

**State of Vermont**  
**NATURAL RESOURCES BOARD**  
**Water Resources Panel**

**In re City of Newport**  
**No. UPW-05-01**

**VT Proposed Rule 05P025**

**MEMORANDUM OF DECISION AND RESPONSE SUMMARY**

(Issued Oct. 14, 2005)

The Water Resources Panel (WRP) of the Vermont Natural Resources Board will proceed with the adoption of a rule extending until January 1, 2011 the City of Newport's existing delegated authority to regulate moorings in public waters in Lake Memphremagog, the Clyde River, and the Black River within the city limits.

**I. Background**

Under 10 V.S.A. § 1424(f), the WRP may delegate its authority to regulate the surface uses of public waters to a municipality adjacent to these waters provided the municipality accepts the delegation by creating or amending a bylaw or ordinance regulating the affected waters. In 2000, the Vermont Water Resources Board amended the Use of Public Waters Rules by adding Appendix D, which delegated to the City of Newport the authority to establish a mooring management area in Lake Memphremagog, the Clyde River, and the Black River within the City limits. Pursuant to Rule 3 in Appendix D of the Use of Public Waters Rules, the Water Resources Board's delegation of authority to the City of Newport became effective on March 13, 2001, when the Water Resources Board issued a letter approving the City's implementing ordinance. The Water Resources Board subsequently approved amendments to this ordinance that became necessary after the City had some experience with the original. Rule 16 of Appendix D provides that the City of Newport's delegated authority shall expire on January 1, 2006.

On March 14, 2005, the City of Newport filed a petition with the WRP to extend its delegated authority by another five years, that is until January 1, 2011. The WRP filed a proposed rule with the Interagency Committee on Administrative Rules (ICAR) on May 26, 2005, met with ICAR on June 13, 2005, and received ICAR's approval of the rule proposal on June 15, 2005. On June 16, 2005, the WRP filed the rule proposal with the Secretary of State's Office. The rule proposal amends the expiration date of the delegation in Rule 16 of Appendix D from January 1, 2006 to January 1, 2011.

The WRP sent notice of the proposed rule to various persons or organizations with an interest in public waters in Vermont. In addition, the WRP posted the proposed rule on its web site. The deadline for filing written comments on the rule proposal, which could be mailed,

delivered, or emailed to the WRP, was September 1, 2005. A public hearing was scheduled for the evening of July 19, 2005.

On the afternoon of July 19, 2005, the WRP met with the City of Newport's City Manager and Recreation Director at the City of Newport's waterfront and viewed the City's mooring management area. At the public hearing on the rule proposal that evening, no one other than the City Manager and the Recreation Director, both of whom supported the proposed rule, testified. No written comments were filed.

At its meeting on September 16, 2005, the WRP reviewed and discussed the City of Newport's petition and voted unanimously to grant the petition. The WRP will therefore proceed with the adoption of a rule extending until January 1, 2011 the City of Newport's existing delegated authority to regulate moorings in those public waters of Lake Memphremagog, the Clyde River, and the Black River located within the city limits.

## **II. Discussion**

The existing delegation of authority to the City of Newport has been a success. As the WRP explained in the economic impact statement for this rule proposal, the existing delegation has relieved congestion at the City's redeveloped downtown waterfront, improved the circulation of boating traffic, and protected access to fishing. At its site visit, the WRP was able to see organized mooring areas and the fairways in between. There has been no opposition to extending the City's delegated authority by another five years. Based on the success of the City's first five years of delegated authority and the lack of any opposition to extending this authority, there does not appear to be any reason for the WRP not to adopt the proposed rule.

Under Rule 3 of Appendix D of the Use of Public Waters Rules, the delegation will be effective once the City has adopted an amended ordinance implementing its delegation and the WRP has approved the amended ordinance. As the WRP has advised the City, amendments to its implementing ordinance are necessary to make the ordinance consistent with Permit Reform, which eliminated the Water Resources Board, created the Vermont Natural Resources Board, transferred the Water Resources Board's appellate functions to Environmental Court, and transferred the Water Resources Board's rule making functions to the Natural Resources Board's WRP. *See* The Act Relating to Consolidated Environmental Appeals and Revisions of Land Use Development Law, 2004 Vt. Acts and Resolves No. 115 (effective Jan. 31, 2005). The WRP is making the Use of Public Waters Rules consistent with Permit Reform through rules that the WRP intends to adopt at the same time as the rules extending the City of Newport's delegated authority to regulate moorings. *See In re General Amendments*, No. UPW-05-05.

On September 26, 2005, the City of Newport filed an amended mooring management ordinance for the WRP's approval. At its meeting on October 11, 2005, the WRP voted unanimously to approve the amended ordinance pursuant to Rule 3 of Appendix D of the Use of Public Waters Rules. The City of Newport's delegated authority to regulate moorings until January 1, 2011 shall therefore become effective once the WRP's proposed rule to extend the City's delegated authority takes effect pursuant to section 845(d) of the Vermont Administrative Procedure Act, 3 V.S.A. § 845(d).

The WRP will file with the Legislative Committee on Administrative Rules (LCAR) final proposed amendments to the Vermont Use of Public Waters Rules consistent with this decision. LCAR will then review the final proposed rules and decide whether to approve or object to all or a portion of the final proposals. After meeting with LCAR, the WRP may withdraw the final proposed rule in whole or in part or adopt a final rule. Any rule that the WRP adopts may reflect changes from the final proposal germane to any objections or expressed concerns of LCAR. *See* 3 V.S.A. §§ 841-843. Information about the rule making process is available on-line at <http://vermont-archives.org/apa/rules.html>. Additionally, information about LCAR meetings and procedures can be obtained by contacting the Committee's Clerk, Katie Pickens, at 802-828-2231 or [kpickens@leg.state.vt.us](mailto:kpickens@leg.state.vt.us).

### **III. Response Summary**

As noted, no one opposed the rule proposal at the public hearing in this matter and no written comments were filed.

Dated at Montpelier, Vermont this 14<sup>th</sup> day of October, 2005.

VERMONT NATURAL RESOURCES BOARD  
Water Resources Panel

/s/ Patricia Moulton Powden

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Patricia Moulton Powden, Chair  
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