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April 12, 2022

Rep. Amy Sheldon, Chair
Vermont House Committee on Natural Resources, Fish, and Wildlife
State House
Montpelier, VT
By Email

RE: S.226 Written Testimony

Chair Sheldon and Committee Members,

Thank you for providing this opportunity to comment on S.226, An act relating to expanding access to safe and affordable housing. For nearly five years I served as Commissioner of Environmental Conservation under Governor Douglas, following six terms as Mayor of Rutland. More recently I served as Rutland's Commissioner of Public Works for seven years until my retirement last year. I believe my experience as the person responsible for the operation of a 2 MGD public drinking water system and the state's largest wastewater treatment plant, in addition to serving as Vermont's chief regulator of water and wastewater utilities, makes me qualified to comment on certain sections of this bill.

Senator Ram Hinsdale has stated that S. 226 is primarily a housing bill with permitting reform measures, which will better enable the development of safe and affordable housing in Vermont. The bill contains multiple provisions aimed at increasing incentives and removing disincentives to housing development. You have or will receive testimony on all aspects of S.226, and I am in agreement with VLCT, VNRC, The Agency of Commerce and Community Development and the Agency of Natural Resources, all of whom support this bill.

My testimony will focus on sections 19 and 20, relating to exemptions from state permitting for connections to regulated municipal water and wastewater systems. Currently, the Department of Environmental Conservation requires permit approvals for new connections to municipal water and wastewater utilities, and changes of use to existing connections requiring physical modifications. This is in addition to municipal utility approvals of the same connections.

The purpose of S.226 is to encourage affordable housing development in compact development areas, essentially areas served by regulated municipal water and sewer utilities. The utilities are regulated by the state through permits under the Clean Water Act and the Safe Drinking Water Act, and their operations are reviewed by DEC including submission of monthly reports and periodic on-site inspections.[1]

Sections 19 and 20 of S.226 would remove the requirement for duplicate permits as long as the utility imposes standards at least as stringent as those required by the state and issues its own

[1] The 164 page long Vermont Wastewater System and Potable Water Supply Rules may be found here: https://dec.vermont.gov/sites/dec/files/dwgwp/wastewater/pdf/finalwspwsrules.effective2007.09.29.pdf

permit. This will reduce the cost and time imposed on developers without any increased risk to public health or the environment. These costs and delays are not insubstantial. Rutland's DPW typically issues approvals within a week or two for fully complying projects. DEC will not review that permit application until the City has issued its "Ability to Serve" letter, essentially the local permit approval. Once the City approval is in hand, DEC considers the application and invariably takes at least the full 30-day standard review.

The DEC review adds delay and expense to those seeking connection permits and nothing else. DEC does not track the capacity of the water supply or wastewater treatment plant to accommodate the increased demand – that responsibility rests with the utility. The state relies entirely on the municipality to affirm that the additional demand will not result in a permit violation for the treatment system. DEC enforces the overall treatment capacity limits through their permits on the water and wastewater treatment plants themselves.

In addition, DEC does not certify that the connection design is in compliance with their rule. The responsibility for that certification rests with the licensed engineer or designer who prepared the application. Enforcement of compliant designs is done through those state-issued professional licenses.

In sum, DEC offers no added value or protection of public health or the environment by requiring duplicative permitting for these connections. Zero.

Now, I note that Thomas Weiss and others have testified before this committee. He has argued that that because wastewater utilities sometimes have unpermitted discharges of untreated wastewater, allowing new connections increases that risk. This argument makes no sense. First of all, to my knowledge DEC has never denied a connection permit on this basis, so the suggestion that if they no longer issued these permits pollution would increase uncontrollably is ridiculous.

But the argument also fails on its own foundational assumption. From my experience it is safe to assume every regulated wastewater system everywhere will from time to time experience some form of untreated discharge. There is no possible way any utility can monitor on a real-time basis every lineal foot of their collection system. Failing that, weather events, accidents, 'flushable wipes', and FOG – fats, oil and grease – will foul pipes and pumps and cause backups. And, on occasion, it will result in an untreated discharge. Since every wastewater collection system is prone to these discharges, following Mr. Weiss' logic, no new connections should ever be permitted anywhere.

Another concern is associated with combined sewer overflows. CSOs are different in that they are not the result of a failure, but of the system functioning exactly as designed. CSOs only happen where the collection system serves the dual purpose of transmitting wastewater and stormwater to the treatment plant, and there are 11 of these systems, including most of the largest ones, in Vermont. CSOs are not caused by wastewater; they occur when stormwater flows exceed the hydraulic capacity of the collection or treatment infrastructure, thereby threatening backups into buildings and onto streets. The excess stormwater and wastewater are allowed to discharge directly to receiving waters in order to prevent these backups and thereby protect public health.

Rutland has already invested more than $20 million to reduce CSOs, and tens of millions more will be required. But CSOs are caused by stormwater – not wastewater. The idea that permitting a sewer connection for a new three-bedroom home would somehow increase the likelihood or duration of a CSO event is ridiculous.

In addition, as I have testified and documented on multiple occasions in the past, combined sewer systems, which by definition will always be prone to at best infrequent CSOs, do a far better job of protecting water quality than separated systems, even including the untreated CSO discharges. This is because substantial volumes of stormwater are treated at the plant in addition to the wastewater. Stormwater carries nearly all of the same pollutants as wastewater, although in different concentrations. Treating the stormwater as though it is wastewater ensures that when it is returned to the environment it meets far more stringent standards than any current or proposed Vermont stormwater discharge regulation.

Eliminating CSOs can only be done by eliminating combined sewers, and if we did that water quality would decline dramatically. While minimizing and managing CSOs must be a priority to improve water quality, there is no water quality benefit from either eliminating combined sewers or eliminating the ability of utilities to issue permits for new wastewater connections.

Others have pointed out that current law allows municipalities to apply for permission to issue state permits. This provision was passed at my insistence while serving as Commissioner of Environmental Conservation under Governor Douglas, and it has proven to be an abject failure. In the nearly two decades since, only two municipalities have used this, and it is not because others do not want to. It is because the administrative requirements are so onerous it is completely unworkable.

In summary, the state's interest is protected by the permitting, inspection and regulation of the utilities themselves. If the discharge from the treatment plant meets all permit requirements, and the utility permits and regulates connections to the system properly, on what conceivable basis does the state need to review and approve each individual connection again? Only when a utility is unwilling or unable to properly review and issue local connection approvals should the state assume this responsibility. And S.226 provides for this.

Duplicative and sometimes contradictory permitting has created a nightmare for applicants and municipalities, and Rutland alone has dozens of examples. Mr. Weiss has studied a handful of approved wastewater connection permits in a few communities and concluded that the delays and fees are reasonable. While the five permits issued by Rutland that he studied are hardly a statistically valid sample, I completely disagree with his conclusion. Using data from his study, the average processing time for the DEC WW permit for these five projects was nearly 45 days. Had the provisions of sections 19 and 20 of S.226 been in effect, the developers would have satisfied their WW connection requirements an average of 64 days earlier than is required by the duplicative permitting system we now have. Total state WW connection fees paid by these five projects was $5,026, and this does not include the costs associated with the consultants and engineers retained by the developers to prepare the DEC permit applications and manage that process.

Mr. Weiss bases his conclusion that DEC WW permitting does not increase project delays because other required approvals – notably Act 250 – take even longer. But S.226 seeks to reduce multiple disincentives for housing development, including Act 250. His own study

suggests that streamlining Act 250 without eliminating DEC permitting of water and wastewater connections would be largely self-defeating.

Here is my analysis of Mr. Weiss' data:

	DEC permit approval-days after application	DEC permit approval-days after city allocation	DEC fees
26 Watkins Avenue	66	110	$ 580
25 - 29 Center Street	26	29	$ 870
120 Crescent Street	35	44	$ 306
67 Grove Street	55	60	$ 270
10 Lincoln Avenue	42	77	$ 3,000
AVERAGE	44.8	64	$ 1,005
TOTAL	224	320	$ 5,026

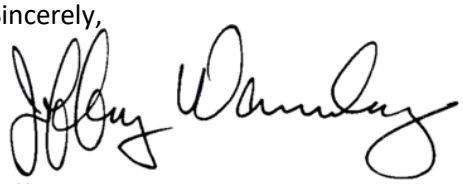
Let me put on my former DEC hat for a moment here. Since I served as commissioner DEC has been charged with dramatically more responsibility by the public through their elected representatives. The Lake Champlain TMDL, Vermont Clean Water Act, and Global Warming Solutions Act are just three examples. Clearly, this vital department's resources are being stretched beyond recognition compared to my time there in the 2000's. Look at the times DEC staff took to duplicate utility reviews of just these five projects. Given that these reviews added no public health or environmental benefit, is this really the highest and best use of Vermont's environmental protection resources?

Finally, given that the state heavily regulates these water and wastewater utilities, where does the state's legitimate interest lie? Is it to regulate whether a homeowner adds a bedroom or whether the discharge from the wastewater treatment plant is in full compliance with its permit under state and federal law when it enters the waters of the state?

S.226 is supported by ACCD, ANR, VLCT, VNRC, and many others including the unanimous vote of the Senate. When was the last time these stars and planets were all in alignment? I urge the committee to support this bill, including sections 19 and 20.

Thank you.

Sincerely,



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