

STATE OF VERMONT

SUPERIOR COURT) ENVIRONMENTAL DIVISION
IN RE SOUTH BURLINGTON)
WWTF PERMIT NO. 3-1207) Docket No. 138-10-17 Vtec

APPELLANT’S STATEMENT OF QUESTIONS

NOW COMES Appellant Conservation Law Foundation (“CLF”) by and through its attorney Elena M. Mihaly, Esq., and hereby submits this Statement of Questions in the above captioned docket.

- 1. Given that discharges from the Montpelier wastewater treatment facility (“WWTF”) currently contribute phosphorus to a long-standing and ongoing violation of a numeric water quality criterion applicable to Lake Champlain, and that discharge permit No. 3-1207 as issued in fact authorizes 2,418 pounds of phosphorus per year to be released into the Lake, is the water-quality-based effluent limitation for phosphorus contained in section I.A.1 of the discharge permit sufficiently stringent to meet water quality standards in Lake Champlain as required by the Federal Clean Water Act (“CWA”), 33 U.S.C. § 1311(b)(1)(C), and its implementing regulations at 40 C.F.R. §§ 122.4(a),(d), 122.44(d)(1)?
2. Since the Environmental Protection Agency (“EPA”) was able to allocate greater phosphorus loadings to the WWTFs in the Lake Champlain Phosphorus Total Maximum Daily Load than would otherwise be required under the CWA, 33 U.S.C. § 1311(b)(1)(C) based on the assumption that nonpoint source reductions would be achieved in the future through as yet to be adopted or implemented programs, does the water-quality-based effluent limitation for phosphorus contained in section I.A.1 of the discharge permit—which immediately authorizes 1,204 pounds of phosphorus per year above and beyond current discharge levels—comply with the requirement in 40 C.F.R. § 122.44(d)(1)(vii)(B) that effluent limits developed to protect a numeric water quality criterion be “consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA”?
3. Since ANR authorized the water-quality-based effluent limitation for phosphorus in section I.A.1 of the discharge permit contingent on future conditions that are not yet known to ANR—namely, the amount of nonpoint source reductions that may be achieved in the future through as yet to be developed and implemented programs, and the related assimilative capacity of the Lake to accommodate additional phosphorus loading—does

this section constitute an impermissible condition subsequent in violation of the Federal Water Pollution Control Act regulations at 40 C.F.R. §§ 122.4(a),(d), 122.44(d)?

Dated: November 13, 2017
Montpelier, Vermont

By: 

Elena M. Mihaly, Esq.
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
(802) 223-5992
emihaly@clf.org