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February 9, 2015

David Deen, Chair  
House Fish, Wildlife and Water Resources Committee  
Vermont State House  
115 State Street  
Montpelier, VT 05633-5301

Dear Chairman Deen:

I am writing on behalf of Vermont local officials to follow up on my initial testimony to your committee regarding H.35 as introduced. The draft bill to which the comments in this letter are directed is 1.2, dated January 30.

As I mentioned in my initial testimony, we support the proposals to strategically target revised Accepted Agricultural Practices to preventing phosphorus and other nutrients from getting into the waters of the state. In particular, we appreciate your inclusion of a prohibition on applying manure on a farm within 25 feet of an adjoining surface water or within ten feet of a ditch. We urge you to make the setback 25 feet from both as ditches eventually convey water and pollutants to waters of the state, particularly in high precipitation events. We support measures to prohibit construction or siting of farm structures in a flood way identified on a National Flood Insurance map. We note that a river corridor can be an exceedingly wide swath of land, in some areas comprising the entire valley floor, which may make compliance very difficult in those circumstances. We urge the committee to prohibit livestock in surface waters and to prohibit subsurface tile drainage to municipal ditches or rights of way.

At the same time we believe that the current language at 6 V.S.A. section (a) (2) – “BMPs shall be practical and cost effective to implement” – is important to retain and should be applied to measures required of municipal governments as well. Neither farmers nor municipal officials have the ability to implement impractical or wildly expensive stormwater control measures that will effectively bankrupt them, unless there is funding in place to complete the project.

Section 8 of Draft 1.2 addresses the regulation of custom applicators. We urge you to include compliance with posted weight limits on town highways in the certification requirements for not only custom applicators but also agricultural service vehicles. Both types of vehicles can cause significant damage to and erosion of town highways in spring when they are posted for weight limits. The churned-up road material is eventually conveyed to the waters of the state. Title 23 section 1400d reads,

*“(a) An agricultural service vehicle, as defined in subdivision 4(71) of this title, shall be exempt from the provisions of sections 1400 and 1400a of this title if the gross weight does not exceed 60,000 pounds.”*

*A custom applicator (I believe) is defined at 23 V.S.A. section 4 (70) as “Agricultural custom service vehicle” means a motor truck used on a farm for planting, harvesting,*

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VLCT Municipal Assistance  
Center

VLCT Property and Casualty  
Intermunicipal Fund, Inc.

VLCT Employment Resource  
and Benefits Trust, Inc.

*or transporting crops or waste products produced on the farm, that is owned by a person providing custom services who is not a farmer as defined in 32 V.S.A. § 3752(7). In order to qualify as an “agricultural custom service vehicle,” a motor truck shall be registered under either subsection 367(a) or (f) of this title and shall be exempt from sections 1400 and 1400a of this title if the gross weight does not exceed 60,000 pounds. The operator of an “agricultural custom service vehicle” shall be exempt from the requirements of chapter 39 of this title, to the extent allowed by federal law.*

*An agricultural service vehicle is defined at 23 V.S.A. section 4(71), (71) "Agricultural service vehicle" means a motor truck that shall be registered under subsection 367(a) of this title, and is used for the purpose of transporting to or from a farm:*

*(A) agricultural inputs, including lime, fertilizer, commercial feed, or forages; or*

*(B) agricultural outputs, including milk, vegetables, fruit, horticultural crops, forages, or livestock.”*

After other enforcement measures have failed, the VLCT Board endorses removing the owner of agricultural or forest land in the Use Value Program who is found to be out of compliance with Accepted Agricultural Practices or orders issued to remedy a violation of those practices. That provision is incorporated into Section 16 of Draft 1.2.

Section 18 of Draft 1.2 would require the Secretary of the Agency of Natural Resources (ANR) to prepare and maintain an overall surface water management plan to include a schedule for updating the basin plans. The secretary must consult with not only regional planning commissions, as the draft suggests, but also with municipalities in the basin. Regional planning commissions are no surrogate for local governments, and their interests are sometimes very different. Subsection (h) of that section states, “the Secretary may require the regional planning commission to (1) ensure that municipal officials, citizens, watershed groups and other interested groups and individuals are involved in the basin planning process...” The section should instead read, “The Secretary *shall* require...” What basin plan would be supportable if citizen and municipal engagement and input were ignored? We are relieved that you addressed this issue in the committee last week.

Section 19 adds yet another goal to the relentlessly ever-expanding list of goals that municipal plans must address. The most recent addition took effect May 27, 2014. We note that the basin plan adoption process in statute is essentially up to the ANR secretary, who needs only give “due consideration” to the items listed in 10 V.S.A. section 1253 (e) and pursuant to the new language in section (f), “*may* contract with a regional planning commission”... and “*may* require the regional planning commission to ...”. If a new goal of maintaining water quality according to the policies and actions in the basin plans is included in statute, the statute should also require the secretary to direct any contracted regional planning commission to ensure that municipal officials, concerned citizens, watershed groups and other interested parties are included in the process, and “shall address the concerns raised by those participants” with respect to both her own activities and those of any contracted regional planning commission.

At Section 23, the ANR secretary would be directed to adopt rules to manage stormwater runoff. “At a minimum, the rules shall “(1) Establish as the primary goals of the rules assuring compliance with the Vermont Water Quality Standards and maintenance after development, as nearly as possible, of the predevelopment runoff characteristics.” We believe that the primary goals of the rules should be to assure implementation of a total maximum daily load (TMDL) for the water of concern.

“Predevelopment runoff” is an impossibly high standard for most settled areas, which are those places where the State of Vermont purports to want to direct development. It is also a tremendously high standard for town highways. To us, predevelopment means original state, a condition that has not been

in place in our cities and towns or on our roads for well over 200 years. We urge you to consider a reasonable standard or to further define what is meant by “predevelopment.”

We are also concerned that including technical standards in rules may not provide flexibility to use new and hopefully lower cost technologies as they are tested and made generally available (item 4). We note that item (7) of that section is to allow municipalities to assume full legal responsibility for a stormwater system permitted under the rules as part of a municipal separate storm sewer system (MS4) permit. If any municipality assumed that responsibility, that could represent a labor and cost savings to the agency, potential savings that are not reflected in H.35. We are concerned that full legal authority might still include significant oversight and micro-managing from the agency, costing everyone and saving little. How would such authority devolve?

Section 24 of Draft 1.2 addresses town highways. We urge you to call them town highways and not create a duplicative name that will only lead to confusion in the future. The definition of “redevelopment” includes virtually everything because it does not include construction or reconstruction of impervious surface that already exists when the construction or reconstruction involves less than 5,000 feet. Please note that municipalities maintain 11,000 miles of highway in Vermont for the benefit of every person who lives, plays, or works in or visits this state. Our understanding was that ANR would regulate town highways through a general permit, as the agency said it would do in the Clean Water Initiative. It is not clear in this draft that the General Permit is the way that regulation of town highways for stormwater management will be implemented.

We understand that town highways and impervious surfaces, particularly in developed areas, contribute significantly to pollution in the lake (13.8 percent of phosphorus loads to the lake for developed lands and 5.6 percent for unpaved roads). Nevertheless, as we mentioned to Representative Krebs in our initial testimony to the committee, we are completely wrapped around the axle about potential costs, which will be enormous. In January 2013, ANR released “Water Quality Remediation, Implementation and Funding Report,” which it had prepared for the Vermont General Assembly in Accordance with Act 138 (2012). That report estimated that addressing stormwater runoff from town highways would cost approximately \$10.45 million per year for each of the next ten years. It also estimated that curbing currently unregulated stormwater runoff would cost municipalities in excess of \$70 million per year, and addressing municipal infrastructure and regulated stormwater would cost in excess of \$63 million per year for the next ten years. Needless to say, property tax payers, who made their voices heard last November, are straining to pay their bills today before any of this goes into effect.

Funding for Class 2 town highways from state sources has been level since FY09. Since that time, the Town Road and Bridge Standards have been amended twice. The Town Highway Structures Program, which provides assistance for maintenance and construction of bridges, culverts, retaining walls and other structures, has been level-funded since FY13. Transportation revenues from the gas tax are down and the federal government, which provides no funding for town highways, has not been able to pass a new transportation authorization in years. VLCT has proposed an increase in the gas tax to take advantage of some of the temporary downturn in gas prices. Steve Jeffrey, VLCT Executive Director, presented his proposal to both Transportation committees in the last month.

Section 25 directs ANR to do a lot of work that it has done in the past several years. I urge the committee to visit the Flood Ready Vermont website, [www.floodready.vermont.gov](http://www.floodready.vermont.gov).

We support the creation of a Clean Water Fund. We find it curious that there would be no municipal representation on a board of a fund that would, presumably, provide money for implementing projects to municipalities, nor that the board would be directed to solicit public comment from municipalities.

Additionally, it would be helpful to say in the law that the Clean Water Fund Board is subject to the Open Meeting Law. If the objective is to track all the money being directed to clean water efforts, the board should advise the Secretary of Administration on not only Clean Water Fund, General Fund and Transportation Fund expenditures, but also the Capital Budget, any tax originally implemented with the objective of cleaning up the waters of the state, and fee bill revenues and expenditures.

We also support the development of a per-parcel or impervious assessment fee if that fee is applied to every parcel in the state without exception, if the fund is available for municipal implementation projects on a statewide basis as needs arise, and if the fee is billed and collected by the Vermont Department of Taxes. The department has all the data regarding parcels, addresses, and grand lists it would need to accomplish that task. We imagine it will be virtually impossible to establish the amount of impervious surface each of the 300,000 parcels in the state contains. The committee may want to establish tiers of presumptive impervious surface if it chooses to go with that kind of fee.

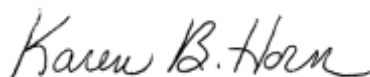
We oppose increasing the Department of Environmental Conservation fees by 150 percent in order to fund 13 new positions in the department. Despite the testimony from the department, it seems there should be the possibility of redirecting some of its 284 staff to stormwater management priorities. Fees assessed on municipalities will largely be paid by the property tax.

Thank you for extending eligibility for the Ecosystem Restoration Program to MS4 communities. We urge the committee to consider how municipalities that have done stormwater related work already (and many have throughout the state over the years) will be given consideration for that work.

Thank you for your committee's very important work on devising a system that is equitable and effective at cleaning up Lake Champlain.

Finally, we realize that a Draft 1.3 of H.35 will be available on Tuesday. We hope the committee has time to incorporate our recommendations into the bill.

Sincerely,

A handwritten signature in cursive script that reads "Karen B. Horn".

Karen Horn  
Director, Public Policy and Advocacy

## 1.21. Summary of Costs of Achieving Clean Water in Vermont

<sup>65</sup> Additional costs beyond current funding levels.

<sup>66</sup> See Appendix B for budget details for nonpoint sources.

<sup>67</sup> See Appendix C for budget details for Municipal Wastewater, Stormwater, and Water Supply

Infrastructure. **Item**

### Average Annual Cost Over Ten Years

Group #1: Municipal Operations for Nonpoint Source Pollution Reduction<sup>66</sup>

1.1 Unregulated Stormwater \$70,854,000

1.2 Unregulated Stormwater Runoff from Road Networks \$10,450,000

Subtotal

\$81,304,000

Group #2: Agricultural and Forestry Operations for Nonpoint Source Reduction<sup>66</sup>

1.3 Farm Compliance with the Accepted Agricultural Practice Rules \$635,000

1.4 Agricultural Nutrient Management \$700,000

1.5 Agricultural Livestock Exclusion from Streams \$3,300,000

1.6 Technical Assistance and Education for Agriculture \$652,500

1.7 Agricultural Best Management Practice Implementation \$3,290,000

1.8 Management of Runoff from Timber Harvesting Operations \$150,000

Subtotal

\$8,727,500

Group #3: River, Floodplain, and Lake Shoreland Management<sup>66</sup>

1.9 River Corridor/Floodplain Management \$1,440,000

1.10 River Channel Management \$152,500

1.11 Lake Shorelands Protection \$175,000

Subtotal \$1,767,500

Group #4: Municipal Infrastructure and Regulated Stormwater Programs<sup>67</sup>

1.12 Aging Municipal Wastewater Infrastructure \$18,000,000

1.13 Nutrient Pollution Controls at Municipal Wastewater Facilities \$11,300,000

1.14 Financial Planning for Municipal Infrastructure Management \$160,000

1.15 Municipal Drinking Water Infrastructure \$21,500,000

1.16 Municipal Stormwater Infrastructure Needs Unknown

1.17 Replacement or Upgrade of Failing and Substandard Septic Systems Unknown

1.18 Stormwater Impaired Waters \$10,000,000

1.19 Enhanced Stormwater Regulations \$1,300,000

1.20 Implementation of the MS4 General Permit Programs \$1,600,000

Subtotal \$63,860,000

**TOTAL \$155,659,000**

*Water Quality Remediation, Implementation, and Funding Report; Prepared for the Vermont General Assembly in Accordance with Act 138 (2012). P. 27.*