

Robert C. Krebs, P.E., L.L.S.
State Representative
134 East Shore Road
South Hero, Vermont 05486
Tel. 802-372-4567

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Ms. Anne Whiteley
Department Attorney
Department of Environmental Conservation
State of Vermont Waterbury, Vermont.

Re: Surface water sources – Lake Champlain
Wastewater System and Water Supply Rules

Dear Anne,

For sometime now the consultant community has been told that the use of a surface water source for potable water was not allowed under the Environmental Protection Rules. My district is surrounded by Lake Champlain and this prohibition has been a struggle for some, exacerbated by the fact the most drilled wells in the islands are either plagued by sulfur or hardness. In past years the design and construction of potable water systems using Lake Champlain was allowed, and I personally shepherded some of those through the system.

Last week I stopped in Waterbury and spent some time with Ernie Christianson discussing this issue and trying to find the "prohibition" in the rules, or as some policy decision. We spent a considerable amount of time paging through the rules and also spoke with Scott Stewart in the Water Supply Division. I believe Ernie's position was that that the Water Supply Rules did not specifically authorize wastewater management to permit surface water sources, or something similar to that. Some years ago I remember hearing that agency personnel (Roger Thompson or Don Robisky) had made that decision at least partially based on the assumption that homeowners would not maintain their required water treatment systems, and thusly "public safety" required that such systems NOT be approved. So, we were not able to resolve the issue and agreed to look into it further.

I have since spend some of the weekend looking through the rules, and having possibly missed something, see no prohibition on using Lake Champlain as a potable water source. I started with the Water Supply Rules (revised December 1, 2010). These rules apply to ALL water systems including non-public water systems and privately owned water sources (page 7). Later in the rules all water systems are separated as Public and Non-public, and further defined as Non-public as needing a permit (under Water Supply) or not needing a permit (page 8). Discussion of the Non-public needing a permit and Non-public NOT needing a permit continues on page 9 of the rules, and Non-public water systems NOT requiring permits are regulated by the Environmental Protection Rules. This seems to me anyway as clear delegation of authority to the wastewater management division. Further on page 21 of the WSR's under Permits-Administration, section 3.1.1 clearly gives the authority for the development of new drinking water sources for non-public waters systems to the Wastewater Management Division through its regional offices.

Next I looked at the Wastewater Management Rules (September 29, 2007) including the summary of recent changes. Since the water supply rules did delegate the authority to the Wastewater Management Division there should be some acceptance of that action. Section 1-101(c) seems to do that, "these rules regulate potable water supplies that are not subject to regulation under the Vermont Water Supply Rule as public water supplies". Non-public water supplies not needing a permit as defined in the water supply rules are NOT regulated by those same water supply rules. The definition of potable water supply in the Protection rules means the "source", and Lake Champlain is not prohibited (page 15). Regarding the anecdotal concern that homeowners would not maintain their systems, they should be treated no differently than any other permittee, and homeowners further are required to care for their system (1-309(c) page 31). It appears that some of the standards are portable between the two sets of rules, but again no prohibition of a surface water source is in either. The water supply rules (page 19 (3.2)) says that a surface water source includes all tributary streams and basins, natural lakes and artificial or natural impoundments.

I'm hoping that this is a reasonably logical look at the rules and that the Agency can issue some clarification that would allow the use (with proper protection, treatment, etc.) of Lake Champlain as a suitable source of potable water. Please let me know if you have any questions, or if I have missed some directive/policy/guidance document that does prohibit the use of lake Champlain. Thanks of listening.

Very Truly Yours,

Robert C. Krebs

cc. E Christianson