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**STATE OF VERMONT**  
LEGISLATIVE COMMITTEE ON  
ADMINISTRATIVE RULES

**MEMORANDUM**

To: Rep. David Deen, Chair, House Committee on Fish, Wildlife and Water Resources  
Sen. Chris Bray, Chair, Senate Committee on Natural Resources and Energy

From: Legislative Committee on Administrative Rules; Rep. Patsy French, Chair

Date: December 15, 2016

Subject: Rule 16-P21 – Agency of Natural Resources/ Vermont Use of Public Waters, Berlin Pond (Combustion Engines)

On October 6, 2016, the Legislative Committee on Administrative Rules (LCAR or the Committee) voted to approve Rule 16-P21, Vermont Use of Public Waters, proposed by the Agency of Natural Resources. The specific amendment was the prohibition on the use of all internal combustion motors on Berlin Pond, including tools powered by internal combustion. However, pursuant to 3 V.S.A. § 817(e), the Committee writes to request that your committees consider whether a ban on internal combustion engines should be required on all public waters serving as the source of a public water supply.

In the Scientific Information Statement provided as part of the rule-making submission, the Department of Environmental Conservation (DEC) offered the following quote from the U.S. Environmental Protection Agency (EPA) for the scientific basis to prohibit internal combustion motors on Berlin Pond:

Even a small spill can have serious impact. A single pint of oil released into the water can cover one acre of surface area and can seriously damage an aquatic habitat. A spill of only one gallon of petroleum can contaminate a million gallons of source water.

This statement from EPA is an analytical and pragmatic basis for the proposed limitations on Berlin Pond, but it begs the question of why internal combustion motors are not prohibited on all public waters used as a source of a public drinking water supply.

There are 20 public surface waters in the State, other than Lake Champlain, that supply water for a public water supply. If the risk of petroleum contamination on Berlin Pond is significant enough to amend the allowed uses on that water, the risk to the other 19 waters is likely the same or similar. It would be important to determine if DEC has contemplated a ban on internal combustion motors on these other 19 waters and if so, what basis may exist for DEC's decision not to recommend the prohibition of the use of motors on these waters.

In addition, if DEC has not contemplated or proposed the prohibition of internal combustion motors on the 20 public waters used as a source of a public water supply, the Committee suggests to you and, by copy of this memorandum, to DEC that it engage in that review and submit to the General Assembly a recommendation for regulating internal combustion motors on these 20 waters.

Please feel free to contact the committee or legislative counsel Michael O'Grady if you have any questions.

cc: Deborah Markowitz, Secretary, ANR  
Alyssa Schuren, Commissioner, DEC  
Michael O'Grady, Legislative Counsel