

November 5, 1996

VERMONT ANTI-DEGRADATION IMPLEMENTATION EXISTING USE DETERMINATION

Vermont's Anti-Degradation Policy requires that existing uses and the level of water quality necessary to protect those existing uses shall be protected and maintained (Section 1-03, Vermont Water Quality Standards). To issue a permit for a discharge or activity that will meet the Water Quality Standards, the Secretary of the Agency of Natural Resources must find that existing uses will be protected. This finding will often require a field assessment and public participation process to determine the presence or absence of existing uses.

Contact Recreation

Where the Agency lacks information on contact recreation within a proposed waste management zone, the project proponent may overcome the assumption that contact recreation occurs, and constitutes an existing use protected under the Water Quality Standards, by providing documentation in support of the following findings:

Finding 1. There is little or no evidence that people have access to the waters for contact recreation.

Documentation needed:

- a. Existence of road pull-off areas, parking areas, and access trails
 - ☞ Video and/or pictures taken from adjacent roads and from the water.
- b. Status of land ownership: public lands and public easements
 - ☞ Maps of municipal, state, or federal lands (including road rights-of-ways and bridge crossings)
 - ☞ Documents referring to easements on private lands granting public access to the water.

Finding 2. There is no physical evidence of attractive contact recreation sites in and along the affected water.

Documentation needed:

- a. Presence of any sandy or grassy beach areas where people can comfortably rest out of the water.
 - ☞ Video or pictures taken along the shore land of the affected waters.
- b. Presence of deep water holes, cascades, gorges, rock outcroppings or large boulders in or along the affected waters that create a slow water area for swimming, wading, and bathing.
 - ☞ Video or pictures taken of the affected waters
- c. Presence of aesthetically pleasing waters.
 - ☞ Observation of water clarity, algae growth, substrate composition (mucky or gravelly bottom)

Information gathered under Findings 1 & 2 will be used by the Agency to determine the level of documentation deemed necessary to make Finding #3. The project proponent should consider scheduling a meeting with the Agency prior to the months of July and August to review information under findings 1 and 2, so that the prime season for contact recreation use is available to complete work under Finding #3.

Finding 3. There is no more than incidental contact recreational use of the affected waters.

Documentation needed:

- a. Observed regularity of use of the affected waters for contact recreation
 - ☞ A count of the number of people swimming, wading, or bathing on three warm, sunny days on three different weekends between June 1 and August 31, over a four-hour period between 1-5 pm.
 - ☞ A count of the number of people swimming, wading, or bathing on the same three days and times at a nearby "swimming hole" or beach at a similar type of water body (stream, river, or lake)
 - ☞ A count of people fishing, tubing, or canoeing on the affected waters on the same days and times
- c. Local accounts on the regularity of use of the affected waters
 - ☞ Interview a representative sample of people using the affected waters during observation periods; business owners along the affected waters; and local officials (including planning and conservation commissions and recreation committee members)
 - ☞ Solicit information from potential users through a press release, notices at public places, and letters to potential user groups (consider having local social studies or science teacher explain the project to school children to ask if they swim in the affected waters).