

#### **4. Criterion 1(B) (Disposal of wastes)**

##### **I. Requirements for Issuance of Permit**

Criterion 1(B) requires that “the development or subdivision will meet any applicable health and environmental conservation department regulations regarding the disposal of wastes, and will not involve the injection of waste material or any harmful or toxic substances into groundwater or wells.” 10 V.S.A. § 6086(a)(1)(B).

##### **II. Burden of Proof**

The burden of proof is on the applicant. 10 V.S.A. § 6088(a). The applicant must present evidence sufficient to support a finding that the development will not result in undue water pollution, and meets applicable regulations.

##### **III. Analysis**

###### **Presumptions**

The following permits and approvals create a rebuttable presumption that the part of the project covered by the project or approval will not cause undue water pollution:

1. A potable water supply and wastewater system.
2. An individual discharge permit, an approval to operate under a general discharge permit, or a discharge permit for a wastewater treatment facility owned or controlled by the applicant and to be used by the project.
3. A certification of compliance that the project's use of a sewage treatment facility not owned or controlled by the applicant complies with the permit issued for that facility.
4. A sewer line extension permit.
5. An underground injection permit for the discharge of non-sanitary waste.
6. A solid waste or hazardous waste certification.
7. An underground storage tank permit with regard solely to the substance to be stored in the underground storage.

NRB Act 250 Rule 19(E)(1).

### **Substantial Deference to ANR Technical Determinations.**

The Commission is required to give substantial deference to any technical determination ANR makes in issuing any permit or approval entitled to a presumption under Rule 19(E). 10 V.S.A. § 6086(d). This shifts the burden to the party opponent to prove, by clear and convincing evidence, that the technical determination is incorrect. *See Criterion 1(air) flow chart for order of analysis.*

### **“[A]pplicable health and environmental conservation department regulations”**

May include the following:

1. Vermont Water Quality Standards
2. Potable Water Supply and Wastewater Rules
3. Environmental Protection Rules
4. Groundwater Protection Rules
5. Indirect Discharge Rules

If the applicable DEC or Health regulations require a certain permit or approval prior to construction, the Act 250 process may precede the other required permit or approval. If an Act 250 applicant has not yet obtained the other required permit or approval, the applicant must prove substantive compliance with the applicable regulations before an Act 250 permit can be issued. This would necessarily include proof that the needed permits will be obtained prior to construction or operation, as required. As a practical matter, it may be advisable for the applicant to obtain other necessary permits and approvals before proceeding under Act 250.

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