

RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF WATER RESOURCES

**Response to Comments on Proposed Amendments to the
Rules Establishing Minimum Standards Relating to Location, Design, Construction and
Maintenance of Onsite Wastewater Treatment Systems
250-RICR-150-10-6**

November 3, 2021

The Rhode Island Department of Environmental Management has received comments on the proposed amendments to the “Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems,” also known as 250-RICR-150-10-6. Eight individuals or organizations submitted written comments during the public comment period from October 4, 2021 to November 3, 2021. Comments have been paraphrased and are presented below in the order of receipt, followed by DEM’s response. Copies of all comments are on file and available for public review at the RI Department of Environmental Management, 235 Promenade Street, Providence, RI 02908.

Comment: David Kalen

Commenter expressed support for proposed change to exempt Professional Engineers from testing and continuing education requirements to obtain and maintain a Class III Designer’s License. Commenter also expressed support for proposed change to exempt active Class I, II, and IV Licensed Designers from continuing education requirements after holding a license for 12 consecutive years.

Response:

No response necessary, no change to proposed rule in response to this comment.

Comment: Tom Principe

Commenter also expressed support for proposed change to exempt active Class I, II, and IV Licensed Designers from continuing education requirements after holding a license for 12 consecutive years.

Commenter expressed opposition to proposed change to exempt Professional Engineers from testing and continuing education requirements to obtain and maintain a Class III Designer’s License. Specifically, commenter stated there should still be a certification process to protect homeowner interests and to reduce potential review burden on DEM staff caused by poor application submittals.

Response:

The regulatory changes exempting Professional Engineers from testing and continuing education requirements to obtain and maintain a Class III Designer’s License were made to incorporate revisions made to R.I. Gen. Laws § 5-56.1-4 (Designers of Individual Sewage Disposal Systems- Conditions for obtaining a designer's license) by the R.I. General Assembly in the 2019 session. The change in statute states that professional engineers, registered and

authorized to practice engineering in Rhode Island, meet the minimum qualifications, experience, and education requirements for an OWTS designer's license. DEM does not have any discretion in making this change as it is required by the enabling legislation for designer licensing. In response to the point that there should still be a certification process, the legislation says that Professional Engineers have met the prerequisites for obtaining a license. They are still required to apply for and pay a fee to be granted a license. The Department retains its authority to suspend or rescind a designer's license under 6.13- *Disciplinary Action for Class I, II, III and IV Licensees*. Furthermore, application submittals that do not meet the OWTS rules will not be approved by DEM. The Department does not anticipate any significant increased burden to the permit review process to be caused by this proposed change. For these reasons, the Department will not make changes to the proposed rule in response to this comment.

Comment: Rhode Island Builders Association

Commenters expressed support for proposed change to exempt Professional Engineers from testing and continuing education requirements to obtain and maintain a Class III Designer's License. Commenters also expressed support for proposed change to exempt active Class I, II, and IV Licensed Designers from continuing education requirements after holding a license for 12 consecutive years. Commenters noted that under current rules the requirement to obtain 12 CEU credits every three years leads to designers retaking courses. Commenters expressed the opinion that design professionals who have been providing services for more than 12 years have attained more knowledge through work experience than through continuing education coursework.

Response:

No response necessary, no change to proposed rule in response to this comment.

Comment: Tom D'Angelo

Commenter expressed support for proposed change to exempt Professional Engineers from testing and continuing education requirements to obtain and maintain a Class III Designer's License. Commenter also expressed support for proposed change to exempt active Class I, II, and IV Licensed Designers from continuing education requirements after holding a license for 12 consecutive years. Commenter noted opinion that as new OWTS technologies are approved that education or vendor certification should be required by all designer classes.

Response:

The OWTS rules specify in 6.41(G)(3) that the Department may establish special conditions on OWTS technology approvals including a requirement for special qualifications for designers and installers. Designer and installer training, by the technology vendor, in the design and installation of new technologies is routinely required by the Department. No change to proposed rule in response to this comment.

Comment: James Boyd, RI CRMC

Commenter expressed opposition to proposed change to exempt active Class I, II, and IV Licensed Designers from continuing education requirements after holding a license for 12 consecutive years,

noting this change goes beyond the statutory language exempting PEs from testing and continuing education requirements. Commenter suggests continuing education is important to keep practitioners up to date on advanced OWTS technologies and changes in siting and operation of OWTS. Commenter also recommends that continuing education should be maintained and is important in the context of climate change impacts in the coastal regions, including changes to groundwater elevations and sea level rise inundation. Commenter suggests CRMC may file an objection to proposed sentence in 6.12(B)(3) exempting active licensees who have maintained their license for 12 consecutive years. CRMC would support the proposed rule language if this sentence were deleted in the final rule.

Response:

As noted above, the OWTS rules specify in 6.41(G)(3) that the Department may establish special conditions on OWTS technology approvals including a requirement for special qualifications for designers and installers. Designer and installer training, by the technology vendor, in the design and installation of new technologies is routinely required by the Department. Any future changes to OWTS design, installation, or operation requirements would be specified in the OWTS rules themselves. Licensed designers are responsible for designing OWTS and submitting applications that meet the requirements of the rules. OWTS applications that do not conform to the rules are not approved by DEM. While the issues raised by the commenters are important, the Department will continue to address them through the application review process. Climate change impacts present current and future challenges to effective onsite wastewater treatment, especially in the coastal zone. The Department may consider future rule changes to enhance treatment effectiveness and resiliency of OWTS but such changes are beyond the scope of the current rule revision.

Comment: George Loomis, URI, NE OWTC

Based on long experience with both technical aspects of OWTS design, installation, and operation as well as policy development and education, commenter expressed opposition to proposed change to exempt Professional Engineers from testing and continuing education requirements to obtain and maintain a Class III Designer's License. Commenter expressed opposition to proposed change to exempt active Class I, II, and IV Licensed Designers from continuing education requirements after holding a license for 12 consecutive years.

Commenter points out that onsite wastewater treatment system design is not a part of university engineering curricula. This leaves engineering program graduates to gain training from more senior colleagues in a workplace setting. As a result, more junior engineer's quality of training depends on the degree to which the more senior engineer has maintained up-to-date knowledge of the state of the science. Commenter suggests that both DEM and consumers expect quality work from licensed designers and that, over time, the quality of work will decline as a result of the proposed changes. Commenter suggests that if continuing education is no longer required, only "early adopters" within the profession will continue to come to classes. Conversely, the people most in need of additional training will no longer participate without a requirement to do so. Commenter suggests the 12-year threshold for exemption from continuing education is arbitrary and that the need to stay current with state of knowledge does not expire after 12 years of work in the industry as new research findings and innovations continue to occur. Overall, commenter suggests that adopting the proposed change will

be a disservice to the residents of Rhode Island and will set the industry back in its efforts to recruit new workers.

Response:

The regulatory changes exempting Professional Engineers from testing and continuing education requirements to obtain and maintain a Class III Designer's License were made to incorporate revisions made to R.I. Gen. Laws § 5-56.1-4 (Designers of Individual Sewage Disposal Systems- Conditions for obtaining a designer's license) by the R.I. General Assembly in the 2019 session. The change in statute states that professional engineers, registered and authorized to practice engineering in Rhode Island, meet the minimum qualifications, experience, and education requirements for an OWTS designer's license. DEM does not have any discretion in making this change as it is required by the enabling legislation for designer licensing.

Numerous OWTS professionals, including Professional Engineers, have been expressing to the DEM for many years that the continuing education requirements have proven to be burdensome and have over time provided diminishing returns for seasoned professionals. After evaluating this feedback the DEM is pursuing the proposed changes to the continuing education requirements to provide a healthy balance between meeting the needs of the OWTS professional community and at the same time ensuring that a baseline level of training is provided for all individuals entering the field. The existing mandatory continuing education requirements alone do not guarantee that OWTS professionals receive the correct amount or type of training needed to be successful. However, the available continuing educational opportunities do serve to augment on the job training and DEM oversight efforts by increasing the competency and effectiveness of the RI OWTS professional community.

Although required continuing education credits will phase out for professionals after 12 years of licensure, voluntary educational opportunities will continue to be encouraged and provided. The DEM regularly advertises available training opportunities as they become available on our DEM OWTS email list and plans to continue this effort going forward. The DEM has for many years and will continue to work closely with the New England Onsite Wastewater Training Program (NEOWTP) at the University of Rhode Island to modify existing courses and develop new course content that will assist the DEM to achieve its mission. The goal of this collaboration is to periodically reassess and provide new training opportunities that the OWTS professional community will desire. DEM staff actively communicate with NEOWTP staff multiple times each year by assisting with course instruction, attending training classes, and through membership on the newly formed NEOWTP Steering Committee. The purpose of the NEOWTP Steering Committee is to provide input, feedback, and suggestions that help guide the training program to address training needs.

To ensure that OWTS professionals receive the appropriate technology specific training a list of trained designers, installers, and service providers must be made available to the public and to the DEM by each Vendor that possesses an Advanced/Experimental Technology approval in RI.

DEM staff conducts periodic audits to verify that appropriate technology specific training has been provided to OWTS professionals.

The proposed rule changes were proposed as part of a formal public notice process which allows for the submission of public comments. The public notice was advertised via posting on the RI Secretary of State's website, directly through emails from the DEM to all major OWTS stakeholders, and where possible in face-to-face communications encouraging all major stakeholder groups to provide public comments on the proposed OWTS Rule amendments. The DEM does not agree that the TRC is the appropriate forum for evaluating OWTS Rule revisions. The role of the RIDEM alternative and experimental technology technical review committee (TRC) as established in OWTS Rule 6.41(G)(2), if requested by the DEM, is to review an alternative or experimental technology application and submit recommendations on the proposed alternative technology, alternative OWTS component, or experimental technology.

Licensed designers are responsible for designing OWTS and submitting applications that meet the requirements of the rules. OWTS applications that do not conform to the rules are not approved by DEM. New approaches to OWTS design, siting, and installation that provide material improvements to onsite wastewater treatment are and can be incorporated into the rules. An example is the 2018 rule amendment incorporating pressurized drainfield options into the rules. Under the proposed amendments, licensees would still be required to obtain continuing education credits for four license renewal cycles at the current rate of four per year. Licensees would still be required to be trained on new advanced treatment technologies by vendors regardless of their years of work experience. While the issues raised by the commenter are important, the Department expects it will be able to address application deficiencies through the application review process. The Department also retains its authority to suspend or rescind a designer's license under 6.13- *Disciplinary Action for Class I, II, III and IV Licensees*.

No change to proposed rule in response to this comment.

Comment: Tod Drake, Town of Portsmouth

Commenter expressed opposition to proposed change to exempt Professional Engineers from testing and continuing education requirements to obtain and maintain a Class III Designer's License. Commenter suggests that engineering education may not provide sufficient training in OWTS design and the specifics of approved OWTS technologies. Commenter suggests that designers of all experience levels make errors in design submittals and have certified poor quality installations. Commenter suggests that proposed changes should be reversed. Commenter suggests that licensees should be re-tested every three years and that an additional field installation training component be added.

Response:

The regulatory changes exempting Professional Engineers from testing and continuing education requirements to obtain and maintain a Class III Designer's License were made to incorporate revisions made to R.I. Gen. Laws § 5-56.1-4 (Designers of Individual Sewage Disposal Systems- Conditions for obtaining a designer's license) by the R.I. General Assembly in

the 2019 session. The change in statute states that professional engineers, registered and authorized to practice engineering in Rhode Island, meet the minimum qualifications, experience, and education requirements for an OWTS designer's license. DEM does not have any discretion in making this change as it is required by the enabling legislation for designer licensing. The errors in design submittals and incorrect installation certifications noted by the commenter have occurred under current rules and the Department anticipates being able to continue addressing such issues through the application review process. The proposal to require retesting for license renewal and include field training in OWTS installation for all licensees is beyond the scope of this proposed rule change.

Comment: Matthew Dowling, Town of Charlestown

Commenter expressed opposition to proposed change to exempt Professional Engineers from testing and continuing education requirements to obtain and maintain a Class III Designer's License. Commenter notes that engineers with no previous knowledge or specific training in designing of onsite wastewater treatment systems could pose an increased risk to water quality, could fail to provide property owners with effective system designs, and could imperil public opinion of the effectiveness of alternative and/or experimental systems.

Commenter expressed opposition to proposed change to exempt active Class I, II, and IV Licensed Designers from continuing education requirements after holding a license for 12 consecutive years. Commenter notes that OWTS industry is rapidly evolving and that continuing education is important to maintaining one's skills. Commenter suggests the 12-year threshold for exemption from continuing education is arbitrary. Commenter suggests this exemption will eventually lead to a group of design practitioners who produce substandard work to the detriment of public health and the environment and providing poor value to property owners.

Response:

The regulatory changes exempting Professional Engineers from testing and continuing education requirements to obtain and maintain a Class III Designer's License were made to incorporate revisions made to R.I. Gen. Laws § 5-56.1-4 (Designers of Individual Sewage Disposal Systems- Conditions for obtaining a designer's license) by the R.I. General Assembly in the 2019 session. The change in statute states that professional engineers, registered and authorized to practice engineering in Rhode Island, meet the minimum qualifications, experience, and education requirements for an OWTS designer's license. DEM does not have any discretion in making this change as it is required by the enabling legislation for designer licensing.

Licensed designers are responsible for designing OWTS and submitting applications that meet the requirements of the rules. OWTS applications that do not conform to the rules are not approved by DEM. New approaches to OWTS design, siting, and installation that provide material improvements to onsite wastewater treatment are and can be incorporated into the rules. An example is the 2018 rule amendment incorporating pressurized drainfield options into the rules. Under the proposed amendments, licensees would still be required to obtain continuing education credits for four license renewal cycles at the current rate of four per year.

Licensees would still be required to be trained on new advanced treatment technologies by vendors regardless of their years of work experience. While the issues raised by the commenter are important, the Department expects it will be able to address application deficiencies through the application review process. The Department also retains its authority to suspend or rescind a designer's license under 6.13- *Disciplinary Action for Class I, II, III and IV Licensees*.

No change to proposed rule in response to this comment.