



October 30, 2015

Alyssa Schuren, Commissioner
Department of Environmental Conservation
One National Life Drive
Montpelier VT 05620-3520

Dear Commissioner Schuren:

I am writing on behalf of the member cities and towns of the Vermont League of Cities and Towns to comment on the draft Combined Sewer Overflow Policy.

What is the standing of a policy relative to a procedure or adopted rules? This is a perennial question for the agency as sometimes policies are adopted without going through a rule-making process and without making clear what legal status they have. The proposed update, if adopted, will impose significant costs and obligations on municipalities. In a rules adoption process, the department must include an economic impact analysis. We do not find that here and consider it to be a very important part of adoption of this policy, particularly when viewed in concert with the Vermont Water Quality Act, the Lake Champlain TMDL, local stormwater obligations and other TMDLs, new and dramatically higher than predicted ANR permit fees, and costs to maintain aging water and wastewater infrastructure. We believe that the rule-making process is the appropriate forum for adoption of such a substantial program.

We understand that the Combined Sewer Overflow Policy adopted in 1990 is in dire need of updating. We expect that the update will be written with an eye not only to making the policy consistent with water quality science in 2015 but also with consideration for the potentially tremendous costs that a revised policy will impose. You understand that the Lake Champlain TMDL and the Vermont Water Quality Act as well as the potential Long Island Sound TMDL on the Connecticut River side of the state are going to impose astronomical costs on local governments and that there are relatively very few dollars committed to addressing those unfunded mandates. Thus, we are very concerned about the purpose described in the introduction – to “further enhance and support the control of CSOs in Vermont” – within twenty years, particularly when taken in combination with all the aforementioned programs. What kind of funding will it take to eliminate CSOs? Will the Vermont Legislature appropriate sufficient funds to fulfill that goal?

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Casualty Intermunicipal
Fund, Inc.

We urge you to retain language in this updated policy at Section II that states “the compliance schedule shall reflect the shortest reasonable time to bring the CSO(s) into compliance which is consistent with state funding priorities.” To this end, we also urge you to adopt the integrated permitting program that EPA has endorsed and also to implement the EPA “Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development,” promulgated in 1997. At that time, the Assessment Approach stated “In the Water Quality Standards (WQS) program, economic factors are considered in the process of modifying WQS. State WQS authorities conduct economic analysis of the impacts that will result from treatment levels beyond the

technology-based requirements of the Clean Water Act.” There is no way that municipalities will be able to implement all the water quality mandates that have been imposed on them in the last few years, particularly without substantial and sustained funding from the state and federal governments.

At Section 1A, Definitions, we urge you to define a Combine Sewer Overflow event as a storm that triggers overflows at outfalls. The difference is significant as one storm might trigger several overflows. Each overflow at each outfall should not be considered a separate event.

We suggest conforming the definition of municipality to Vermont law. A municipality in Vermont is not a borough, county, parish or association. It is generally a city, town, village, or district.

With respect to the proposed controls, we are concerned about the absolute prohibition on CSO events during dry weather. We urge you to realistically consider what will be the cost of monitoring to effectively characterize CSO impacts; the efficacy of CSO controls; to establish and maintain precipitation recording stations within the subcatchment of each CSO outfall; and to establish a CSO flow monitoring system. How should a municipality give accurate notice to the public and agency of occurrence of a CSO event within four hours of an event (h.2)? Or as is suggested in Section II, Public Notification, no later than 24 hours of an event? We believe 24 hours is the appropriate time frame and four hours would be an impossible standard to meet. What does “Immediate” notification of sewage backing up into buildings or discharges of raw sewage onto the ground (section 1) mean?

We endorse Rutland Pubic Works Commissioner Jeff Wennberg’s proposal to allow for a “To Be Determined” response to the question of gallons discharged in a storm event. It clearly may take time to accurately assess the amount of water discharged and if possible the amount of sewage discharged (as was discussed at the public hearing).

We have heard concerns that infiltration into the system may result in an event even when actual rainfall itself does not. Is there a way to address this in the policy or rule?

We are disappointed in the reliance on enforcement in this proposed policy. No municipality allows CSO events to occur out of negligence, malice or because they want to. Every municipality is burdened with aging infrastructure that will cost millions to upgrade. We are ready to work with the agency to resolve issues. We hope that enforcement would be a last resort and not the first action taken.

Finally, we believe that if the department is committed to encouraging green stormwater infrastructure, you may want to include incentives or credits for taking action in this CSO procedure or rule.

Sincerely,



Karen Horn, Director
Public Policy and Advocacy