths cent (\$0,045) per one hundred (100) cubic feet of water consumed in the quarter such violation occurs.

(c) If such wastewater has a suspended solids concentration in excess of three hundred (300) mg/l, then for each mg/l in excess of three hundred (300) mg/l, fifteen and three-tenths cent (\$0,153) per one hundred (100) cubic feet of water consumed in the quarter such violation occurs.

(2) Such surcharges shall be calculated based upon a minimum of one (1) random twenty-four-hour composite sample taken during the quarter. If the town, in its sole discretion, elects to take or require more than one (1) such sample, then such surcharges shall be based upon the average of the random twenty-four-hour composite samples taken or required by the town during such quarter.

(3) The foregoing surcharges shall apply to each quarter during which one (1) or more of the foregoing exceedances occurs, may be billed separately from the other rates established hereunder as soon as reasonably practicable following the necessary computations and calculations by the town and shall be payable thirty (30) days from the date of rendition. A separate surcharge shall be due for each exceedance under each of the three classifications COD, suspended solids). Payment of a surcharge shall not relieve the user of his or her obligations to comply with the provisions of the Town Sewer Use Ordinance (Part 3 of this chapter), as amended from time to time, and payment and acceptance of the surcharge shall not be deemed a waiver by the town of any of its enforcement rights either under the ordinance or under applicable law.

(4) The Board of Sewage Disposal Commissioners may amend the surcharge rates herein from time to time as the costs of treatment at the facility per unit of COD and suspended solids may change.

(5) Any amounts payable to the town on account of the surcharge shall be paid over by the town to the city to defray its additional treatment costs occasioned by such violations of the

Town Sewer Use Ordinance, to the end that such violations will not cause increases in the basic rate, town business rate and new town business rate charged by the city to the town.

(6) All costs of testing incurred by the town to determine the COD and suspended solids concentrations in a user's wastewater shall be additional sewage disposal charges payable to the town by such user. The town shall bill such user for such costs of testing, as soon as practicable after the end of each quarter, and such additional sewage disposal charges shall be due within thirty (30) days of billing.

(7) The surcharges provided in Subsection D herein shall be calculated based upon all water consumed in the quarter that Subsection D becomes effective.

§ 175-125. ALPINE PIPELINE CUSTOMERS

Alpine Pipeline customers located within the Town of Rutland and utilizing a portion of the town's waste load allocation in Otter Creek as set forth in the Municipal Sewage Disposal Agreement are obligated to pay the basic rate, town business rate and new town business rate, including the charge equal to twenty percent (20%) of real estate taxes, to the same extent as other property owners in the town utilizing the Rutland facility pursuant to the Municipal Sewage Disposal Agreement.

To the extent Alpine Pipeline customers pay such amounts to the Alpine Pipeline Company and such amounts are disbursed to the City of Rutland, Alpine Pipeline customers are not required to make such payments to the town. However, Alpine Pipeline customers shall pay to the town all such sewage disposal charges, including the amount equal to twenty percent (20%) of real estate taxes, to the extent that the same are not collected by the Alpine Pipeline Company and disbursed to the city, within thirty (30) days of receipt of billings therefor by the town.

The town shall have no responsibility to provide for or require Alpine Pipeline Company's collection of such amounts, and payment over to the city.

§ 175-126. Due dates.

Sewage disposal charges shall be billed quarterly for the quarters ending with the 20th days of December, March, June and September, and bills shall be due and payable thirty (30)

§ 175-127. Defective meter.

If for any cause any meter fails to register the amount of water passing through it, the property owner shall pay to the town for sewage disposal charges based on the average daily water consumption rate based upon the previous quarter, as recorded by the meter when in operating order. However, if the meter was not operating for the entirety of such previous quarter, or if during such previous quarter a less water intensive use was being made of the premises or if part of the time water was not used, such that water consumption would not be fairly representative,

then water consumption while the meter is defective shall be deemed that amount which the city may lawfully use in calculating amounts due from the town to the city for such sewer service.

§ 175-128. No meter.

Except as set forth hereafter, no property owner may utilize sewage disposal services via the facility during any period of time when a meter is not installed in compliance with § 175-123 above. If any property owner utilizes such services during a period of time when a meter is not installed, the amount of water consumed during such period of time shall be deemed to be that amount which the city may lawfully use in calculating amounts due from the town to the city for such sewer service.

§ 175-129. Automatic reduction in town business rate and new town business rate.

The town business rate and new town business rate shall change to, the basic rate plus ten percent (10%) thereof after expiration of the ten-year periods set forth in Paragraph 17(B) and (C) of the Municipal Sewage Disposal Agreement.

§ 175-130. Interim arrangements as to unmetered service.

Notwithstanding anything contained herein, until the Rutland Superior Court's temporary order dated October 27, 1988, in the case of City of Rutland v. Town of Rutland and Town of Rutland Fire District No. 1 is modified or superseded by a final order, the basic rate for unmetered users of sewer service flowing into the sewage disposal system of Town of Rutland Fire District No. 1 shall be calculated in accordance with Paragraph 2 of that order. A copy of the City of Rutland's schedule relating to unmetered city residents is attached hereto and incorporated by reference.

Until such time as the provisions in that paragraph are modified, amended or repealed by the Sewage Disposal Commissioners, pending a determination by the Court or arbitration, the property owners referred to in Paragraph 2 of the Court's Order shall not be required to install meters as a precondition for the utilization of sewer service, although they may do so at their option.

§ 175-131. Interpretation.

Subject to § 175-130 above, the application of the definitions and charges herein shall be consistent with the provisions of the Municipal Sewage Disposal Agreement and any amendments and any interpretations of said agreement by any arbitrator or court having jurisdiction.

§ 175-132. Sewage disposal charge to retire bonded Indebtedness incurred for construction of town sewer lines.

A. Each person making a connection to any town sewer line or to any sewer line discharging to a town sewer line shall first pay to the town a sewage disposal charge, calculated as follows, based upon the number of gallons which are estimated to be discharged from such person's property as a result of the connection:

- (1) Five dollars (\$5.) per gallon for each gallon up to fifty thousand (50,000) gallons.
- (2) Two dollars and fifty cents (\$2.50) per gallon for each gallon in excess of fifty thousand (50,000) gallons.

B. If such person making the connection has a sewer allocation permit issued pursuant to the Town of Rutland regulations relating to allocation of sewer capacity (Part 4 of this chapter) for the use to be serviced by such connection, then the number of gallons shall be based upon the amount approved for a sewer allocation to service such use prior to the effective date of such ordinance then the number of gallons shall be based upon such prior approval. Upon application, the Sewage Disposal Commissioners may base such sewage disposal charge upon a lesser number of gallons than the amount specified in such permit or approval, if such person can demonstrate that the proposed use will generate less flows than are set forth in such permit or approval, and such person waives any rights under such permit or approval to discharge sewage in excess of such lesser demonstrated flows.

C. All sewage disposal charges paid under this section shall be used solely to pay for construction of town sewer lines, existing or proposed and to pay principal and interest on sewage disposal bonds of the town.

§ 175-133. Severability.

If any provision or part of this Part 5 is deemed to be invalid or unenforceable by any court of competent jurisdiction, such determination shall not affect the validity or enforceability of any other provision or part of such sewage disposal charges.