



**Testimony of Mason Overstreet, Staff Attorney
Conservation Law Foundation Vermont**

Before the Senate Committee on Natural Resources & Energy Committee

March 30, 2023

Good morning Chairman Bray and Members of the Committee,

Thank you for the opportunity to testify on [DR REQ 23-1011](#), an act relating to the reclassification of high quality waters. For the record, my name is Mason Overstreet and I appear before this Committee as a Staff Attorney with Conservation Law Foundation Vermont. For background and context, as my colleague, Mr. Groveman, previously mentioned our organizations have closely followed and worked on this issue for decades. More recently and relevant to this legislation, we actively participated in the antidegradation pre-rulemaking stakeholder process, which led to the development and introduction of the Draft Proposed Antidegradation Implementation Rule.

At the outset, it is worth repeating that this is a complex-esoteric topic. The issue is too often confused, misunderstood, and misinterpreted. To make matters more complicated, there are multiple moving parts related to this bill and its intent. And from our perspective, when considering this legislation, it's vital to separate and compartmentalize all of the parts—despite their interrelation. Regarding our organizations' positions and recommendations on the legislation, I'd like to start with some background context.

- The 1,000 gpd prohibition on indirect discharges within Class A waters was developed and implemented during the same era as Act 250 in an effort to combat development and protect Vermont's pristine waterways. To-date, the prohibition has proven to be effective at its original intention—which is vital to recognize for purposes of this conversation and this bill's intent and goal(s).
- Our organizations acknowledge that the 1,000 gpd ban has also been viewed as “red tape” for certain de minimus proposals for wastewater system (for example new combined lake owner camp wastewater systems, updating State Park wastewater systems, etc.) permits in very high quality waters. We also acknowledge that ANR believes that the prohibition has had an observed chilling effect during reclassification processes.
- While we understand that ANR believes lifting the 1,000 gpd ban will expedite and streamline reclassification, it is an assumption and there is no formal data verifying the assumption. Moreover, we note that ANR's legal obligation is to manage waters

according to their classification based on water quality data and the use of waters regardless of whether the wastewater limit is lifted.

- Closely related, our organizations undoubtedly agree that the existing reclassification process is clunky, slow, and in need of a thoughtful overhaul to provide necessary protections to vulnerable waterways during a time of shifting demands, increased development pressures, and the effects from a changing climate. Indeed, thoughtfully improving and streamlining the reclassification process may be one of the single most important resiliency steps the State could take to ensure we protect and conserve these precious natural resources.
- To that end, as you heard from ANR and will hear from other organizations and members of the public, we too, want to see the countless streams and waterbodies in Vermont that deserve classification or reclassification receive protections. Here is where connecting the links in the chain is critical due to the interconnection between the Antidegradation Implementation Rule, Vermont's Water Quality Standards, the reclassification process, and the desire to lift the 1,000 gpd prohibition.
- Again, recognizing the effectiveness of the ban, if the Legislature wishes to move forward with lifting the prohibition, we must ensure that robust-visionary sideboards are developed in its place, as well as reforming other pieces of the puzzle—namely galvanizing an accountability process to ensure streams and waterbodies with supportive quality-controlled data are in fact classified or reclassified (along with LCAR approving the Draft Antidegradation Implementation Rule). Without a formal accountability-process, in theory, the Legislature could effectively lift the 1,000 gpd ban allowing activities to occur all the while certain deserving vulnerable streams could continue to sit in the queue without protections.
- More specifically, our organizations recommend and encourage the following protective sideboards for this legislation:
 - The legislation must ensure statutory consistency and effective protections and oversight in very high quality waters for new wastewater systems.
 - Remove the engineering certificate presumption related to review of wastewater systems under Title 10, Chapter 64 in very high quality waters, and clarify that these systems will receive the full Tier 2 site specific antidegradation review under the Rule. (Note: We can share proposed edits to Ch. 64 to accomplish this.)
 - The legislation must explicitly prohibit wastewater systems that indirectly discharge more than 6,500 gpd in very high quality waters. (6,500 gpd is the

threshold at which an Indirect Discharge Permit is required from ANR.). These first two recommendations are crucial to ensuring that Class A1 and Class B1 waters are not degraded from wastewater systems if the 1,000 gpd limit is lifted.

- The legislation must require ANR during the triennial rulemaking for the Vermont Water Quality Standards to reclassify any waters where water quality data meets or exceeds the minimum criteria for a higher class of one or more designated uses. (For consistency, this of course, must correlate with the Draft Antidegradation Implementation Rule.)
- The legislation must require ANR to convene a non-point source pollution stakeholder group to review antidegradation as it relates to non-point source pollution, the AMPs, and the RAPs in very high quality waters. The stakeholder group shall analyze whether the RAPs and AMPs are sufficient to protect very high quality waters and what changes to law are necessary to ensure that agricultural and silvicultural activities do not degrade very high quality waters.
- The legislation must require ANR to report back to HEE and SNRE annually on the state of very high quality waters, the effectiveness of any changes (that occur via reclass. leg.), the number of wastewater permits and permits at-large issued in very high quality waters, progress updates on reclassifications, as well as whether any legislative or rule course corrections are necessary.
- The legislation must require ANR to amend the Draft Antidegradation Rule to ensure consistency with the legislation that all proposed new wastewater systems in very high quality waters must receive individual permit review, including a cumulative impact analysis.