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State of Vermont  
Agency of Natural Resources

Julia S. Moore, P.E.  
Agency Secretary

Peter W. Walke  
Deputy Secretary

January 24, 2019

Zak Griefen, Senior Enforcement Attorney  
Elena Mihaly, Staff Attorney  
Conservation Law Foundation  
15 East State Street, Suite 4  
Montpelier, VT 05602

Dear Mr. Griefen and Ms. Mihaly:

This letter is in response to the Conservation Law Foundation's petition for rulemaking filed on October 25, 2018. Pursuant to an agreement between CLF and the Agency of Natural Resources, CLF granted an extension to the 30-day response period required by 3 V.S.A. § 806(a) to January 25, 2019. Contained within that petition, CLF requested that the Agency adopt a treatment technique as a Maximum Contaminant Level (MCL) under the Vermont Public Water Supply Rules. In the alternative, CLF requested that the Agency adopt the Vermont Health Advisory for PFOA, PFOS, PFHxS, PFHpA, and PFNA as an MCL. As stated in this letter, the Agency is denying your petition in part and granting your petition in part.

**1. The Agency is denying the petition for rulemaking with respect to establishing a treatment technique standard for PFAS.**

The Agency is denying the petition with respect to CLF's request that the Agency propose a treatment technique for PFAS for several reasons. Because there are reliable methods that are economically and technically feasible to measure certain PFAS contaminants at the health level of concern, an MCL is more appropriate than a treatment technique for those PFAS. Also, the Agency believes that significant additional research and assessment are necessary prior to the Agency being prepared to propose a rule requiring a treatment technique approach for PFAS. The effectiveness of various treatment technologies on many PFAS compounds is unknown, and a treatment technique developed for the class could result in a false sense of protection. An essential part of developing a treatment technique standard is specifying what the best available technology (BAT) for treatment is, and there is not enough scientific data to defend an appropriate BAT. Further, technologies to measure a level of performance are not readily available and are untested in an "in the field" environment (as opposed to the laboratory under research settings), and compliance could not be accurately evaluated. There is also insufficient information to evaluate costs of various technologies (capital as well as maintenance costs), which is integral to setting any National Drinking Water Regulation, whether an MCL or a treatment technique.

As you are aware, the Agency is actively working with other States and the Federal Government to evaluate whether there is a scientifically defensible approach to regulate PFAS as a class. As we gain more information, there may come a time when it is appropriate to do so.

**2. The Agency is granting your alternative request to initiate rulemaking to adopt the Vermont Health Advisory as an MCL for PFOA, PFOS, PFHxS, PFHpA, and PFNA**

The Agency is granting the petition to initiate rulemaking to propose an MCL for PFOA, PFOS, PFHxS, PFHpA, and PFNA at 20 parts per trillion. The Agency is granting this petition for the following reasons:

- The Vermont Department of Health has concluded that the afore referenced five PFAS pose a health risk and have established a Health Advisory for them.
- The United States Environmental Protection Agency has not established an MCL for these contaminants and does not appear to be establishing an MCL in the near term.
- These five PFAS are not naturally occurring in the environment.
- PFAS have been contaminants of particular concern to the State of Vermont.

In light of these considerations, the plans to initiate a 30-day pre-rulemaking process to involve additional stakeholders and water systems in this conversation prior to filing with the Interagency Committee on Administrative Rules (ICAR). The Agency will promptly file with ICAR following this stakeholder engagement process. Consistent with the Vermont Water Supply Rule, since the value in the Health Advisory is for non-acute exposure, the MCL would apply to Public Community and Non-Transient Non-Community systems. The Agency will share the draft language with Petitioners as soon as we have completed drafting the proposed rule.

Sincerely,



Julia S. Moore, P.E., Secretary  
Agency of Natural Resources

cc. Jon Groveman  
Policy & Water Program Director  
Vermont Natural Resources Council

Johanna de Graffenreid  
Program Director, jobs, Justice, Climate  
Campaign  
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Paul Burns  
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Shaina Kasper  
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