



**State of Vermont
Public Utility Commission**

March 23, 2023

Dear Members of the Legislative Committee on Administrative Rules:

After the Vermont Public Utility Commission (“Commission”) submitted our final proposed Commission Rule 4.500 (Safety of Hydroelectric Dams), we received feedback from Legislative Counsel noting that the existing definition of “Dam” in Section 4.521(C) of the rule does not align with the current definition in 10 V.S.A. § 1080 or the Agency of Natural Resources’ (“ANR”) Dam Safety Rule. In response to that feedback, the Commission now wishes to amend our proposed rule by updating the definition of “Dam” to ensure it is consistent with state statute and ANR’s Dam Safety Rule.¹ This change has no substantive impact on the dams over which the Commission has jurisdiction. The Commission proposes replacing the definition of “Dam” in the final proposed rule with the following:

- 4.521(C)** “Dam” means any artificial barrier, including its appurtenant works, that is capable of impounding water, other liquids, or accumulated sediments.
- (1) A dam includes an artificial barrier that meets all of the following:
 - (a) previously was capable of impounding water, other liquids, or accumulated sediments;
 - (b) was partially breached; and
 - (c) has not been properly removed or mitigated.
 - (2) A dam shall not mean:
 - (a) barriers or structures created by beaver or any other wild animal as that term is defined in 10 V.S.A. § 4001;
 - (b) transportation infrastructure that has no normal water storage capacity and that impounds water only during storm events;
 - (c) an artificial barrier at a stormwater management structure that is regulated by the Agency of Natural Resources under 10 V.S.A. Chapter 47;

¹ The definition of “Dam” currently in Rule 4.500 is: “Dam” means any barrier (including its appurtenant structures and adjacent supporting natural features) constructed across a waterway to control the flow or raise the level of water, or behind which water is impounded or pumped for later release, over which the Commission has jurisdiction pursuant to Chapter 43 of Title 10 of Vermont Statutes Annotated.

- (d) an underground or elevated tank to store water otherwise regulated by the Agency of Natural Resources;
- (e) an agricultural waste storage facility regulated by the Agency of Agriculture, Food and Markets under 6 V.S.A. Chapter 215;
- (f) above or below grade tanks, vessels, or storage chambers of steel or concrete construction used to store wastewater;
- (g) dug ponds created by excavating below grade and constructed without artificial barriers or outlet structures, which pose no threat to life, property, lifelines, or the environment downstream from the pond;
- (h) any structure related to a wastewater treatment facility permitted by the Agency of Natural Resources pursuant to 10 V.S.A. § 1263, excluding wastewater ponds and lagoons impounded by a dam;
- (i) levees, meaning any earthen embankment, floodwall, or structure along a water course whose purpose is flood risk reduction or water conveyance; or
- (j) any other structure identified by the Department of Environmental Conservation by rule.

The rest of proposed Rule 4.500 remains unchanged. Along with this letter, I am also submitting a revised redline and clean version of the final proposed Rule 4.500 to reflect this change.

Please let me know if you have any questions. We look forward to discussing proposed Rule 4.500 at the upcoming March 30, 2023, meeting of LCAR.

Sincerely,



Micah Howe