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September 29, 2016

RE: Changes to the Vermont Water Quality Standards

Dear Representative French and Members of the Committee,

The Agency has made the following changes to the Vermont Water Quality Standards in response to public comments and based upon the Agency's final review of the Rule. The "Summary of Public Comments and Responses" included with this rulemaking package further explains the reasons for these changes.

§ 29A-102 Definitions. The Agency made minor clarifying edits to the new definitions of "equilibrium condition," "flow characteristics," "physical habitat structure," and "stream processes." The definitions were added for purposes of applying the aquatic habitat criteria for rivers and streams and are consistent with definitions and terminology used in state statute, the Stream Alteration Rule, and the Agency's Stream Geomorphic Assessment and habitat assessment procedures and protocols. For in-line changes, see the "Summary of Public Comments and Responses," Comment 16, "Changes to proposed VWQS."

Additionally, in response to comment, the Agency made minor changes to definitions (31) and (35), consistent with Legislative Council and Agency drafting conventions. Where the phrase "including, but not limited to" was used in those definitions, the clause "but not limited to" was removed because it is excess language that is unnecessary.

§ 29A-103(e)(4) Tactical Basin Planning. The Agency made a clarifying edit, consistent with state statute, to this subdivision governing tactical basin planning; a "should" was changed to a "shall," and a clause was added to make it explicit that any recommendations for Outstanding Resource Waters be included in tactical basin plans. For specific in-line changes, see "Summary of Public Comments and Responses," Comment 20, "Changes to proposed VWQS."

§ 29A-104(d) Classification of Water Uses. The Agency made clarifying edits to this new subsection, which lists the designated uses protected by the Vermont Water Quality Standards. An edit was made to clarify that the Standards protect aquatic biota and wildlife that *may* use the waters in the future, but aren't currently present (for example, in the case of an impaired water). Additionally, for the uses of waters for boating and fishing, rather than saying "boating and *other* recreational uses" and "fishing and *other* recreational uses," the word "other" was replaced with "related" in order to more clearly state the uses being protected. For the in-line changes, see "Summary of Public Comments and Responses," Comments 7 and 13, "Changes to proposed VWQS."



§ 29A-105(c) Antidegradation Policy, Protection and Maintenance of High Quality Waters. As part of this rulemaking, the Agency has proposed updates to the Antidegradation Policy to more closely align the state policy with the federal policy. Many commenters expressed concern about one particular clause that was added to the state policy from the federal policy, the clause “in the area in which the waters are located.” Commenters were concerned the clause would weaken the State’s policy. In response to the extensive public comments voicing concern over this clause, the Agency has removed this clause from the Antidegradation Policy. Therefore, now, prior to allowing a limited lowering of water quality, the Secretary must find that “after an analysis of alternatives, allowing lower water quality is necessary to prevent substantial adverse economic or social impacts on the people of the State ~~in the areas in which the waters are located.~~”

Additionally, in 2015, federal Antidegradation Policy requirements were updated to require alternative analyses prior to allowing a limited lowering of water quality. In this rulemaking, the Agency added the alternative analysis requirements and now proposes additional clarifying edits, consistent with federal regulations. Under § 29A-105(c)(3), an applicant must evaluate alternatives and must select a “practicable” alternative, if one is identified. “Practicable” is defined in federal regulation, but this definition was inadvertently omitted from the proposed updates to the Vermont Water Quality Standards, so the Agency has proposed adding the federal definition to the end of the subdivision, as follows, “For purposes of this section, “practicable” means technologically possible, able to be put into practice, and economically viable.” For the in-line changes, see “Summary of Public Comments and Responses,” Comment 11(2), “Changes to proposed VWQS.”

§ 29A-105(d) Protection of Outstanding Resource Waters; Appendix H. The Agency has added Appendix H to the Vermont Water Quality Standards to list waters that have been previously designated as Outstanding Resource Waters (ORWs) and for purposes of designating other waters in the future. Therefore, the Agency has added a cross reference to the new Appendix in this subsection about ORWs stating, “Outstanding Resource Waters are listed in Appendix H of these rules.” For the in-line changes, see “Summary of Public Comments and Responses,” Comment 21, “Change to proposed VWQS.”

§ 29A-203(a)(2) Nonpoint Source Pollution Policy. To ensure consistency with Act 64 of 2015, the Agency has made a minor edit to the policy statement regarding nonpoint source pollution, as follows, “In implementing subdivision (a)(1) of this subsection, the Secretary and the Secretary of the Agency of Agriculture, Food and Markets are encouraged to exercise the full range of discretion authorized by the Act and 6 V.S.A. Chapter 215 and to manage discharges of nonpoint source waste in as a practical and cost-effective a manner ~~as possible~~, consistent with the provisions of these rules.”

§ 29A-305(a) Numeric Biological Indices and Aquatic Habitat Assessments. The Agency mistakenly deleted the phrase “and aquatic habitat uses” from this subsection regarding and is adding it back. For the in-line changes, see “Summary of Public Comments and Responses,” Comment 27, “Change to proposed VWQS.”

§ 29A-306(b) Aquatic Habitat. In response to comment, the Agency has made clarifying edits to the aquatic habitat criteria for rivers and streams. Through this rulemaking, the Agency had no intent of changing the aquatic habitat criteria for rivers and streams, but some commenters expressed concerns over the proposed language. Therefore, the Agency has made changes to this subsection to more closely align it with the language in the existing VWQS and to help more clearly distinguish criteria among the different classes of waters. For specific in-line changes, see “Summary of Public Comments and Responses,” Comment 17, “Changes proposed to VWQS.”

Appendix F. Water Quality Classifications. The Agency made updates to the descriptions of drinking water sources as recommended by Vermont Rural Water, in consultation with the Drinking Water and Groundwater Protection Division of the Department of Environmental Conservation. The updates are merely for purposes of accurately and factually describing these drinking water sources and include no changes to the classifications of these waters.

In addition, in response to comment, the Agency is changing the boating use classification of Bingo Brook from Class B(2) to Class A(1) to more accurately reflect the boating use in this water.

Please let me know if you have any questions about the foregoing changes.

Sincerely,



Elizabeth Schilling, Associate General Counsel
Department of Environmental Conservation