

Date: February 13, 2015

To: Vermont House Committee on Natural Resources and Energy

**From: Chip Sawyer
Director of Planning & Development
City of St. Albans**

Re: Comments on bill H.35 - An act relating to improving the quality of State waters

Chairman Klein and members of the Committee on Natural Resources and Energy, thank you for your time and this opportunity to comment on bill H.35. This is an important bill that will set the tone for a crucial statewide effort, and I am hoping that I can provide testimony that effectively communicates the issues from the perspective of our historic urban community. I will be referencing both the version of the bill as introduced (v.2) and draft 1.3 of the bill (v.3).

Summary of City of St. Albans

- Roughly 2 square miles and 7,000 residents. Exhibits the land use patterns of an economic center from the 1800s.
- The City operates a wastewater treatment plant that serves all properties in the City and many properties in the surrounding Town of St. Albans, which is a separate municipality. Like many historic urban communities, we have a combined sewer overflow (CSO) issue, meaning that stormwater is diverted into our sanitary sewer system in certain parts of the City, and significant rain events can threaten back-ups of sewer via man-holes. We have been solving this issue over time with the VT Dept. of Environmental Conservation (VTDEC). Much more of the City's stormwater system is separated from the sewer system and discharges into local brooks at various points.
- There are two stream watersheds that run through the City for Stevens Brook and Rugg Brook. Both eventually flow into St. Albans Bay. Portions of these watersheds have been deemed impaired by VTDEC for reasons of stormwater sediment.
- The City of St. Albans has long been a water quality partner. We have implemented several small-scale stormwater flow reduction and infiltration practices and have been the subject of many site visits by VTDEC staff and others in the water quality field.
- Based on recent efforts and successes, the City of St. Albans also has been hailed as a success story in keeping redevelopment in historic urban areas, rather than resulting in sprawl.
- On October 1, 2013, VTDEC issued the City of St. Albans an MS4 permit, which includes various new requirements and obligations associated with the MS4 NPDES

general permit that the State administers on behalf of the US EPA. The City has begun the process of complying with the vast planning and stormwater treatment obligations that come with an MS4 permit.

- Between our MS4 permit and the stormwater and phosphorus TMDLs, the City is now looking at obligations to reduce our storm flows by 24.4% for the Stevens Brook and 16.0% in for the Rugg Brook, to reduce our stormwater phosphorous into the both brooks by up to 25% (to be confirmed by spring TMDL), and to reduce our wastewater discharge phosphorous concentrations to 0.2 mg/L or less (to be confirmed by spring TMDL).

The Context of Historic Urban Areas

I am not here today to provide testimony on whether the City of St. Albans should do our part to turn the corner on water quality in our brooks, St. Albans Bay, and Lake Champlain; far from it. Please keep in mind that urban centers and their taxpayers and ratepayers have the added burden of being in the cross-hairs of the EPA's limited point source reduction authority, if the State's proposed programs are unsuccessful. Rather, our concern is how the implementation of the State's water quality obligations will prove successful in the historic urban context and not result in unintended land use consequences that are detrimental to the Vermont landscape.

I'd like to speak about the context of historic urban centers in Vermont. In St. Albans City, we cherish our historic, walkable, diverse community. Likewise, Vermont devotes significant State resources to preserving communities like ours. Nevertheless, as with brownfields, our generation has inherited the stormwater challenges that come with 200 years of development without the benefit of today's environmental rules. It is interesting to note that the historic community forms that we love today may not look the same if they had been developed under current stormwater rules.

The blessing of a historic urban center also comes with a curse that development here is inherently more expensive than greenfield development on the fringe. The community and property retrofits required by MS4 and TMDL requirements could further exacerbate the urban-rural development cost differential and be a barrier to urban redevelopment overall. The private market already needs substantial incentives to consider developing in urban centers like ours. New growth in St. Albans has recently occurred only with unprecedented involvement from municipal government. Any added disincentive to redevelopment in the City would only be a step backward from how far we've come in the past few years. Statewide, the results of poorly implemented urban stormwater retrofit requirements would fly in the face of the State's statutory land use vision (24 V.S.A. § 4302), smart growth principles, walkable communities, historic preservation, and preservation of the working landscape.

The City's MS4 is not like previously permitted suburban MS4s in Chittenden County. We deal with different legacy impacts, and we do not enjoy the same growth pressures. MS4s like the City are also set apart from others by the lack of available land for stormwater retrofits. For instance, our preliminary flow reduction plan for the Stevens Brook watershed shows that 96% of the treatable impervious acres would require land that the City doesn't currently own for a

stormwater retrofit. More than 26% of those treatable impervious acres would have to be treated by land entirely outside of the City. I do not believe that we are the only community in Vermont that shares these challenges.

The prospect of acquiring new land via easement or purchase is especially daunting to the City. In other redevelopment efforts, we've seen the price of land increase substantially once it is known that the government is in need of it. The initial estimated construction cost of the flow reduction treatment for Stevens Brooks in the City is more than \$4 million. This does not include land acquisition or permitting, which could more than double the cost, based on past experience. The costs for Rugg Brook are not yet known, nor are the phosphorous reduction treatments for either brook that will be required by the TMDL.

Comments on Proposed Legislation

I respectfully offer the following comments on what H.35 and other State policies could address in order to ensure the success of water quality efforts in the historic urban context:

1. Through the Clean Water Fund (v.2 Sec. 16 and v.3 Sec. 26) the State should provide sufficient funding, with revenue collection spread statewide and including residential and tax-exempt properties, for urban water quality solutions. If local bond authority is to be a required tool for the State to achieve any portion of its water quality obligations, then YES votes will be more likely when the voters can see substantial assistance from the State.
2. For the portion of retrofit costs that may require funds from an urban community, please consider exploring the option for a municipality to "piggy-back" an additional percentage on the State's Clean Water Fund revenue collection - similar to a local option tax.
3. Consider incentivizing stormwater retrofits through other state funding and state-administered federal funding that are often linked to urban redevelopment projects (e.g. Downtown Transportation Fund, Vermont Community Development Program, Transportation Alternatives Program).
4. The City supports the change in v.2 Sec. 19 and v.3 Sec. 38 to allow MS4 areas to be eligible for Ecosystem Restoration Program funds.
5. We urge that House appointees to the Clean Water Fund Board understand the local urban context of permitting and implementation.
6. We respectfully request that the Clean Water Fund be used for the highest priority projects that will provide the most efficient use of funds for water quality improvements, not just for the best looking grant applications. MS4 status should be considered one of the highest priorities – our permit is proof of the importance of water quality in our watersheds. Allow VTDEC to be flexible on the permitting timelines for lower-priority projects until they are higher in the priority list. While the City appreciates the efforts to

build such a fund, the role it can play in our financial planning is still tenuous if there is no assurance of funding.

7. Provide adequate resources and flexibility to the Tactical Basin Planning process (v.2 Sec. 13 and v.3 Sec. 19). It is fitting that the basin plans should have a significant role in determining water quality project priorities. However the process must have adequate State and regional staff to easily integrate the latest knowledge from local MS4 and TMDL planning without unnecessary redundancies and bureaucracy. Ensure that the local communities have a direct line into the basin planning prioritization process and that statewide DEC goals and activities are truly linked to the priorities in the basin plans, so that there is a multi-level shared focus on what should be required and funded and in what time frame.
8. Ensure flexibility in the State's stormwater permitting program (v.2 Sec. 14 and v.3 Sec. 24) concerning the context of phosphorous reduction requirements. The cost of reducing phosphorous from the stormwater of a built-out urban site is much higher than from a new greenfield site.
9. Ensure flexibility and integration in an urban community's overall water quality obligations with DEC. Do not pit MS4 flow reductions versus combined sewer overflows. Do not force communities to put forward competing stormwater and wastewater treatment bonds to their voters. Allow DEC to work with communities on prioritizing flow and phosphorous reductions across point-source and non-point source and requiring one project at a time.
10. Provide State-funded annual testing of MS4 watersheds for impairment status (v.2 Sec. 15 and v.3 Sec. 25). There is too much money that will be required for our water quality goals to be based solely on models and proxies, and our efforts to prioritize projects will benefit from recent baselines and the ability to plot outcome trends.

In Closing...

There is no way to avoid the fact that the clean-up of Lake Champlain and its watersheds will require additional funding that must be born statewide and require implementation that benefits from prioritization and flexibility. Vermont's historic urban centers are a special breed of community with special challenges that I urge you to be mindful of. We are under the same mandate as VTDEC and the State, and we recognize the challenges and importance of success. We have long been a partner on water quality issues. We are depending on the State to continue that partnership and support us to thoughtfully and successfully implement water quality improvements to Lake Champlain.