

John Dillon

LCAR testimony on wake rule 2/8/2024

Thank-you. I understand you may vote today and I know your role is very narrow: to approve the rule or not under the Administrative Procedure Act. The APA lists seven reasons for disapproval. I urge you to vote no, because here are four reasons to reject it.

Number 1. It's contrary to the intent of the Legislature. Title 10 VSA § 1421 says the state's role of trustee of its navigable waters [is to] promote public health and safety,

Hundreds of people testified over the last year about the safety impact of wake boats, stories of property damaged, little kids getting swamped etc. But the DEC admits it has no expertise in safety and would have to hire a consultant to help with "safety planning." That's an outrageous abdication of responsibility. It also violates legislative intent that places safety and public protection paramount.

2. Arbitrary. The DEC takes a pass on critical safety enforcement issues. They think citizens will enforce this rule, citizens with magic eyes who can tell from shore when a boat is 400, 450 or 500 feet away. By failing to address safety *and* enforcement, ANR has promulgated an arbitrary rule.

3. Failure to maximize public input. When the agency released the rule for public comment last May, it declared wake boats are *not* a "normal" use of public waters. Makes sense, right? They generate five-foot waves, Hardly normal on any pond! Six months later, filed with you, the agency said they were a normal use. That both an obvious *arbitrary* change – it's also a failure to maximize public input as required by the APA. How

can the public comment on such a big change if they don't know about it?¹

4. Failure to address a substantial environmental impact.

In a September memo, the agency's staff recommended a tougher rule that would have protected seven more lakes. The agency secretary rejected that.

But Agency staff cited the "precautionary principle." Wake boats will get more powerful they said. We'll soon see more than one on a lake at a time, they said, churning even more phosphorus into our waters.

This rule fails this environmental protection test because it will *worsen* our phosphorus pollution problem.

Thank you

¹ The agency in its Feb. 6 memo now says its statement in May that "wake boats produce wakes that are significantly larger than conventional boats and are not a 'normal use' of public waters" was "inadvertently included" in the filing documents at the time. Regardless of what happened, the fact remains that the public did not get a chance to comment on this substantial change to the rule when the language was mysteriously removed before the rule was filed with LCAR.