



## CONNECTICUT RIVER WATERSHED COUNCIL

*The River Connects Us*

Upper Valley: P.O. Box 206, Saxtons River, VT 05154

August 14, 2014

Neil C. Kamman, Manager  
Monitoring, Assessment and Planning Program  
1 National Life Dr., Main 2  
Montpelier, VT 05620-3522

Dear Mr. Kamman:

The Connecticut River Watershed Council (CRWC) is a not for profit membership public interest organization founded in 1952 that has an interest in protecting environmental values that directly and indirectly support the State, regional, and local economies and the quality of life offered by the Connecticut River and its tributaries. Our work throughout the watershed informs our vision of ecological and economic abundance.

The interests represented by CRWC are: improving water quality; enhancing habitat for fish and other aquatic biota; safeguarding and improving wildlife habitat; protecting threatened and endangered species; protecting wetlands; preserving undeveloped shore lands; enhancing public recreation and promoting recreational safety; and maintaining any energy benefits that may exist at hydroelectric projects in the Connecticut River watershed.

Our specific comments follow.

**Section 1-02 D 6** changes existing wording to read, “approval or adoption of a basin plan.” What is the distinction between these actions by the Secretary? Would an approved plan have the same weight as an adopted plan? Would either a plan approved or adopted both have the water classifications into types in the plan or does approval lessen that requirement but still allow mitigation funds to flow? The word approval should have a definition.

**Section 1-05** The draft strikes this section entirely from the WQS, a request for a declaratory ruling. I understand that the Panel no longer has control over these rules. I believe that the Secretary does not have authority to issue declaratory rulings, as did the panel, but what if someone does want an explanation or clarification of a section of the WQS, who answers the question? If an answer is given, is it a decision of the Secretary? Is the answer appealable to the Environmental Court as are all decision of the Secretary?

HEADQUARTERS: 15 BANK ROW, GREENFIELD, MA 01301 [WWW.CTRIVER.ORG](http://WWW.CTRIVER.ORG)

MASSACHUSETTS  
413-772-2020

LOWER VALLEY  
860-704-0057

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802-869-2792

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### 3-01 B.1. d. Temperature

CRWC remains concerned that the thermal variance language is not protective enough of Vermont waters. CRWC recommends that DEC implement a new approach to developing biologically based temperature criteria and permit conditions for thermal discharges that ensure effluent limits and ambient conditions. There are examples of such criteria in other jurisdictions, including work done in the Midwest in the Ohio River drainage. Considering the existing work done by DEC on developing biological criteria using macroinvertebrates, DEC should adopt this new approach to thermal discharges as part of this triennial review of Vermont's Water Quality Standards.

Specifically, we recommend that DEC and ANR engage with New Hampshire, Massachusetts, and Connecticut water quality and fisheries agencies; the USFWS' U.S. E.P.A.; and the New England Interstate Water Pollution Control Commission in order to develop temperature criteria for Vermont's waters as well as a means to implement the criteria into permit conditions.

Since the needed coordination with other jurisdictions will take time, CRWC suggests that DEC add two new subsections after the existing 3. This language will provide an improved level of protection while the needed coordination is undertaken by DEC.

#### a. Assimilation of Thermal Wastes

The Secretary may, by permit condition, specify temperature limits that exceed the values specified above in order to authorize discharges of thermal wastes when it is shown that:

- (1) The discharge will comply with all other applicable provisions of these rules;
- (2) A mixing zone of 200 feet in length is not adequate to provide for assimilation of the thermal waste;
- (3) After taking into account the interaction of thermal effects and other wastes, that change or rate of change in temperature will not result in thermal shock or prevent the full support of uses of the receiving waters;

Added language:

- (4) The owner or operator of any source seeking a thermal variance, can demonstrate that any effluent limitation proposed for the control of the thermal component of any discharge from such source requires thermal effluent limitations more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made, and;
- (5) Any permit conditions with respect to the thermal component of the discharge (taking into account the interaction of such thermal component with other pollutants), will assure, the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on that body of water, notwithstanding any variance that exceeds the values specified above.

**Section 3-02 5. Table 3, Section 3-03 5. Table 4 and Section 3-04 5. Table 5** Each of these sections in the table under Aquatic Biota, Wildlife, and Aquatic Habitat will be "implemented according to the numeric thresholds established in the Vermont Department of Environmental

Conservation “Biocriteria for Fish and Macroinvertebrate Assemblages in Vermont Wadeable Streams and Rivers - Implementation Phase” dated February 10, 2004 or as more recently updated.” (Emphasis added.)

The publication offers a discussion of the applicability of criteria to wadeable streams and includes the following footnote on page 1

“The term “wadeable” is somewhat imprecise but refers to any stream or river that at some time during the year can be sampled by an individual wading into the thalweg of the stream channel; “wadeable” is a function of depth, velocity, and, to a lesser extent, investigator size and strength. The population of wadeable streams in Vermont is somewhat variable depending upon hydrological characteristics during the sampling period, and the robustness of field personnel at any given time (which may be declining over time with successive recruitment failures within an aging core staff of biologists).”

This discussion goes to our specific responsibility to protect the Connecticut River and its watershed. Because the definition of wadeable excludes larger mainstem river segments, including the Connecticut River and its larger tributaries, these waters are not covered under the proposed nutrient criteria. Large, non-wadeable, river segments have adverse impacts from excess nutrients just as smaller wadeable segments do. There are technically feasible monitoring and assessment strategies for large rivers that would allow for the creation of comparable nutrient criteria for these segments. What are the Agency’s plans in that regard?

“Proposed Nutrient Criteria for Vermont’s Inland Lakes and Wadeable Streams” is another of the backup documents for this rule making. In Table 2 page 4 under the criteria section, the narrative continues to use subjective words “minimal, minor or moderate” when describing allowable changes in water quality. Do definitions of these words exist either in statute, rule or case decisions? If so, some reference to the source definitions should be included here, maybe as a footnote. If there is no guidance then how does DEC define those terms since they are vital to reaching the management goals of the waters of Vermont? Additionally, having a listing of which river segments are “non-wadeable” easily available would allow the public to understand better the applicability of this part of the proposed rule.

CRWC thanks the Department of Environmental Conservation for the opportunity to comment on the draft Water Quality Standards. Even with our suggestions for strengthening the Water quality Standards further, CRWC applauds the strong protections these Standards offer to Vermont waters.

Sincerely

A handwritten signature in black ink, appearing to read "David L. Deen". The signature is fluid and cursive, with a small horizontal line above the first few letters.

David L Deen Upper Valley River Steward