



**Lake Champlain
International**
Clean Water. Healthy Fish. Happy People.



September 7, 2016

Neil C. Kamman, Manager
Monitoring, Assessment and Planning Program
VTDEC
1 National Life Drive, Main 2
Montpelier, VT 05602-3522

Re: VNRC, VCV and LCI Comments on Proposed Changes to VWQS - Sent via e-mail

Dear Neil:

Thank you for the opportunity to comment on the proposed changes to the Vermont Water Quality Standards (VWQS). The VWQS represent the foundation that our system of laws and rules that protect Vermont's public trust surface waters are built upon. As Vermont's oldest statewide environmental organization, the Vermont Natural Resources Council (VNRC) has been involved with every significant change to the VWQS since they were adopted. VNRC's position, which is shared by Lake Champlain International (LCI) and Vermont Conservation Voters (VCV), as co-signers of this letter, has been and remains that any changes to the VWQS should strengthen protections for Vermont's waters, and that the standards should not be weakened.

Based on your August 12, 2016 letter to VNRC, Conservation Law Foundation (CLF), LCI and Two Rivers -Ottawaquechee Regional Commission (TRORC), VNRC understands that the Department of Environmental Conservation (DEC) "agrees that the VWQS should not be weakened," and it is not the intent of the proposed changes to weaken the VWQS. VNRC, LCI and VCV appreciate the Department of Environmental Conservation (DEC) clarifying this extremely important point.

This point is particularly important in this instance because DEC is proposing changes to provisions of the VWQS that address Vermont's anti-degradation policy. The anti-degradation policy, which is required by the Clean Water Act (CWA), in part, prohibits more than a limited lowering of high quality waters that exceed minimum standard unless the applicant can prove there is a social and economic justification (SEJ) for the impact to Vermont waters.

VNRC has argued for more than a decade that DEC has not fully or properly implemented the anti-degradation policy. DEC is now required by state law to

adopt a rule implementing the anti-degradation policy. The changes to the anti-degradation policy proposed in this rule are precursors to the anti-degradation implementation rule that DEC has indicated it will propose as soon as this year.

It is difficult to fully understand the impacts of the proposed changes to the anti-degradation policy without knowing how this policy will be implemented. Given this uncertainty, it was very important to VNRC, CLF, LCI and TRORC to have DEC's assurance that the proposed changes in this rule are not intended to weaken the VWQS, including the anti-degradation policy.

In the context of the above general comment, VNRC, LCI and VCV submit the following specific comments on the proposed rule:

Section 29A-105 (c) (2) (B) - This provision alters the existing SEJ for allowing more than a limited lowering of high quality waters. The existing rule allows more than a limited lowering of water quality only if:

(a) the adverse economic or social impacts on the people of the state specifically resulting from the maintenance of the higher quality of the waters would be substantial and widespread; and

(b) these adverse impacts would exceed the environmental, economic, social, and other benefits of maintaining the higher water quality.

The proposed rule allows more than a limited lowering if:

[a]fter 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 area in which the waters are located.

VNRC, LCI and VCV remain concerned that this provision weakens the SEJ test, and it makes it easier for DEC to allow for a lowering of water quality. The new SEJ test focuses on impacts on people in the area in which the waters are located, where the existing test allows a lowering only if there are substantial adverse impacts statewide. We understand that DEC inserted the concept of impacts on people of the state, in the area in which the waters are located to address this concern. However, we are not convinced that even with this change the SEJ test as proposed will not make it easier to lower the quality of high quality waters.

This proposed change is a direct example of the challenge of commenting on the proposed changes to the anti-degradation policy without knowing how the policy will be implemented. We presume that the anti-degradation implementation rule will address how the SEJ policy will be applied, including how DEC will define "substantial adverse economic or social impacts on the people of the State in the area in which the waters are located." DEC is asking the public to comment on these changes in the absence of defining these key terms. To address this concern, we

recommend that the proposed changes to the anti-degradation policy be withdrawn until DEC also proposes the anti-degradation implementation rule.

Section 29A-105 (c) (3) - We have the same concern about the proposed change to this provision. This section combined with Section 29A-105 (c) (2) (B) requires an alternatives analysis to determine if water quality should be lowered. We do not oppose the use of alternative analysis per se. However, without understanding how the SEJ policy will be implemented we cannot support the use of an alternative analysis in this context. To address this concern, we recommend that the proposed changes to the anti-degradation policy be withdrawn until DEC proposes the anti-degradation implementation rule.

Section 29A - 103, 29A-104 and 306 (and throughout proposed rule) - As noted in the FAQ for the proposed rules, the main impetus behind the rule changes is because Act 70 of 2016 revised the water classification structure for Vermont's surface waters. We supported Act 79, and support reflecting the new B1 and B2 classifications in the VWQS, and the fact that specific uses of waters may have different classifications. We believe these changes have the potential to lead to more waters being properly classified to reflect their higher level of water quality. To ensure that the intent of Act 79 is realized, we recommend that Section 29A-103 be revised to require DEC to propose reclassifications of waters made in tactical basin plans as a result of the basin planning process.

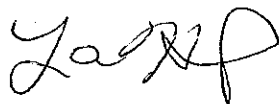
Sincerely,



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