House Environment – S.223
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- We are here today to describe the purpose of S. 223. Much of what you will hear today is an expression of Federal Clean Water Act (CWA) requirements. Mr. O'Grady described many CWA requirements that attach to Vermont, as to all states, early in the session. It was a master-class presentation, and Ms. Sargent and I will retread some of that ground as a refresher, since this is a meaty and very important water quality topic.

- The CWA established a goal that waters are "fishable and swimmable," which is shorthand for the expectation that the ecological integrity and recreational suitability of surface waters must be maintained, or be restored if compromised by pollution.

- But not all waterbodies are created equally. The expectations for integrity differ between, for example, a high elevation babbling brook and a flat valley-bottom meandering stream; likewise, between a small, forested pond and Lake Willoughby. This means that the goals for maintenance or restoration differ for these different waterbody types.

- The CWA recognizes this by establishing the concept of classification of waters, and a set of policies to maintain or restore, based on the different waterbody type.

- DEC supports S.223 in its current form. S. 223 establishes a study group to review the current statutory and regulatory requirements and frameworks related to water classification and antidegradation, and to recommend changes to better protect the ecological integrity of the State's lakes and ponds, adequately address current and potential threats to the water, and provide greater regulatory certainty. I believe S.223 brings together the right expertise and interests to fulfil its charge.

- To protect and maintain water quality, first and foremost, we need a classification system that works – one that accurately reflects Vermont's management objectives for its surface waters and the expected conditions; one that can be implemented efficiently and equitably; and one that provides regulatory certainty.

- The core concepts – antidegradation and water classification – are complex, closely integrated, and not widely understood. Let me take a step back from S.223 to

describe how the state meets its obligations under State and federal law to protect and maintain water quality as well as some of the challenges with the status quo.

- The Clean Water Act requires states to develop water quality standards (WQS) consisting of designated uses and water quality criteria. The Clean Water Act also requires states to adopt an antidegradation policy and methods to implement that policy.



- The Vermont Water Quality Standards, which are adopted by administrative rule (Environmental Protection Rule Chapter 29A), establish designated uses (e.g., for aquatic biota and wildlife; aesthetics; recreational uses such as swimming, boating, fishing; and as a public water source). These uses must be protected and maintained.

- In Vermont, waters are classified for each designated use. The class of the water determines the management objectives and the minimum water quality criteria. The criteria, which can be narrative or numeric, are the conditions that protect the designated uses for that class. In other words, we have different goals, and therefore management objectives and minimum criteria that waters must meet.

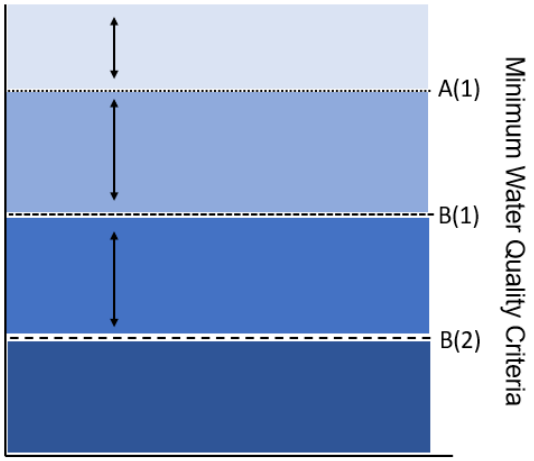
- There are four classes established in statute (10 V.S.A. § 1252):
  - B(2): Waters that are suitable for swimming and other primary contact recreation; irrigation and agricultural uses; aquatic biota and aquatic habitat; good aesthetic value; boating, fishing, and other recreational uses and suitable for public water source with filtration and disinfection or other required treatment. “Good”
  - B(1), one or more uses are of demonstrably and consistently higher quality than B(2). “Better”

  - A(1), waters in a natural condition that have significant ecological value. "Best"
  - A(2), waters that are suitable for a public water source with filtration and disinfection or other required treatment; character uniformly excellent.

- By statute (10 V.S.A. § 1253), all waters above 2,500 are Class A – A(1) or, those that are classified as a public water source, A(2). All other waters in the state are B(2) unless they have been reclassified – "If the Secretary finds that the established classification is contrary to the public interest and that reclassification is in the public interest."

- In addition to designated uses, management objectives, and water quality criteria, the Vermont Water Quality Standards includes the state's antidegradation policy. Under the policy, a limited reduction in a high quality water (meets minimum criteria) is only allowed when:
  - The agency has provided an opportunity for public comment.
  - After an analysis of alternatives, allowing lower water quality is necessary to prevent substantial adverse economic or social impacts on the people of the State.
  - The highest statutory and regulatory requirements for new or existing point sources, and all cost effective and reasonable best management practices for nonpoint sources control, consistent with state law, have been achieved.

- In summary, antidegradation limits incremental water quality degradation above the minimum criteria to protect uses (see figure below). The analysis occurs during the permitting process for new or increased discharges into high quality waters (meet the minimum criteria). The decision requires public notice, and any permitted lowering of water quality must be justified.



- The Agency's methods for implementing the policy are described in the Interim Antidegradation Implementation Procedure, which was signed in 2010.

- Beginning in 2021, the Agency worked closely with a stakeholder group, many of whom are testifying this morning, to develop an Antidegradation Implementation Rule. In working collaboratively with this group, it became clear that to implement antidegradation effectively, we also needed to comprehensively address reclassification.

- The Agency has water quality that demonstrates more than 100 surface waters (lakes and streams together) meet or exceed the water quality criteria of a higher class for one or more uses.

- To date, only surface waters in wilderness areas and National Recreation Areas of Green Mountain National Forest were reclassified to A(1) in 2017, and three streams in Ripton in 2022. Prior to that, only a handful of streams had been reclassified from B(2) to A(1) – in 1996 (Cold Brook in Dover), 1989 (Kidder Brook in Stratton and Jamaica), and 1991 (the Upper Reach of the Winhall River in Stratton and Winhall and Cobb Brook in Windham and Jamaica).

- Reclassification of the three streams in Ripton was initiated by petitions from the conservation commission. The Agency, in reviewing petitions, is tasked with evaluating whether reclassification is in the public interest. The water quality data supported reclassification, the petitioner supported reclassification, but several of the landowners felt singled out unfairly. Why? First, we were only acting on three streams when there were many throughout the state that met A(1) criteria. Why would these streams (and their watersheds) now be managed differently and held to a higher standard? In addition, State statute prohibits onsite wastewater systems greater than 1,000 gallons per day in the watersheds of Class A waters.

- The Agency currently has four lake reclassification petitions. This prohibition becomes even more significant for lake reclassification as lake watersheds are often larger and may include town centers.

- We have made significant progress working with stakeholders representing various sides of the issue over the last several years. The S.223 study group, charged with evaluating the existing statutory and regulatory framework related to classification of Vermont lakes and antidegradation, and making recommendations on legislative or policy changes will help us identify the best path forward.