

Neil C. Kamman, Manager  
Monitoring, Assessment and Planning Program  
1 National Life Dr., Main 2  
Montpelier, VT 05620-3522

September 6, 2016

Dear Mr. Kamman:

The Connecticut River Watershed Council (CRWC) is a not for profit membership public interest organization founded in 1952 that has an interest in protecting environmental values that directly and indirectly support the State, regional, and local economies and the quality of life offered by the Connecticut River and its tributaries.

The interests represented by CRWC are: improving water quality; enhancing habitat for fish and other aquatic biota; safeguarding and improving wildlife habitat; protecting threatened and endangered species; protecting wetlands; preserving undeveloped shore lands; enhancing public recreation and promoting recreational safety; and maintaining any energy benefits that may exist at hydroelectric projects in the Connecticut River watershed.

### **General**

Our first comment goes to our specific responsibility to protect the Connecticut River. We would like to thank you for holding one hearing in the Connecticut River Watershed. The Water Quality Standards (WQS) are of import to all users of Vermont waters. As you know the Council works in all four watershed states and has a key priority to improve the water quality standards and criteria in all four states so that the entire watershed has both ambitious and consistent goals and requirements for the public's water. We appreciate Vermont's leadership in developing standards, criteria, and classifications that have strong basis in not only the chemical and physical characteristics, and the biology of healthy waters.

### **Definitions**

(31) and (35) remove "but not limited to."

(49) refers to class B waters, if that means both B1 and B2 it should say so. This use of B not B1 and B2 occurs in several sections of the rule so however this reference is intended, its use should be consistent throughout the rule. CRWC feels the agency should delineate B1 and B2 in all cases where B is now used.

### **§ 29A-101 Applicability**

- (a) CRWC feels it is important that the agency make it clear that this language does not limit in any way the aspirational aspect of the WQS and does not limit the attainment requirement for all uses to their highest level.
- (b) CRWC understands that the federal law has exemptions relative to the definition of "waters" but that need not necessarily apply to Vermont waters since Vermont may have stricter standards and broader definitions than the federal. This language should not limit Vermont in recognizing wetlands that the federal government does not. Vermont could, and we feel should recognize detached waters and intermittent streams as waters of Vermont.

### **§ 29A-203 Nonpoint Source Pollution**

- (a) Policy, remove the "but not limited to..."

## **§ 29A-104 Classification of Water Uses**

(d) This subsection enumerating the designated uses does not incorporate the aspirational nature of the designated uses of the WQS. The language states the use in the active present tense. As an example (1) says, “that utilize or are present in the waters”;

CRWC feels that the statement should say, “*that do, or may, utilize or have been present in the waters.*” CRWC feels that because an aquatic species is absent does not mean that it was never present or in fact would be present except for natural or human intervention. Without regulatory recognition, here of the potential for our waters, we are not meeting the “protect, enhance, and restore” standard of the federal Clean Water Act and our own standard of “protect, maintain, and improve water quality.”

It is of some import what the agency means where the rule says, “The use...” The agency should signal that there is a clear understanding that use does not mean only present provable documented use but also the potential use of those waters for any of the designated uses.

## **§ 29A-105 Antidegradation Policy**

(2) (C) CRWC is concerned about the change in the standards that brings the evaluation area of impact to the local area. The proposed rule says, “adverse economic or social impacts on the people of the State in the area in which the waters are located;”

CRWC has two concerns about this wording. It could limit participation of public trust interests outside the immediate geographic area when the proposed degradation would take place. Potentially a fisher from down state impacted financially could not weigh in because the rule limits impacts to the local area.

The other concern is that social and financial impacts are relative. When considered only in the local area an impact of X dollars might seem substantial but when compared to the entire state would not really be substantial and not justify a reduction in water quality. CRWC feels that the rule should measure the impact against the entire population/economy/land area of the state and unless it is substantial in those terms, the degradation should not meet the antidegradation test.

The agency should delete “in the area in which the waters are located” and return to “*the people of the state.*”

It is difficult to feel comfortable commenting definitively on this section of the draft WQS even with our suggested rewritten language because the antidegradation rule is not available for review. Full disclosure in this particular discussion requires that we have the opportunity to review the antidegradation rule alongside this WQS language.

## **§ 29A-105 (3)**

CRWC feels the agency should rewrite this paragraph. CRWC believes the agency knows what they mean but there are several possible interpretations of what that language says and we think none

of them bode well for water quality in VT. By that, we mean that the rule does not identify who devises the alternatives and by that action controls the first major step in determining eligibility for and the level of degradation of our waters. Knowing in the rule who that entity is seems central to protecting our waters. Next, who selects and presents the alternative to the Secretary?

Our alternative language would be:

(3) The analysis of alternatives required under subdivision (c)(2)(B) of this subsection *shall be performed according to procedure promulgated by the Secretary and will* evaluate a range of practicable alternatives that would prevent or lessen the degradation associated with the proposed activity. When the analysis identifies one or more practicable alternatives, the Secretary shall *select the alternative that has the least impact on the waters of Vermont and only allow a minimum* lowering of *water quality* if necessary for the alternative selected for implementation.

If the agency controls these steps in the process then the rule should say so. If the Secretary does not control these steps then this section of the rule § 29A-105 Antidegradation Policy should be rewritten with full stakeholder participation.

#### **§ 29A-106 Discharge Policy**

(a) Discharge Criteria

(2) The rule should either define or replace the word unreasonable with a less subjective word.

(9) The rule should either define or replace the word negligible with a less subjective word.

#### **§ 29A-302 Criteria Applicable to Waters Based upon Fish Habitat Designation, Use Classification, or Type of Body of Water**

(1) Temperature

CRWC remains concerned that the thermal variance language is not protective enough of Vermont waters. We would like to suggest that DEC add two new subsections after the existing 3 subsections. The existing language says,

§ 29A-302 (D) Assimilation of Thermal Wastes.

The Secretary may, by permit condition, specify temperature limits that exceed the values specified above in order to authorize discharges of thermal wastes when it is shown that:

- (1) The discharge will comply with all other applicable provisions of these rules;
- (2) A mixing zone of 200 feet in length is not adequate to provide for assimilation of the thermal waste;
- (3) After taking into account the interaction of thermal effects and other wastes, that change or rate of change in temperature will not result in thermal shock or prevent the full support of uses of the receiving waters;

CRWC would add the following language:

- (4) *The owner or operator of any source seeking a thermal variance, can demonstrate that any effluent limitation proposed for the control of the thermal component of any discharge from such source requires thermal effluent limitations more stringent than necessary to assure the*

- protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made, and;*
- (5) *Any permit conditions with respect to the thermal component of the discharge (taking into account the interaction of such thermal component with other pollutants), will assure, the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on that body of water, notwithstanding any variance that exceeds the values specified above.*

Short of adopting our suggested language, we would request that the agency undertake the rewriting of this entire thermal section so that it explicitly includes biological integrity, not by inference as in (1) but in clear language in this thermal section.

CRWC thanks the Department of Environmental conservation for the opportunity to comment on the draft Water Quality Standards. CRWC applauds the overall strong protections these Standards offer to Vermont waters and hopes our suggestions will make them even stronger in protecting the waters of the Connecticut River Watershed.

Sincerely

A handwritten signature in cursive script, appearing to read "David L. Deen".

David L Deen Upper Valley River Steward