



STATE OF VERMONT  
WATER RESOURCES BOARD  
MONTPELIER, VERMONT 05602  
(802) 828-2871

May 13, 1991

James Leamy  
Lake Bomoseen Association  
Castleton, Vermont 05735

Dear Jim:

RE: Petition to amend rules regulating the use of public waters, 10  
V.S.A. § 1424

As we discussed by phone last Thursday, I have determined that the petition filed on behalf of the Lake Bomoseen Association is not complete under the applicable Water Resources Board Rules of Procedure for the reasons outlined below. Accordingly, although the Board will be advised of this filing, no formal consideration will begin until the Association completes its filing in accordance with this letter. I'd be happy to work with you and/or Mr. Abatiell to assist in that effort.

1. Procedural/Informational Deficiencies

As indicated in my August 1990 letter, Rules 11 and 14 (copy enclosed) of the Board's Rules of Procedure describe the procedure by which such petitions must be filed and the information they must contain. Your filing does not comply with the following provisions of these rules:

- a. There is no narrative as required by Rule 14(B)(3) "providing a detailed summary of the circumstances prompting the petition." The Board, and other potentially interested participants need to know what specific problems or issues the Association is trying to address via the petition and why the Association has decided to propose the specific actions requested. In the Board's experience such a narrative is very important to everyone's understanding of the issues being presented. The narrative should also make clear whether the requested rules are intended to supplement or replace the current use of public waters rules for Lake Bomoseen adopted by the Board in 1974.
- b. Rule 14(B)(4) requires that copies of all documents which the petitioners intend to rely upon be submitted with the petition and distributed to all persons and governmental

up W91-02 letter

agencies specified in Rule 14(D) (see comment #2 below). A waiver of this requirement can be granted by this office in certain circumstances where it is impractical to comply absolutely with this rule.

I don't mean to suggest whether this petition should or should not be further documented, that's up to the Association to decide, but if you plan to submit documents (reports, studies, plans, etc.) to support your petition, they must be included as part of the initial filing.

- c. Rule 14(B)(5) requires some analysis of the economic impact of the proposed rules and who will be affected. Your filing does not address this issue at all. I realize that this type of information is difficult to quantify. We do not expect an in-depth economic analysis but such information is required of the Board as part of any rulemaking process and therefore it is necessary for the petitioner to comment in as much detail as possible.
2. Incomplete distribution -- Rule 11 requires that complete copies of all information submitted to the Board by the petitioners be filed with all persons and governmental agencies identified in Rule 14(D). To document that this has occurred, the petitioner must indicate that such distribution has been made, as you did with the surface level rules petition. The key point here is to be sure that you distribute all information you file with the Board. Also please note that Rule 11 requires the petitioner to file six (6) complete copies, with the Board.
  3. Comment on proposed regulations

The Association can petition the Board for whatever rules it feels are within the Board's authority under 10 V.S.A. § 1424. However, to facilitate a better understanding of what is being requested and why, I would offer the following comments for the Association's consideration. The statutory references below are found on pages 22-25 of the enclosed booklet entitled Vermont Boating Safety Operating Laws and Regulations.

- a. Proposed Rules 1 and 2 refer to "restricted use zones" or "areas" to be "designated." It is unclear what uses, except as specified in subsequent proposed rules, are to be restricted or how or by whom such "zones" or "areas" will be designated. What are we talking about?
- b. Proposed Rule 3 seems to impose substantial restrictions on the use of "public waters" so I would suggest that your narrative make very clear what issue(s) this proposed rule is intended to address and why the Association feels this is the appropriate way to address those issues. How would it be determined when a vessel is "in front of" any particular property?

- c. Proposed Rules 4 and 7 establish noise and operational restrictions more stringent than those established by recent amendments to Vermont law (see 23 V.S.A. §§ 3309 and 3311(c)). Proposed Rule 7 would seem to be in conflict with § 3311(c)(3).
- d. The petition should include information regarding a Coast Guard approved Type B 1 or better fire extinguisher so that we know the implications of the proposed rule.
- e. Proposed Rule 5 appears to conflict with 23 V.S.A. § 3312a(a) which requires that all operators of Personal Water Craft be age 16.
- f. Proposed Rules 4, 6, 9, and 10 seem to be virtually the same as current law, see 3 V.S.A. §§ 3309, 3312a and 3311(a). Why are they being proposed?
- g. Proposed Rule 11 raises several issues which the petitioner does not address. Does the Water Resources Board have authority under 10 V.S.A. § 1424 to establish user fees? If so, who collects the fees and spends the revenues generated?

Sincerely,

  
William A. Bartlett  
Executive Officer

kgr

Enclosures Rules 11 & 14  
Vermont Boating Safety Operating Laws and Regulations

cc: Anthony Abatiell  
Jan Eastman, Secretary, Agency Natural Resources  
Tex LaRosa, Acting Commissioner, Department Environmental  
Conservation  
Castleton Town Clerk  
Rutland Regional Planning Commission

bec:  
Lt. Mike Vinton  
Steve Crowley  
David Clough