

Fact Sheet Regarding Wolcott Pond and the Department of Environmental Conservation's Decision on the Friends of Wolcott Pond Petition (October 22, 2014)

What did the Use of Public Waters petition seek?

The Friends of Wolcott Pond petitioned the Department of Environmental Conservation (Department) to add a prohibition on the use of internal combustion motors to the existing rules that govern surface use activities on Wolcott Pond. The Vermont Use of Public Waters Rules (UPW Rules), that govern the recreational uses of surface waters in Vermont, included the following rules on Wolcott Pond at the time of the petition:

- a. Vessels powered by motor shall not exceed 5 mph (VUPW Rule 3.2(a))
- b. Use of personal watercraft is prohibited (VUPW Rule 3.3)
- c. Use of aircraft is prohibited May 1 – November 30, except where authorized under 5 V.S.A. Ch. 9 (VUPW Rule 3.4)

Why did the petitioners ask for this rule change?

The Friends of Wolcott Pond's reasons for petitioning for the prohibition of internal combustion motors were to protect the quiet nature of the pond, to reduce the risk of pollution from internal combustion motors, and to reduce the risk to swimmer safety. The petition contended that 1) the number of quiet users of the pond has increased and the number of fishing boats using electric motors rather than internal combustion motors has increased dramatically; 2) the 5 mph speed limit is often violated because the sign is small and only posted on a bulletin board at a public landing; and 3) those who violate the 5 mph speed limit disturb the quiet nature of the pond, produce pollution, and create a safety hazard to other users.

What process did the Department follow to review the petition and make a decision?

The Department notified the public of the receipt of a petition, held a public meeting to collect comments on the proposal at the Wolcott Town Office, and also received numerous comments from the public by email or letter. The collected comments and other information can be viewed here: <http://www.anr.state.vt.us/dec/waterq/rulemaking/htm/petitions.htm>. The Department also refers to the UPW Statute (10 V.S.A. § 1424) and the UPW Rules that set out guidance and considerations for making decisions. In addition, the Department also reviews past Use of Public Waters decisions in order to make a decision that is consistent with other decisions state-wide.

What was the Department's decision?

The Department found that enforcement of the 5 mph speed limit was a less restrictive way to achieve the Petition's purpose and therefore denied the petition to adopt a rule prohibiting internal combustion motors on Wolcott Pond. Therefore the rules listed above in the first question will continue to be those in effect for Wolcott Pond.

How did the Agency reach that decision?

Section 2 of the UPW Rules includes standards for review of petitions. Of relevance to the Wolcott Pond decision, the UPW Rules state that the Department must "attempt to manage the public waters so that the various uses may be enjoyed in a reasonable manner, in the best interests of all the citizens of the

State,” and to provide for all normal uses to the extent possible. In addition, the UPW Rules reference the need to provide an appropriate mix of water-based recreational opportunities on a regional and statewide basis, and to make decisions “using the least restrictive approach practicable that adequately addresses the conflicts.”

Accordingly, the Department found that enforcement of the existing 5 mph speed limit is the preferable alternative to banning internal combustion motors, as the latter would be the more restrictive measure. Much of the concern regarding noise and disturbance on the pond focused on times when the speed limit was violated rather than when boats were operating at slow speeds. In addition, the Department found that the threat to water quality was not adequately demonstrated in the petition. And finally, the Department found that boaters who obey the 5 mph are not a safety threat to swimmers and non-motorized boaters. Again, enforcement of the existing speed limit is the least restrictive means of addressing this concern.

Who has responsibility for enforcing the UPW Rules and the public safety rules?

Enforcement is conducted by the Department of Fish and Wildlife Game Wardens and the State Police Marine Division. Users of Wolcott Pond who observe potential rule or law violations can contact these entities, preferably with boat registration or vehicle license plate numbers. The Department will work with Friends of Wolcott Pond to enhance the visibility of the rule postings at the access area and enhance communication with the enforcement programs.