



For a thriving New England

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September 7, 2016

Neil Kamman
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Monitoring, Assessment and Planning Program
Watershed Management Division
VT Dept. of Environmental Conservation
1 National Life Drive, Main 2
Montpelier, VT 05620-3520

Sent via email: neil.kamman@vermont.gov

Re: Comments on proposed changes to the Vermont Water Quality Standards and antidegradation policy

Dear Neil,

Thank you for the opportunity to comment on the proposed amendments to the Vermont Water Quality Standards (VWQS) and, in particular, the proposed changes to the antidegradation policy. CLF appreciates the extensive outreach you have undertaken during this rulemaking process.

The goal of the antidegradation policy is “the maintenance and protection of water quality, and existing and designated uses.”¹ This strong environmental mandate is crucial to strengthening Vermont’s resilience to the mounting challenges of climate change, safeguarding public health, and supporting a clean water economy.

It is our understanding the Department of Environmental Conservation (DEC) has proposed amendments to the antidegradation policy because the current language is “so expansive as to be unworkable.”² At the same time, DEC has reiterated that it is not the intent of the proposed changes to weaken the VWQS. In order to narrow the antidegradation policy while also maintaining the strength of the water quality standards, DEC has made a trade-off.

¹ Interim Anti-Degradation Implementation Procedure, (October 2010), pg. 1.

² Letter from Neil Kamman to VNRC, LCI, CLF, and TRORC (August 12, 2016).

On one hand, DEC proposes to weaken the standard for lowering water quality by limiting the scope of adverse social and economic impact. By confining the impact to the “area where the waters are located,” a statewide impact is no longer necessary to justify a lowering of water quality. On the other hand, DEC points out that the new classification structure, which has created an intermediate B(1) class “floor,” reduces the amount of lowering that could be authorized, in the event that a Class B(1) level use is designated or existing.³

It is our interpretation that DEC feels the water quality standards will not be weakened overall by the proposed changes because, while the standard to allow degradation (the SEJ test) is weakened, the amount of degradation that could possibly occur is perhaps limited. This is an unacceptable trade-off. CLF is opposed to any changes that would facilitate the lowering of water quality.

We are particularly concerned with the language reflected in the draft rule on stormwater management, which emphasizes the socioeconomic effect of requiring certain practices.⁴ It is unclear why the State has chosen to emphasize a cost-benefit analysis in the antidegradation section of the stormwater rule. Cost should not justify implementing poorer performing practices.

Further, with the potentially weaker antidegradation standard, would the State allow a lowering of water quality because the socioeconomic impact of requiring certain stormwater treatment practices is too onerous? This would be a perverse interpretation of antidegradation. Additionally, at least for pollution sources regulated by National Pollution Discharge Elimination (NPDES) permits, allowance of this type of socioeconomic analysis is not authorized by the Clean Water Act.⁵

CLF agrees with VNRC, CRWC, and other advocates that it is difficult to fully understand the implications of the proposed changes without seeing the antidegradation rule. DEC is asking the public to comment on changes in the absence of defining key terms and without detailing the broader context. CLF recommends the proposed changes to antidegradation be withdrawn until DEC proposes the antidegradation implementation rule.

Thank you for the opportunity to comment.

³ *Id.*

⁴ 2017 Vermont Stormwater Management Manual Rule, (August 30, 2016) pg. 1-2.

⁵ CWA § 301(b)(1)(C); See, e.g., *In re City of Moscow, Idaho*, 10 E.A.D. 135, 168 (EAB 2001) (“[S]ection 301(b)(1)(C) of the Clean Water Act requires unequivocal compliance with applicable water quality standards, and does not recognize an exception for cost or technological infeasibility.”).



Sincerely,

A handwritten signature in black ink, appearing to read "Rebeka", with a horizontal line extending to the right.

Rebekah Weber
Lake Champlain Lakekeeper
Conservation Law Foundation