

Vermont Department of Environmental Conservation
Watershed Management Division
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Agency of Natural Resources


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Department of Environmental Conservation

JUN 17 2014

MEMORANDUM

Commissioner's Office

TO: Pete LaFlamme 

FROM: Neil Kamman 

DATE: June 16, 2014

RE: **Requesting Commissioner Signature** – PROCEDURE FOR EVALUATING
PETITIONS TO RECLASSIFY WADEABLE RIVERS or STREAMS TO CLASS A(1)
ECOLOGICAL WATERS PURSUANT TO 10 V.S.A. § 1253

The accompanying Procedure was drafted to provide guidance for the Division's efforts to pursue reclassification of certain surface waters from Class B waters to Class A(1) Ecological waters. We briefed David on this draft Procedure on May 6, when we first presented to him the WQS amendments. In the interim period, we also completed legal review of the Procedure, as is documented by the attached email thread.

Thank you for your attention in this regard.

From: Kamman, Neil
Sent: Wednesday, June 04, 2014 11:23 AM
To: Borg, Mary
Subject: RE: Draft Class A1 Procedures_v2.docx

Yes.

Pete, Eliz, and I also briefed DM on this, on May 6th when we briefed him on the WQS changes prior to filing ICAR. At that time, I made David aware that this procedure was together as draft, and presented to him the reasons for it, and content. I also indicated that we wanted to massage the language a little before requesting his signature. The document you are looking at represents the completion of that.

N

From: Borg, Mary
Sent: Wednesday, June 04, 2014 11:19 AM
To: Kamman, Neil
Subject: FW: Draft Class A1 Procedures_v2.docx

Hi Neil. Have you briefed Pete on this? Mary

From: McDonald, Elizabeth
Sent: Wednesday, June 04, 2014 8:49 AM
To: Kamman, Neil
Cc: Borg, Mary; Chapman, Matt
Subject: RE: Draft Class A1 Procedures_v2.docx

Neil,

The Procedure looks great. I have no additional comments or edits.

Thanks for answering my questions. I think it makes sense to go ahead with this procedure and let lakes do a separate one. Also, thanks for explaining about the monitoring data.

-Elizabeth

From: Kamman, Neil
Sent: Tuesday, June 03, 2014 3:48 PM
To: McDonald, Elizabeth
Cc: Borg, Mary
Subject: Draft Class A1 Procedures_v2.docx

Eliz,

Thanks for looking at this. Excellent markup and questions. The two main ones are about the lakes issue, and the age of data we use to make a decision.

In regards to the first, I envision that lakes will take on developing a similar Procedure. They have a very different set of criteria, which are not yet finalized. This is work I believe Kellie Merrell plans to have Leslie take on this summer or fall. I would like for this procedure to be in place to grease the skids on the rulemaking we want to undertake to designate A(1) on USFS lands this summer. It would be a shame to hold off the proposal for USFS waters while awaiting Kellie's ability to work on her part, as I have the table set to begin the process. Further, as the approaches are so different between lakes and wadeable streams, a Procedure combining both would become somewhat unwieldy.

As for the second, the 10 year data limitation only pertains to the older of at least two assessments, the younger of which must be 6 years or more recent. This reflects the reality of how our monitoring program is able to assess these more remote or undisturbed waters.

Could you take a look at the attached with edits accepted and comments stripped. If you are OK with it, then I'll route for DM signature.

From: McDonald, Elizabeth
Sent: Monday, May 12, 2014 11:41 AM
To: Borg, Mary
Cc: Chapman, Matt; LaFlamme, Pete; Kamman, Neil
Subject: RE: Draft Class A1 Procedures_v1.docx

Mary and Neil,

Attached is my mark-up of the Class A(1) waters designation procedure. Neil, I'm happy to meet to discuss.

My main question is whether we want the procedure to cover waters other than just rivers and streams.

-Elizabeth

 VERMONT
Department of Environmental Conservation

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VERMONT AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
WATERSHED MANAGEMENT DIVISION

PROCEDURE FOR EVALUATING PETITIONS TO RECLASSIFY
WADEABLE RIVERS or STREAMS TO CLASS A(1) ECOLOGICAL WATERS
PURSUANT TO 10 V.S.A. § 1253

June, 2014

§ 1. Purpose

The Department of Environmental Conservation (DEC or the Department) has the responsibility to administer the Vermont Water Quality Standards (VWQS) and has the authority to enter into rulemaking, or to receive petitions to enter into rulemaking, for the purpose of reclassifying surface waters to Class A(1) Ecological Waters pursuant to 10 V.S.A. § 1253.¹ Class A(1) Ecological Waters are high quality waters which have significant ecological value and are managed to achieve and maintain waters in a natural condition. 10 V.S.A. § 1252(a); VWQS § 3-02.

This Procedure provides guidelines for potential petitioners and other persons or entities interested in DEC's reclassification of a water to Class A(1) Ecological Water. This Procedure is intended to promote clear, transparent, and consistent decision-making and assist petitioners in submitting petitions.

§ 2. Definitions

2.1 Assessment - means an evaluation of a biological sample collected in accordance with DEC procedures outlined in *Biocriteria for Fish and Macroinvertebrate Assemblages in Vermont Wadeable Streams and Rivers -Implementation Phase* (DEC 2004). Assessments are scored on the basis of the similarity of the sampled assemblage to those taken from Vermont sites that exhibit the reference condition.

2.2 Biological Integrity - means the ability of an aquatic ecosystem to support and maintain, when consistent with reference conditions, a community of organisms that is not dominated by any particular species or functions (balanced), is fully functional (integrated), and is resilient to change or impact (adaptive), and which has the expected species composition, diversity, and functional organization. VWQS § 1-01(B)(10). Biological integrity is highest given an assessment of a flowing water of *excellent* and lowest when an assessment is rated as *poor*.

2.3 Reference Condition – means the range of chemical, physical, and biological characteristics of waters minimally affected by human influences. In the context of an evaluation of biological indices, or where necessary to perform other evaluations of water quality, the reference condition

¹ The 2012 Vermont Legislature transferred surface water and wetland rulemaking authority from the Natural Resources Board's (NRB) Water Resources Panel to DEC pursuant to Sections 20-28 of Act 138, effective May 14, 2012.

establishes attainable chemical, physical, and biological conditions for specific water body types against which the condition of waters of similar water body type is evaluated. VWQS § 1-01(B)(39).

2.4 Wadeable River or Stream - means all rivers, streams, creeks, brooks, or streams, which interconnect wetlands, artificial or natural; which are contained within, flow through, or border upon the State or any portion of it; and which are accessible by wading during the period of low median monthly flow for the purpose of assessment.

§ 3. Applicability

This Procedure applies to Agency-derived proposals, or externally submitted petitions, to reclassify wadeable rivers or streams from Class (B) or Class A(2) to Class A(1) Ecological Waters pursuant to 10 V.S.A. § 1253 and the Vermont Water Quality Standards.

§ 4. Petition Evaluation Process

4.1 **Petition submission.** Petition submissions shall adhere to the requirements set forth in the “Procedure for Evaluating Petitions to Adopt, Amend or Repeal Surface Water and Wetland Rules (November 2013, available upon request).” Petitions and accompanying documents should be addressed to:

Monitoring, Assessment and Planning Program Manager
Watershed Management Division
Department of Environmental Conservation
One National Life Drive—Main 2
Montpelier, VT 05620-3522

Note: DEC does not require multiple hard copies of the petition, but encourages petitioners to also submit an electronic copy of the petition to: anr.wsmd@state.vt.us.

4.2 **Petition Process.** DEC shall follow the petition process set forth in the “Procedure for Evaluating Petitions to Adopt, Amend or Repeal Surface Water and Wetland Rules (November 2013).”

§ 5. Reclassification to A(1) Ecological Waters

5.1. The Secretary may conduct rulemaking to reclassify a flowing waterbody to Class A(1) if he or she finds:

A) That assessments of biological integrity from macroinvertebrate and fish communities identify *excellent* overall biological integrity. Excellent overall biological integrity, for the purposes of this procedure, is defined as a minimum of three combined *excellent* ratings from at least two years of data from both communities (three out of the four possible assessments). If more than two years of assessments are available, then at least two-thirds of the combined fish and macroinvertebrate assessments must be *excellent*. All assessments are to be from data collected that is no older than 10 years with no longer than six years elapsed between each sample. Assessment procedures must

be those established in *Biocriteria for Fish and Macroinvertebrate Assemblages in Vermont Wadeable Streams and Rivers -Implementation Phase* (DEC 2004).

Or

B) If the water is within a watershed that is over 95% forested land cover with little or no human activity, that a single year's assessment of *excellent* from both fish and macroinvertebrate communities within the last six years, and chemical and physical habitat information of the same age, indicate reference-quality habitat exists. This ancillary abiotic information may also serve to strengthen a marginal biological implication of Class A(1) conditions, or substantiate reclassification when only one community type is available.

Or

C) That in publically-owned lands, where waters have limited or no available assessments, long-term land management prescriptions required by state or federal law ensure maintenance of surface waters in their natural condition as defined by Section 3-02 of the VWQS.

5.2. The length of river or stream reach to be recommended for reclassification shall be delineated by analyzing the extent of biological, chemical, physical habitat, and land use information available for the watershed. The decision to include tributaries to the river or stream under consideration will follow the same process.

§ 6. Regulatory Implications of Reclassification

The primary regulatory implications associated with a Class A(1) classification are identified within 10 V.S.A. § 1259, in Chapter 14 of the Vermont Environmental Rules (Indirect Discharge), and in Chapter 29 of the Vermont Environmental Rules (VWQS). These provisions include limitations on discharges to Class A(1) waters as well as specific water quality criteria and management objectives for Class A(1) waters.

§ 7. DEC Contact

For more information on petition submissions, contact the DEC Monitoring, Assessment and Planning Program at anr.wsmd@state.vt.us or (802) 828-1535.

Signed this 17th day of June, 2014.

By:



David K. Mears, Commissioner, Department of Environmental Conservation

