

WATER RESOURCES BOARD RULES ON DISCHARGES TO IMPAIRED WATERS

You may have read in the newspaper or heard on the television news about a recent Water Resources Board ruling regarding the issuance of stormwater permits to waters that currently do not meet state water quality standards. There has been some confusion about what the ruling says and what it means for cities and towns. Some news reports have stated that the decision creates a moratorium on the issuance of discharge permits. As detailed below, the Water Resources Board has not placed an absolute moratorium on the issuance of permits. However, the Board has significantly raised the standards for obtaining discharge permits in certain situations. Here is what we know at the time the *VLCT News* went to print.

In *Re: Hannaford Bros. Co and Lowes Home Center, Inc.*, the Water Resources Board was asked to rule on the question of the standard that must be applied to the appeal of a stormwater discharge permit issued by the Agency of Natural Resources to the applicant. *Re: Hannaford Bros. Co and Lowes Home Center, Inc.*, No. WQ-01-01 Memorandum of Decision (Vt. Water Res. Bd. June 29, 2001). The question of the proper standard to apply is an issue in the case because the applicant proposes to discharge stormwater to a stream that currently does not meet the Vermont Water Quality Standards (such waterbodies are known as “impaired” waters). There are currently hundreds of impaired waters that have been identified by the state.

In a ruling on a preliminary issue, the Water Resources Board stated, “Vermont law does not allow a new or increased discharge of measurable and detectable pollutants of concern into impaired waters for which there is not an adequate wasteload allocation.” If no wasteload allocation exists for the impaired water, the Board stated that “[I]n the absence of a wasteload allocation, discharges into impaired waters may be permitted under Vermont law only if the proposed discharge will not increase the chemical, physical or biological load of pollutants for which the receiving waters are impaired.”

The Board also ruled that the Agency of Natural Resources Stormwater Procedures are *not* regulations that have the force of law and any presumption of compliance with the Water Quality Standards that meeting the Procedures creates is rebutted by the fact a discharge is proposed to an impaired water. The Stormwater Procedures include practices that applicants can take to ensure that a discharge does not violate Vermont Water Quality Standards, which establish parameters to measure the condition of Vermont’s streams, rivers, lakes and ponds.

It is important to note the true significance of this decision. This ruling marks the *first* time that the Water Resources Board has recognized that a different standard should be applied to discharges into waterbodies that do not meet the Water Quality Standards. Prior to the decision the Agency of Natural Resources would issue a stormwater permit based on compliance with its Stormwater Procedures. *The Board has altered the review process for proposed discharges to impaired waters by ruling that complying with the Stormwater Procedures is not enough to create a presumption that the discharge will meet the Water Quality Standards.*

What does this ruling mean for cities and towns? It is not entirely clear at this point. However, issues that the ruling raises include how will proposals to increase discharges from municipal wastewater plants to impaired waters be affected by the

ruling? How many wasteload allocations has the Agency of Natural Resources issued? In the absence of a wasteload allocation, how does an applicant meet the high standard that the “discharge will not increase the chemical, physical or biological load of pollutants for which the receiving waters are impaired?” *Id* at 19.

VLCT will continue to track this case and seek out answers to the above questions. Motions to alter the Water Resources Board ruling have already been filed, and the case is likely to be appealed to the Vermont Supreme Court, which will have the final say. We will keep you posted.

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