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July 18, 2016

VT Department of Environmental Conservation
Watershed Management Division,
Stormwater Program – MSGP
1 National Life Drive, Main 2
Montpelier, VT 05620-3522

HAND DELIVERED

Re: Facility Operator - Vermont Railway, Inc.
Facility/Site Name – Shelburne Transload Facility

Dear Stormwater Program:

This letter is filed on behalf of The Nature Conservancy (“TNC”) with respect to the Notice of Intent dated July 8, 2016 (the “NOI”) by Vermont Railway, Inc. (“VTR”) with respect to the Shelburne Transload Facility (the “Facility”). The NOI is pursuant to the Vermont Multi-Sector General Permit (“MSGP”) 3-9003. This letter incorporates the attached July 15, 2016 letter by Andres Torizzo, Watershed Consulting Associates, LLC. Mr. Torizzo’s letter provides technical analysis with respect to (i) the NOI and potential failures to comply with the terms and conditions of MSGP 3-9003; and (ii) the reasons why the Division should convene a public hearing.

Preliminarily, TNC objects that the deadline for the submission of its comments and request for public hearing precedes the Division’s formal logging-in of the NOI and notification to interested parties. The application documents include a Stormwater Pollution Prevention Plan (“SWPPP”) along with site and drainage plans. Communications with the Division on Friday, July 15, confirmed that the VTR application had not been formally logged-in, and that the SWPPP was not publicly available, notwithstanding the NOI’s representation that the comment period is due to expire on July 18, 2016.

TNC requests that the Division formally confirm that the comment and public hearing request period does not commence until *after* the application materials, including the SWPPP, have been formally logged-in by the Division and are publicly available for inspection and review.

Nevertheless, TNC provides the following comments, and request for public hearing, in compliance with the NOI.

The Particularized Interest of The Nature Conservancy

TNC has the requisite particularized interest to comment on the NOI and request a hearing with respect to the NOI's compliance with MSGP 3-9003. TNC owns and manages 230 acres and holds conservation easements on another 52 acres along the lower LaPlatte River that directly adjoins the property now owned by VTR which is the subject of the NOI. This acreage is the LaPlatte River Marsh Natural Area, and it is proximate to the proposed Facility.

TNC, in conjunction with the Vermont Housing and Conservation Board, the Town of Shelburne, Green Mountain Audubon, Federal Duck Stamp, and many additional public agencies and private partners, has led the conservation of this ecologically significant area since 1976. As a result of these efforts, TNC has made a substantial investment in the LaPlatte River Marsh Natural Area, which fulfills its corporate and charitable functions. The public is benefited by TNC's investment through the public use and enjoyment of the LaPlatte River Marsh Natural Area.

The forested uplands adjacent to the LaPlatte River and its wetlands that are part of the VTR property have provided critical habitat for wildlife including deer wintering areas and movement corridors for bobcat, and other wildlife. Prior to the clearing of the Valley Clayplain Forest by VTR¹, the buffer these uplands provided to the conserved lands, encompassing adjacent wetlands and the LaPlatte River, was critical because it moderated the climate of the interior floodplain forest creating conditions of temperature, shade and humidity that the floodplain forest requires in order to function. The loss of this buffer has the potential to reduce the effectiveness of the floodplain forest to support water quality, encourage the encroachment of invasive species into the floodplain forest, and decrease the abundance and diversity of plant and animals that support a healthy ecosystem. These are consequences which may have an undue adverse effect on the LaPlatte River Marsh Natural Area and which may, potentially, be redressed under the application and review process for the NOI and authorization under MSGP 3-9003.

Accordingly, TNC has the requisite particularized interest and injury in fact relative to the activity set forth in the NOI, pursuant to MSGP 3-9003.

¹ See June 7, 2016 letter to Matthew Chapman, Esq., Office of General Counsel, Department of Environmental Conservation, regarding TNC's Appeal and Revocation of Verbal Permission Granted to Vermont Railway to Cut Trees and Revocation of Authorization under General Permit 3-9020 (2006) For Stormwater Runoff From Construction Sites As Amended February 2008 ("CGP 3-9020").

Comments and Request for Public Hearing

TNC comments and requests as follows:

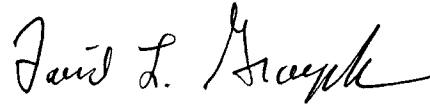
1. As noted above, TNC objects to the comment and request for hearing deadline preceding the Division's formal logging-in of the application. TNC has not had an opportunity to fully review and analyze the SWPPP filed in support of the NOI.
2. TNC concurs with the July 15, 2016 letter submitted by the Town of Shelburne with respect its concerns regarding the NOI and the proposed discharge activity. A copy of the letter is attached.
3. The scope of the project must be precisely described to avoid confusion over the extent of jurisdiction applicable under MSGP 3-9003. The project description is unclear as to whether the industrial activities are limited to salt shipments, or whether additional industrial activities are included. The NOI sets forth SIC code 3291-3299, and secondarily 5171², but does not identify SIC 401100 Transloading of Railroad Cars or SIC 40 Railroad Transportation; SIC 42 Motor Freight Transportation and Warehousing; or SIC 423 Terminal and Joint Terminal Maintenance. The selection of the SIC codes should be explained, including the omission of those directly applicable to transloading and rail transportation.
4. The issues set forth in Mr. Torizzo's letter relative to the impairment of the lower LaPlatte River; chloride loading; compliance with Section 1.2.4.5 of MSGP 3-9003; consideration of riparian buffers; potential release of hazardous materials to the LaPlatte River; and proper consideration of non-stormwater discharges.
5. TNC requests that the Division respond to the comments set forth in this letter, and convene a public hearing with respect to the proposed discharge set forth in the NOI.

² 3291 Abrasive Products
3292 Asbestos Products
3293 [blank]
3294 [blank]
3295 Minerals and Earths, Ground or Otherwise Treated
3296 Mineral Wool
3297 Nonclay Refractories
3298 [blank]
3299 Nonmetallic Mineral Products, Not Elsewhere Classified
5171 Petroleum Bulk Stations and Terminals

VT Department of Environmental Conservation
Watershed Management Division, Stormwater Program – MSGP
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Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Grayck". The signature is written in a cursive style with a large, prominent initial "D".

David L. Grayck, Esq.

Cc: Client
Claudine Safar, Esq.
Matthew Chapman, Esq.,

July 15, 2016

VIA ELECTRONIC MAIL

Helen Carr
helen.carr@state.vt.us
Vermont Department of Environmental Conservation
Watershed Management Division
1 National Life Drive, Main 2
Montpelier VT 05620-3522

**RE: *Application for a Multi-Sector General Permit, Shelburne Transload Facility,
Shelburne, VT (General Permit 3-9003)***

Dear Helen:

I am writing in regards to the Notice of Intent (NOI) for Stormwater Discharges Associated with Industrial Activity under the Vermont Multi-Sector General Permit (MSGP) 3-9003, filed by Vermont Railway, Inc. for the Shelburne Transload Facility. At this time, I have reviewed the NOI although I have not received technical documents that would constitute a complete MSGP application. These documents include a Stormwater Pollution Prevention Plan (SWPPP) along with site plans and drainage plans.

Based on my preliminary review, I have concerns with the project that I would like to share with you. These concerns are summarized here:

1. Section D3 of the NOI states that discharges from the project will not drain directly to any segment of an impaired water as listed on the State 303(d) list, which is inaccurate. My understanding is that the project will drain to the lower LaPlatte River, just upstream of Shelburne Bay in Lake Champlain. The lower LaPlatte is listed as impaired due to e-coli as well as mercury. In addition, Shelburne Bay is listed as impaired due to phosphorus and also PCBs (part A). Per General Permit 3-9003 requirements, a stormwater management plan developed for the site must prevent these pollutants of concern from being discharged to the receiving waters. The MSGP requires documentation submitted to the Vermont DEC in advance of the NOI submittal to demonstrate discharging to impaired waters is acceptable under the MSGP. To date I have not seen a technical submittal with this information.
2. Chloride loading, either by runoff or by groundwater infiltration is a major concern given the proposed industrial activities at the site. A sufficiently protective SWPPP must

include management strategies to prevent exposure of chloride-laden runoff at the facility. The SWPPP must also include benchmark monitoring for chloride to ensure proposed management measures are functioning as intended.

3. Section 1.2.4.5 of the MSGP requires protection of endangered and threatened species and critical habitat. The project must demonstrate that proposed non-stormwater and stormwater discharges will not adversely impact endangered and/or threatened species, and will also not result in impacts to critical habitat. To date I have not seen evidence as to what criteria as listed in the MSGP the project will be able to comply with to meet this standard.
4. The MSGP requires that consideration be given to conserving riparian buffers to protect streams and water quality and utilizing flow treatment interceptors to minimize pollutants. I do not see any consideration given to these factors which would help mitigate stormwater runoff in the present site layout.
5. The site is located in very close proximity to the LaPlatte River, within an area of active planform change and lateral migration, as evidenced by the obvious oxbow scars along the stream reach. The rail citing and salt warehouse are located immediately adjacent to a steep slope above one of these major meanders. The stream sensitivity rating is scored high under the Vermont DEC rapid geomorphic assessment, confirming that the site is extremely vulnerable to future channel adjustment and fluvial erosion risk. I have concerns about locating an industrial development in this setting which will expose hazardous materials to release, should the site be threatened.
6. The MSGP requires that non-stormwater discharges are addressed. Given the site history of TCE contamination, there is concern about contaminated non-stormwater discharges from the project property to the riparian wetland on the south side of the site area. There should be additional exploration to confirm that this potential non-stormwater discharge does not present a concern.

Sincerely,



Andres Torizzo, WCA Principal



Town of Shelburne, Vermont

CHARTERED 1763

P.O. BOX 88 5420 SHELburnE ROAD SHELburnE, VT 05482

Clerk/Treasurer (802) 985-5116	Town Manager (802) 985-5111	Zoning & Planning (802) 985-5118	Assessor (802) 985-5115	Recreation (802) 985-5110	FAX Number (802) 985-9550
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Vermont Department of Environmental Conservation
Watershed Management Division
Stormwater Program – MSGP
1 National Life Drive, Main 2
Montpelier, Vt. 05620

July 15, 2016

Re: **Town of Shelburne Requests a Public Hearing – MSGP 3-9003**
Facility Operator: Vermont Railway, Inc.
Facility Name: Shelburne Transload Facility

Dear Vermont Department of Environmental Conservation:

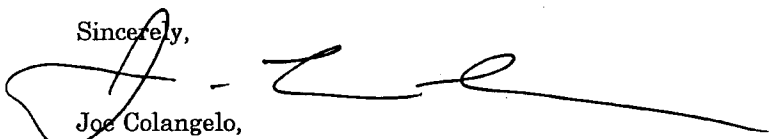
The Town of Shelburne hereby respectfully requests a public hearing on the July 8, 2016 Notice of Intent (NOI) to discharge storm water pursuant to the Vermont Multi-Sector General Permit (MSGP) 3-9003 filed by Vermont Railway, Inc. The Town wishes to make public comment at the hearing and further wishes to extend the public comment period for this NOI beyond the ten (10) days to a minimum of thirty (30) days. A hearing in this matter is warranted because this application for coverage under the MSGP presents significant concerns to the Town, with respect to both natural resources, historic places and public health.

In particular, the Town is concerned about the Railway's representation in Paragraph D3 of the application. The application seeks direct discharge to Shelburne Bay via the LaPlatte River. Lake Champlain is an impaired water for phosphorous and new TMDLs were promulgated on or about June 17, 2016. Paragraph D3 fails to address this issue. The LaPlatte River is also an impaired water for E. coli. This was equally not indicated.

Furthermore, the Town is concerned about the impacts to endangered species. Section 1.2.4.5 of the permit provides that the discharge "will not adversely affect any species that are state or federally-listed as endangered or threatened ("listed") under the Endangered Species Act (ESA) and will not result in the adverse modification or destruction of habitat that is federally designated as "critical habitat" under the ESA or Vermont's Protection of Endangered Species Law, 10 VSA §§ 5401-5410." As there is potential habitat for the Stonecat and the Pocketbook in the proximity of the project site, the Town believes that a study should be performed to demonstrate no adverse affect to these and possibly other species.

Finally, Section 1.2.4.6 provides that "each permittee must comply with applicable federal and state or local laws concerning the protection of historic properties and places." It is known that this property contains historic Native American artifacts and the Town does not believe that the activities on this site comply with these requirements. For the reasons stated the Town of Shelburne believes a public hearing is warranted.

Sincerely,



Joe Colangelo,
Town Manager

Cc: Claudine Safar, Esq, Town Attorney, Monaghan Safar Ducham, PC
Shelburne Natural Resources and Conservation Commission
Shelburne Selectboard
Dean Pierce, Shelburne Director of Planning & Zoning
Chris Robinson, Shelburne Water Quality Superintendent