



Lamoille County Planning Commission

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January 17, 2014

Kari Dolan, Manager, Ecosystem Restoration Program
Department of Environmental Conservation Watershed Management Division
1 National Life Drive, Main 2
Montpelier, VT 05620-3522

Re: *Draft State of Vermont Proposal for a Clean Lake Champlain*

Dear Ms. Dolan,

Lamoille County is the heart of recreational Vermont. Snow-based activities and our rivers, lakes, and forests draw visitors from across Vermont and the Northeast. Seasonal visitors and second homeowners enrich our economy, our culture, and our communities.

Local communities, including road crews, planning commissions, and legislative bodies, have been working together to protect water quality. Jeffersonville Village has developed a flood model to assist it with identifying stream protection and flood damage reduction strategies and is in the process of completing a floodplain buyout. The Brewster River Uplands Trust in Cambridge has protected a significant quantity of headwaters and uplands forest. Stowe Town adopted the state's first-ever Fluvial Erosion Hazard Overlay District. Morristown's Zoning and Subdivision Bylaws address projects that are below the state stormwater permit threshold and offers a rooftop runoff incentive based on the State credit system. Our communities understand the connection between healthy waters and healthy communities and actively work to protect water quality.

The Lamoille County Planning Commission's (LCPC) Board of Directors represents the 15 municipalities in Lamoille County. The Board includes municipally-appointed representatives and elected at-large members representing county-wide interests. LCPC offers the following comments on behalf of Lamoille County:

If implemented, the Plan could bankrupt municipalities.

- The Plan does not use a cleanup approach that is financially proportional to the phosphorus problem. While local roads are believed to contribute only 11% of the phosphorus in the Vermont portion of the Lake Champlain Basin, the Plan imposes a disproportionate cost to municipalities by requiring use of the State's 2013 Town Road and Bridge Standards. Hyde Park, for example, projected that its calcium chloride dust control budget would dramatically increase from its current annual amount of \$25,000 (equal to 500 gallons per mile) if

chemical manufacturers' recommendations for a minimum of 2,000 gallons per lane mile were required.

- Some municipalities have chosen not to adopt the 2013 Standards due to fiscal constraints as they have reached their taxing ability. When towns updated their 2001 Road Standards to the 2011 Road Standard, ditching 500 feet of roadway with 200 feet of steep grade >5%, and ¼-acre of disturbed land *doubled in cost* from \$4,800 to \$9,800. The 2013 Road Standard will increase that cost again.
- The attached letters from municipalities provide additional examples related to this issue.

The Plan should prioritize phosphorus loading problems and solutions.

- The State's presentation graph depicting the sources of phosphorus in the Vermont portion of the Lake Champlain Basin indicates that cropland, streambanks, and developed lands contribute nearly 71% of the phosphorus. The State should target these areas for improvement before addressing the lesser sources of phosphorus. Cropland should be the highest priority source for reduction given its disproportional impact (33%).
- The State has funded river assessments and other studies that identify problematic areas where transportation infrastructure conflicts with river movement and creates or contributes to unstable streams. Targeting these areas for improvements will provide more reasonable assurance of phosphorus reductions than creating a new highway permitting system that the State cannot enforce.
- Not all road ditches enter perennial streams. Targeting roads that discharge large volumes of water into rivers and streams may provide the most benefit without the need for blanket permits.
- Wastewater plants that do not meet current standards should be a priority for reductions.

The Plan does not truly commit the State itself as a partner in long-term phosphorus reduction.

- The Plan appears to place the majority of responsibility for urban phosphorus reduction on municipal stormwater systems with the State playing an educational and incentive role.
- Tying private land surfaces to a municipal stormwater system permit is not fully practical; not all towns have or want to use zoning as a tool to direct development. If the State prefers to direct development in that way, it would be more effective for the State to augment its own stormwater regulations to address the ineffectiveness of the State stormwater permit system in preventing slow degradation of surface waters, or for the State to develop statewide zoning.
- The State has the broadest power for reducing stormwater runoff through its stormwater permitting program. The Plan recognizes the ineffectiveness of the State Stormwater Manual in enabling green infrastructure use. It does not commit the State to upgrading its program by requiring green infrastructure practices that reduce stormwater runoff and retain stormwater and phosphorus on site.

The Plan does not consider Vermont's ability to pay for - and therefore actually achieve - long-term phosphorus reduction.

- Identifying affordable Best Management Practices (BMPs) is critical. Certain highway BMPs, such as stone lining ditches, may temporarily solve or prevent erosion problems. They do not provide long-term solutions. Maintenance is prohibitively expensive, and

budget and taxing limitations make it unlikely that municipalities can afford to provide the on-going maintenance necessary to retain the phosphorus reduction gains.

- Many of the State's proposed activities require municipalities and businesses to do more than what is normal in the course of business. New resources must be provided to fill the expected gap in funding. One-time installation funds, which often come as grants, will not provide reasonable assurance of long-term reductions.
- The State's grant programs for capital projects should be ranked on impact to streams. Municipalities cannot afford the high cost of upgrading all town roads at once, and agricultural businesses cannot afford large capital costs that do not produce a cash return on investment.
- State programs that can document existing funds are fully utilized and can sustain results should be priorities for receiving additional funds.
- Offset programs or impact fees, especially for stormwater, may be considered as a potential funding mechanism. If they are, both the benefits *and capital needs* of implementing these types of programs should be studied prior to program establishment.
- Any offsets payments and fees should be retained for use in the watershed in which they are generated to prevent degradation of lesser impacted watersheds. While priorities for addressing problems must be established, those actions must not result in allowing less impacted waters to become more degraded.

We appreciate the opportunity to provide comment on this important issue. We look forward to following the progression of the TMDL in protecting water quality in Vermont's lakes.

If you have any questions, please feel free to contact me at 888-4548 or bonnie@lpcvt.org.

Sincerely,



Bonnie Waninger
Executive Director

Attachments: Verbal, email, and letters of comments from Lamoille County municipalities

cc: Lamoille County Legislators
Selectboard Chairs and Trustee Presidents
Planning Commission Chairs
Conservation Commission Chairs

State of Vermont Proposal for a Clean Lake Champlain Lamoille County Municipal Comments

Belinda Clegg, Wolcott Selectboard Chair (letter)

Eden Selectboard (letter)

Dan Lindley, Morristown Town Administrator (verbal)

Instead of permitting all municipal roads, DEC should identify and target specific problem areas. For instance, address roads along rivers rather than mountainous roads because ditch turnouts can be used to disperse road-related sediment for mountainous roads.

Todd Thomas, Morristown Planning Director (letter)

Duncan Hastings, Johnson Town and Village Manager (verbal, then follow-up letter)

For a Village perspective:

- Johnson's wastewater treatment plant exceeds (in a good way) current requirements and any new requirements that he's heard DEC talk about. They are at .8% for phosphorus; current limit is 2% and he's heard DEC wanted 1%. Since the wastewater phosphorus load for Lake Champlain's problem is only 3% of the problem, his recommendation is to only target those WWT plants that don't meet the requirements.

From a Town perspective:

- Riprap and stone line ditches don't work that well as BMPs. Yes, they trap sediment but you have to clean the ditch and replace the riprap every ~5 years so on-going maintenance costs are unsustainable. Town's won't likely do it, even if required by permit. They will wait for an enforcement action, which usually begins with a warning and request to do the work. Finding BMPs that have affordable maintenance costs for towns would better address the problem.
- Not all road ditches enter perennial streams. Targeting the roads that discharge large volumes of water into rivers and streams would better address the problem.
- Not all water in town ditches comes from the road; it comes from adjacent land uses. If DEC were serious about ditch runoff, they'd be looking at adjacent land uses and their associated runoff to reduce source reduction. He wondered if DEC is trying to force towns to deal with sediment from land uses that DEC can't address (ag lands).
- For stormwater, tying private land surfaces to municipal stormwater permit is not practical; not all towns have or want zoning to direct development. If the state wants to direct development in that way, it can augment its stormwater regulations or provide for statewide zoning.
- Permitting without enforcement doesn't get us anywhere, and proposing a new permit program for municipal roads isn't likely to address the problem unless it is accompanied by resources for inspectors.

Ron Rodjenski, Hyde Park Town Administrator (verbal then two emails)

#1 - Why not prioritize like this - farms first, then reassess phosphorus loading to see if there is a need for everyone else to do more than possibly follow new BMPs. Also, if farmer's need funding to comply, assess everyone to support a 50% grant program to get the work done asap (the idea being that farms first results in no significant changes or new mandates to others - municipalities, state, commercial or residential uses).

This new effort seems excessive given the reducing levels of phosphorus since detergent laws went in effect, and avoiding the "farm and storm-erosion" as those two are the REAL reason for a new TMDL. If farm and erosion were addressed first, then the overall costs for implementing all of these goals would be reduced. The feds only want reasonable assurance to reach new TMDL, not all inclusive multi-agency attack on phosphorus loading from all sources.

What are the sources for phosphorus? If less than 6% is from wastewater, then 94% is from non-point (<http://www.emcenter.org/wp-content/uploads/2013/02/Agriculture-Phosphorus-and-Water-Quality-in-Vermont.pdf>). So, if you look at the Missisquoi study to break up the 94%, and in a slide in the above web reference, you can see the need to focus on AG and Erosion over any other activity (70% of the cause from AG and Erosion - compared to the remaining 30% which is from urban runoff and forest runoff). I'm not suggesting ignoring all municipal, state and commercial/res impacts, just focusing financial resources there first in a multi-year plan.

RE: Offset payments - this would seem to be similar to an impact fee - like some towns have for schools or roads under 24 VSA 5200. Is that the concept for stormwater offsets - when a municipality will be responsible for accepting project-related stormwater (because the project cannot handle 100% on-site)? If so, the capital cost analysis to support the fee could be prohibitive without grants.

I have no significant problem with new BMP's that are close to the Town and Bridge Standards (any version, including 2013's)

To attain reasonable assurance, it would seem enforcement investment is really the missing link. Education and new rules are fine, but without more funding of programs like Better Back Roads to get work done, it would seem likely to not pass the reasonable assurance test. One projection was that Hyde Park's summer dust control budget would need to double from \$25,000 to \$50,000 per year to get to the minimum of 1,000 gallons of chloride per mile (we are now at 500). However, the prioritization for local capital projects would best be ranked on impact to streams due to the high cost to upgrade all town roads at once (25 foot buffer on road cutouts, for example, may seem simple, but it does require acquisition of stormwater rights from private landowners - not always an easy task. Will the state law provide for an easy way to condemn land for stormwater cutouts along town highways??)

#2 - Calculate the existing TMDL of a municipality (private and public lands) - similar to wastewater treatment plants. Already regulated activities would not be included in this calculation. This would require the State to set an accepted TMDL contribution level at the point(s) water leaves the municipality and provide incentives to reduce, if necessary.

Harry Shepard, Stowe Public Works Director (two emails)

#1 - I cannot afford the time to do this topic justice but offer the following quick instinctive reactions and comments;

1. I wonder if the goals/mandate for P reduction is being used for other purposes, particularly with regards to erosion and sedimentation. I am not convinced the amounts of P being claimed as sourced from gravel roads and stream banks are accurate.
2. I wonder if the current and projected concentrations of P rise to the level of being a Public Health and Safety concern and how much is naturally occurring.
3. I wonder if preventing stream bank erosion conflicts with other floodplain management regulations, policies and goals.
4. Most importantly, at the public discussion I attended in Montpelier, it was stated that Phase 1 of this process was to establish a TMDL program with EPA and Phase 2 will be to figure out how to pay for it. I worry that this will not be fully funded from above. We have so many current needs at the local level with our existing aged and deteriorating infrastructure that lack funding. No cost/benefit analysis? No prioritization? Will the end justify the means? More unfunded mandates will be piling on.

I wish I could do a better job with this but to be honest, given where we landed with the previous efforts by many at the local level in reviewing and commenting on the proposed revisions to the Road and Bridge Standards, the cost/benefit of spending more time cannot be justified. I suspect our fate is at the bottom of the scrum.

#2 - Regarding cost estimates for compliance with the proposed Road and Bridge Standards I offer this; in my mind, one of the more significant requirements in the proposed standards from a cost perspective is compliance with the Stream Alteration Permit requirements. This requires natural bottoms that span the nominal full bank channel width. I understand this for bridges with larger watersheds. However, the watershed size threshold for a Stream Alteration permit has crept over the years from 10 sq. mi to 0.25 sq mi, creating these requirements for larger culverts. We completed a challenging culvert replacement project this fall for \$20K+/- . Although not formally evaluated, we did think some about what this project might cost for full compliance to the proposed standards. My estimate is that it would approach 6 figures. Also, we would still be dancing with consultants and permit agents and my concern this spring would have been that the folks on the other side of this dead end road “would not be able to get there from here”.

**TOWN OF WOLCOTT
PO BOX 100
WOLCOTT, VT 05680
802 888-2746**

January 16, 2014

LCPC
PO Box 1637
Morrisville, VT 05661
Attn: Taylar Foster

Dear Taylar,

The Town of Wolcott has grave concerns over the States proposal for a clean Lake Champlain. Although we sympathize and agree with the state that measures need to be taken to clean up Lake Champlain, we do not feel that the small town of Wolcott has significantly contributed to its current problems. For example, Wolcott might contribute 1% to the watershed but face the same compliance costs (required to follow roadway best practices) that large contributors must follow. Sort of like a wastewater treatment being allowed to send so much phosphorus to the river, then could the town as a whole be evaluated to determine the level of its contribution (either a low or high responsibility to assist in the clean up).

It will be interesting to see if the Agency of Natural Resources or legislature can work on a tiered approach as municipals contribute less than 6% of the source of the problem (over 60% coming from agriculture and stream bank & forest erosion- some even caused by Mother nature).

Lastly as other towns have mentioned, the burden to the taxpayer is already overwhelming and the small town of Wolcott's Highway Budget is already over a half million dollars. Would the state be able to contribute more money to the town's annual highway funds it receives from the state?

In closing we would like to say that we hope that the State takes a second look at this proposal and reconsider the impact this mandate will have on all municipalities.

We are all struggling with our need for better infrastructure and taxpayers ability to pay.

Sincerely,

Belinda Clegg
Selectboard Chair

EDEN TOWN CLERK'S OFFICE

71 OLD SCHOOLHOUSE ROAD
EDEN MILLS, VERMONT 05653
PHONE (802)635-2528 FAX (802)635-1724
Email: cvear@edenvt.myfairpoint.org

Lamoille County Planning Commission
P.O. Box 1637
52 Portland Street
Morrisville, VT 05661

Re: Comments on the proposed regulations regarding the Clean Water Act and watershed management

To whom it may concern:

The State of Vermont is working to adopt increasingly stringent regulations regarding water quality to comply with the mandates specified by the Clean Water Act and EPA. Maintaining control of this matter within the state is obviously advantageous and the hard work of those people that have been instrumental in this regard is to be commended.

There is however one insurmountable hurdle in this mission that would make these new mandates actually possible and that is FUNDING!

Towns have increasingly taken on financial responsibilities in conforming to State regulations that are funded with property taxes. **The people of Eden simply cannot afford any additional tax burden.**

The areas that have been identified in the town that need attention related to the Clean Water Act reducing stream sediment are 5 structures; 2 on the White Branch, one on the Wild Branch and 2 on the Gihon River. At an estimated replacement cost of at least \$500,000.00 EACH, this alone is beyond the town's means. Interestingly enough, these 3 bodies of water are not identified at all in the 2008 List of Waters as needing remediation.

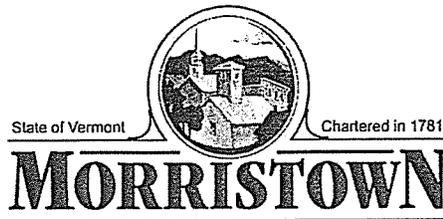
We are in the midst of working to replace one of these structures because it failed in a flood event and was damaged. Another structure showed significant signs of failure in the fall of 2013 and has been temporarily repaired. Both failing structures have been identified by the *Lamoille Sub-Watershed Restoration Project* but are classified as low to medium priority. The Town of Eden absolutely must replace our failing structures first!

Additional mandates applied to the towns are simply not possible to follow if there is no financial assistance.

Sincerely,

Eden Selectboard

Ricky Morin, Chair
Harold Morse
Leslie White



Planning Director
PO Box 748
Morrisville, VT 05661

(802) 888-6373
Fax: (802) 888-6377

January 2, 2014

Lamoille County Planning Commission
P.O. Box 1637 / 52 Portland Street
Morrisville, VT 05661
Attn: Taylar Foster, Regional Planner

RE: Morrystown Comments on "State of Vermont Proposal for a Clean Lake Champlain"

Dear Taylar,

Thank you for your letter dated December 16, 2013 requesting comments from Lamoille County municipalities regarding the "State of Vermont Proposal for a Clean Lake Champlain" (referred to hereafter as "the Proposal"). Morrystown supports efforts to safeguard and protect Vermont's environment. However, Morrystown cannot support the Proposal in its current form because it puts too great of a burden, especially financially, on our municipal budget.

Specifically, Morrystown is opposed to the requirement in the Proposal that requires State stormwater permitting for all municipal roads. Page 15 of the Proposal calls for stormwater BMPs for municipal roads that "shall be as protective as those identified in the Town Road and Bridge Standards." As LCPC is aware, Morrystown is adamantly opposed to the Town Road and Bridge Standards in their current form. The requirements in these standards are unaffordable and cut at the heart of what we all want rural Vermont to look like. If the Proposal moves forward requiring that Town Road and Bridge Standards to be adopted, county roads in Morrystown, and elsewhere in Vermont, will end up looking very industrial, with exorbitantly expensive processed gravel-lined drainage ditches and guardrails at every hill and turn along the road.

Morrystown's opposition to the Proposal is not solely based on aesthetics and the unintended detrimental visual impacts such a policy will have on our country roads. Our opposition is founded on the enormous financial impact that this policy will have on our citizens and taxpayers. As we have noted before, the recently promulgated Town Road and Bridge Standards create a huge unfunded mandate that we believe no town in Vermont can meet. While Morrystown agrees that the 11% of the total phosphorus load in Lake Champlain resulting from unpaved town roads should be addressed, the solution must be proportional to the problem. Morrystown believes that the Proposal relies much too heavily on remaking the historic maintenance and construction of Vermont's rural roads and is blind to the catastrophic cost to do so required by the Town Road and Bridge Standards. We ask that LCPC help its member municipalities call attention to the fact that the Proposal, although well intentioned, could bankrupt towns in Lamoille County and countless communities across the State. It is extremely important to Morrystown that we protect the lake, but to avoid doing so on the backs of our taxpayers by asking them

to fund a road standard that that they neither want nor can afford. The only mechanism that towns could use to fund the tremendously expensive roads that Town Road and Bridge Standards call for is the property tax and there is no room in the property tax for these kinds of expenses.

We very much appreciate LCPC's assistance as we work towards a cleaner Lake Champlain and a more balanced policy of how we will all attain this goal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Todd Thomas', with a long horizontal flourish extending to the right.

Todd Thomas, AICP
Planning Director

CC: LCPC Morristown & Morrisville representatives (Tricia Follert, Ron Stancliff & Ed Debor)

JOHNSON MUNICIPAL OFFICES

Municipal Manager

Duncan Hastings

P.O. Box 383

Johnson, Vt. 05656 802-635-2611

Fax 802-635-2393

To: Taylar Foster, Planner LCPC
From: Duncan Hastings, Municipal Manager
Re: TMDL Rules
Date: 1/7/14

Dear Taylar,

I am in receipt of the letter from Morristown regarding their concerns over proposed rules for to address phosphorus and sediment loading of Lake Champlain and tributaries. The Town and Village of Johnson share great concern over this proposal and we support their letter, which outlines some of the issues.

The study itself recognizes that even if there was a 100% reduction in loading from highway and WWTF sources, it would not be enough to cure the issues with Lake Champlain.

Non-point source pollution is the elephant in the room that no one wants to tackle as it involves forest and farmland uses. Now, I am a native Vermonter whose roots in the state go back many generations and I do not want to see harm come to these important sectors of our economy and our heritage either. However, there can be no question that the land use adjacent to our highways and storm water systems contribute greatly to point source pollution. We do not have control over those land uses when it comes to farm and forest land, yet we are being asked to shoulder the financial burden of removing those sediments and phosphorus from the water ways. How is that fair or even practical?

We also object to the back door approach of imposing the Highway and Bridge Standards on towns and of even considering a storm-water permitting process linked to Best Management Practices, as promulgated by ANR. As you know, Johnson is also on record as being opposed to the recently amended Highway and Bridge Standards and concurs with Morristown's assessment of the visual and financial impact that their adoption and application will have on our rural roads.

Our rural roads are also very much related to the working rural landscape that is so attractive to our out of state visitors and is therefore also worthy of protection and the financial support of state government, if they deem it necessary to impose unfunded mandates in the form of regulation and standards.

State government has a long tradition of promulgating rules and regulations, with significant cost implications with little or no funding or a carrot and stick approach for implementation. In the end there is only one place for towns to acquire the funds for implementation of state wide goals; the local taxpayer or ratepayer. We are at the wall for raising local taxes and water and sewer rates. We cannot bear additional costs of state mandated programs. It has to stop somewhere.

If the state truly believes these mandates are appropriate and will be effective I would propose that we simply deed over all our town highways and bridges to VTRANS

and then state can then control every activity that takes place on those highways, at their cost.

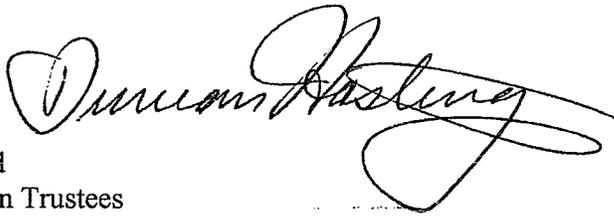
As for the new rules for the WWTF, at present the VOJ WWTF will be able to meet the new standard for phosphorus removal. However there are communities that will not be able to. Again, this will present a huge financial burden to upgrade plants to meet the standard, for very questionable benefit. Does anyone do cost benefit analysis for these impacts?

I wish to be clear that we take seriously the issue of water quality and are not opposed to reasonable techniques and practices to improve water quality. The Village WWTF has won numerous State and EPA Awards for excellence in operations. The water discharged back to the Gihon River is of significantly better quality than the receiving waters themselves.

The Town of Johnson has received numerous Better Backroads Grants and VTRANS Structures Grants aimed at erosion control and improved storm-water collection and discharge. We have undertaken improved practices for ditching and culvert installation. We have done this on our own and in a way that is cost effective and appropriate for our community and the needs of our taxpayers. We do not believe this added layer of mandates is warranted, needed nor can it be supported/funded by our taxpayers.

Sincerely,

Duncan Hastings

A handwritten signature in cursive script, appearing to read "Duncan Hastings". The signature is written in black ink and is positioned to the right of the typed name "Duncan Hastings".

cc:

Town Selectboard

Village of Johnson Trustees

VOJ Public Works Department Heads

Town Highway Foreman