

H.35 Testimony
3PM, Wednesday January 28, 2015
House Committee on Fish, Wildlife and Water Resources

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Thank you for the opportunity to present testimony on House Bill 35. I would also like to thank the Chair and this Committee for efforts on this very important topic in the last legislative session. Water Quality improvement is a complicate and often emotional issue. Your efforts opened this important discussion we are continuing today. This current Bill identifies the updated knowledge of sources of nutrients sources to Lake Champlain while recognizing the high degree of regulation facing a number of permittees in the Basin.

My comments today are on the broad based initiatives presented in the Bill recognizing that there will be alterations made during the rule making process. The community that I represent is heavily invested in water quality improvement with significantly more expensive work to follow as required by the MS4 stormwater permit. Please, no more unfunded mandates.

As you all know, it is extremely important to work straight ahead to achieve the objectives of Phosphorus reduction required in the pending TMDL release. As Vermonters, we cannot afford to implement solutions that are not prioritized in the most cost effective manner. When you really get down to it, we are all polluters through our contemporary living habits, the cars we drive, the homes we own and the infrastructure that supports Vermont today. If we do not invest wisely in Phosphorus reduction early on, direct discharging wastewater facilities and MS4 stormwater facilities will be further regulated by EPA. This reality has been clearly stated by EPA on several occasions. The unintended consequence of delayed implementation will increase costs to a disproportionate few while leaving Phosphorus reduction inadequately addressed. The net result of insufficient action would clearly be higher cost for implementation and delays to this needed remediation work.

The Agriculture community is stepping up to the task at hand. Provisions of this Bill will help those agricultural initiatives succeed. We support these additional safeguards and requirement for farm compliance. Many farms are no strangers to these accepted and best management practices and we commend those land stewards. This Bill will help to remind the other farms of these management practices and encourage water quality improvements first, then enforcement for lack of action.

Even with the comprehensive agricultural implementation under this Bill, visible improvement to challenged sections of Lake Champlain will take many years and many more dollars. For this reason, the prioritization of funding presented in this Bill and in H.29 (Water Quality Improvement Fund) is an excellent direction. Prioritization should include a necessary provision to insure that money invested in water quality improvements bring the best return in terms of Phosphorus reduction.

The introduction to the Bill states “(3) identify cost-effective strategies for the State to address water quality issues;” Careful prioritization is especially important as the funding sources being used have been underutilized due to the recent past permit uncertainty. Release of the Lake Champlain TMDL will result in projects moving forward with increased competition for limited funds.

It is also my understanding that the State Clean Water Revolving Fund allotments is under periodic review at the Federal Government level. Vermont already has the lowest allowed percentage of funds allocated. Any potential Federal reallocation that ends with reductions in support to Vermont would have significant long term impact on our ability to invest in clean water and clean water infrastructure improvement.

Section 4813 BASIN MANAGEMENT: APPEALS TO THE ENVIRONMENTAL DIVISION contains a provision for appeal that states; “Any Person with an interest in the agricultural non-point component of the basin planning process may petition...” Broad definition of an interested party has a potential to expand appeals to water quality improvement processes and potentially delay implementation. Please consider some modification that would allow progress while providing for appeal by truly interested parties.

CERTIFICATION OF CUSTOM APPLICATORS; this section defines Sludge. I request consideration for the treated and regulated byproducts of the wastewater industry to be considered as “Biosolids”. Biosolids are wastewater treatment byproducts that has been treated in accord with state and federal regulations and determined to be safe for recycling these nutrients back to the environment as fertilizer. Biosolids and approved management sites are highly regulated and require State review and Operator Certification under penalty of law. Additional regulation of the Biosolids application process is not necessary nor is it warranted. The land application of Biosolids is also strictly regulated for nutrient application, setback requirements and a host of other regulatory compliance requirements for the program to operate. Biosolids management by land application is integrated into farm nutrient management on Biosolids certified fields. Certified Biosolids meet the intention of this section.

Noted within Section 1264 STORMWATER MANAGEMENT is definition 17 “Watershed Improvement permit”. It is my understanding that this permit class has been abandoned. If the WIP is being re-established in another context, please consider some clarification of the language.

Further in this same section is (c) prohibitions (4). This addition fills an existing gap in state rules that MS4 communities have had to fill for development of land greater than 1 Acre as well as development of land Less than 5 Acres containing greater than 1 Acre impervious surface is filled and corrected. MS4 municipalities now will have state regulation of this development activity.

Section 1388 of this Bill describes the composition of the Clean Water Fund Board. Please note that many sectors are specifically listed with the exception of the NPDES regulated. Though the Agency of Natural Resources will represent the permitted community well, a permit holder representative would present a unique and important perspective in the composition of this Board.

Chapter 245 IMPERVIOUS SURFACE ASSESSMENT 10501 is silent on State and Federal properties that often meet the definition of large impervious areas. Section 10502 LIABILITY FOR PAYMENT (b) exempts farming and forestry. Please consider the addition of "EPA MS4 designated entities". The Commercial property fee assessed to any parcel in an MS4 regulated area would be an extra burden. These parcels are often necessarily looked at by municipalities as the primary means of the MS4 permit compliance requirements. These parcels may also be targeted under the MS4 permit requirement under the mandated Flow Restoration Planning (FRP) requirements. Municipalities must often look to the larger parcels for the biggest bang for the buck to gain compliance under this requirement.

Section 18 6 V.S.S. 366 TONNAGE FEES For clarity of the Phosphorus fertilizer fee application, please consider the specific exemption of Biosolids from the proposed fee. As noted earlier, Biosolids are highly regulated. Their application is integrated into the nutrient management requirements of the fields involved. Additionally, one fertilizer segment that appears to be unaddressed are the large contract commercial and residential law fertilization and pesticide/herbicide applicators.

Thank you for the opportunity to present this to you.

Respectfully Submitted,

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Village of Essex Junction