

**RESPONSIVENESS SUMMARY ON PUBLIC COMMENTS TO DRAFT FINDING OF FACT AND
GROUNDWATER RECLASSIFICATION ORDER DATED OCTOBER 2021**

(Groundwater Reclassification in Bennington and Shaftsbury)

Attachment E of Final Finding of Fact and Groundwater Reclassification Order

Vermont Agency of Natural Resources

October, 2021

PREFACE:

This Responsiveness Summary documents Vermont Agency of Natural Resources (ANR) responses to comment made during the public comment period. The original deadline to receive public comments was March 19, 2021, which was 30 days from when the petition and draft order was placed on the Environmental Notice Bulletin (ENB). However, the deadline was extended several times in response to requests made from the public and elected officials. The final deadline to provide comments was May 28, 2021. The ANR participated in multiple public meetings as listed below about the proposed reclassification of groundwater during the public comment period:

- ANR-lead Virtual Public Meetings on March 4, 2021, and May 11, 2021;
- Bennington Selectboard Meeting on April 12, 2021;
- Village of North Bennington Trustee Meeting on April 13, 2021;
- Shaftsbury Selectboard Meeting on April 19, 2021

The ANR received formal responses, many with multiple comments, via email, but ANR also received multiple informal inquiries and comments from community, local officials, and state and local-elected officials during the comment period. A copy of the formal comments is provided in Attachment F. The ANR reviewed the comments and followed up with commenters, local officials, and elected official about their concerns on the proposed groundwater reclassification order. Many of the comments (formal and informal) were related to the same issue and expressed similar opinions. Therefore, ANR summarized and consolidated comments with similar themes. The summarized comments and ANR responses to these comments are provided below. ANR shared preliminary responses to the most common comments along with proposed changes to the Finding of Fact and Groundwater Reclassification Order at the ANR-led Virtual Public Meeting on May 11, 2021. As stated in the main text, the general feedback from the proposed changes to the Finding of Fact and Groundwater Reclassification Order were positive from community members who were in attendance, many of which provided comments previously opposing the reclassification.

Summarized Comments and Responses

1. Why is the groundwater being reclassified?

ANR Response:

Groundwater in Vermont, by statute, is considered Class III groundwater, which means it can be used as a potable or public water resource unless it has been reclassified.

Groundwater in Vermont that is considered non-potable, or contaminated above Vermont Groundwater Standards, and is expected to remain contaminated for greater than five years, may be reclassified as Class IV groundwater. In Bennington, reclassification of area-wide groundwater from Class III to Class IV is proposed to protect human health and safety, due to the expected presence of elevated PFAS in some parts of the underlying groundwater for greater than 5 years, likely for decades.

ANR recognizes that not all the groundwater within this proposed reclassification area is contaminated with PFAS. ANR drew this conclusion due to the 130 plus drinking water wells with no PFAS, or PFAS below the standards. However, based on our understanding of the area-wide presence of PFAS at elevated levels, particularly in shallow groundwater, there is a high potential that the drilling of a new well anywhere within this proposed reclassification area will find either elevated PFAS or will have to pass through a contaminated portion of the groundwater to get to underlying, cleaner water.

The goal of the reclassification is to protect people living and working in parts of northern Bennington and parts of southern Shaftsbury by providing restrictions and requirements for the installation of new drinking water wells. ANR recognizes that there are areas within the proposed reclassification where the drilling of a new well is the only feasible option for a water supply. The proposed reclassification provides a formal notification to landowners, well drillers, and permitting agencies that groundwater not suitable for drinking water is likely present in at least a portion of the underlying groundwater, due to PFAS levels.

2. A major concern among commenters was the designation of the entire area as non-potable even though over 130 water supply wells have had either no PFAS detected or PFAS levels below the applicable regulatory standards.. Many commenters stated they were confused on how their well can be located within an area where groundwater is designated as non-potable yet their well is potable?

ANR Response:

The ANR agrees that the original language was confusing, and the final reclassification was revised to address this concern: The revisions:

- Removed the term non-potable from the order to avoid confusion;

- Explicitly state in the Finding of Facts and the final Reclassification Order that potable water is present and can be found within the proposed reclassification area, as evidenced by the over 130 water supply wells that are either non-detect for PFAS or below the applicable regulatory standards;
- Clarify that the Class IV designation **does not apply** to existing water supplies that continue to test below the applicable regulatory standards for PFAS. This means that these wells **are potable**;
- Specify the criteria on which a water supply that has or has had PFAS will be considered potable in the future, meaning that the Class IV designation would no longer apply to a specific water supply; and
- Clarify the conditions on which newly permitted wells are considered a potable water supply, meaning the Class IV designation does not apply.

Attachment G includes the proposed changes to the Finding of Facts and the Reclassification Order (changes highlighted in yellow) presented at the virtual meeting on May 14, 2021. As stated in the main text, minor non-substantive changes were made to the Final Finding of Facts and Reclassification Order for clarity and to correct grammatical errors.

3. Why weren't all areas within the Corrective Action Areas and proposed groundwater reclassification areas connected to public water?

ANR Response:

When selecting a corrective action, the ANR is required to evaluate several criteria, including those providing a long-term drinking water remedy. These criteria are:

- (1) compliance with legal requirements;
- (2) protection of human health and the environment;
- (3) long-term effectiveness and permanence;
- (4) reduction in toxicity, mobility, or volume of contamination through treatment;
- (5) short-term effectiveness;
- (6) implementability;
- 7) cost;
- (8) environmental impact and sustainability, and
- (9) community acceptance.

It was ANR's objective to connect to a municipal water line as many residences as possible within the area adversely affected by the presence of PFAS, given the certainty, stability, and predictability associated with a municipal water source. However, after the first preliminary engineering feasibility evaluation of area-wide waterlines, it became evident that that waterline connections to all impacted areas were either not technically nor economically practical, given primarily to the small number of impacted water supplies in areas where waterlines are not near.

For example, connecting one home at the end of a long water line may create water quality problems (e.g., harmful disinfection by-products) because water may sit stagnant in the line. In addition, Saint-Gobain Performance Plastics was not willing to enter into a settlement agreement that would extend waterlines into areas where only a limited number of wells had PFOA levels above the applicable regulatory standards.

4. Can the agreement be renegotiated to have Saint-Gobain connect all “impacted” areas to municipal water?

ANR Response:

From ANR’s perspective, this negotiated settlement provided the best means to achieve a timely and encompassing long-term drinking water remedy/solution for the impacted area. In just over five years since PFAS was discovered in water supply wells, a majority of the long-term drinking water remedies, such as waterline connections and replacement wells, have been completed. Litigation would have delayed the start of the waterlines, or other long-term remedies for years, and it is uncertain whether the outcome of any litigation would have achieved the outcome provided in the Settlement Agreement (a.k.a. The Consent Order and Final Judgment between the State of Vermont and Saint-Gobain Performance Plastics, effective May 2019). There are reopeners in the Settlement Agreement, but the major site conditions on which the Settlement Agreement was reached have not changed. Therefore, at this time, ANR does not believe that seeking a re-negotiated settlement is warranted nor would be fruitful.

5. Can municipalities expand waterline further using other resources, such as federal stimulus monies and potential infrastructure funds?

ANR Response:

The ANR has no objections if the municipalities pursue acquiring state or federal resources to expand waterlines into other areas as long as the expansion meets the administrative and technical requirements for any applicable permit, such as the Construction Permit issued by the Vermont Department of Environmental Conservation Drinking Water and Groundwater Protection Division. As stated within the ANR Response for Comment 3, there are some areas within the reclassification area where waterline expansion may not be technically or economically feasible.

6. What provisions are in place to ensure Saint-Gobain Performance Plastics will hold their end of the bargain, that is, their obligations in the Settlement Agreement between the State and Saint-Gobain Performance Plastics?

ANR Response-:

There are financial assurance provisions in the Settlement Agreement, which are modeled after settlement agreements used at federal Superfund Sites. The initial amount of the financial assurance is \$3M. The current financial assurance in place is an irrevocable

letter of credit. Under the Settlement Agreement, provisions are in place to ensure the financial assurance is sufficient. Adjustment to this financial assurance can be made as necessary.

Although there is no way to predict the future, Saint-Gobain Performance Plastics, or some form of it, has been in business for centuries. This is a large global company. In 2020, their annual sales were at 38B euros (\$44.42B US at today's exchange rate). So far, they have met their obligations set forth in the Settlement Agreement.

7. Can other institutional controls, such as municipal ordinances, be put in place to achieve the same outcome but will be less of a “stigma” as reclassifying the groundwater

ANR Response:

For circumstances where new water supply wells (potable or public) are allowed within the reclassification area, a municipal ordinance would not be practical given that ANR is the only governmental entity with the statutory authority under State law to issue such a permit for a new water supply. In addition, the reclassification area is located within three municipalities (Town of Bennington, Village of North Bennington, and the Town of Shaftsbury). Besides the challenge of going through the public process of implementing consistent provisions amongst multiple municipalities, it is unclear whether the municipalities can modify their ordinances to potentially regulate new wells. Furthermore, under the authority of State Statute and Rule, the Reclassification Order can specify requirements, including well construction, monitoring, and treatment, to be included in any newly state-issued permit for a potable or public drinking water system.

However, municipalities do have the ability to revise their ordinances to require new developments to connect to municipal water in areas that are currently served by municipal water or in areas where the Town plan recommends that new developments be connected to municipal water. ANR has had preliminary discussions with the Town of Bennington about such changes to the zoning or municipal ordinances. This conversation is ongoing. ANR encourages these changes, where practical, to ensure that there is more than one institutional control to reduce the potential of groundwater with PFAS levels above the applicable regulatory standards to be used as a drinking water supply.

8. Multiple commenters were concerned about the effect the groundwater reclassification will have on their property values.

ANR Response:

Here is ANR's experience:

- If there is any effect on property value, it is due to the PFAS levels in groundwater and not the reclassification.

- We have seen that more certainty helps with the transfers of properties. Having a formal plan in place, and defined solutions, creates greater certainty.
9. In nation-wide studies examining the effect that groundwater contamination has on property values, their outcomes varied. Many factors affect property values. **One commenter did not like the use of the term competent rock and is concerned that in some areas the conditions in the proposed reclassification that well casing must be grouted at least 50 feet into competent bedrock is not possible.**

ANR Response:

In many areas within the proposed reclassification, competent bedrock is present. ANR recognizes that there are areas where competent bedrock, particularly within the typical depths for drinking water wells, may not be present. The proposed well construction requirements specified in the reclassification order may not be practical in cases where competent bedrock is not located in the typical depths for drinking water wells. Therefore, language within the Reclassification Order is included that specifies that “an acceptable equivalence” is allowed, as determined and approved by ANR”. This provides the ability of alternative well construction where needed, such as areas where finding competent bedrock may be difficult.

10. **What will happen if my water supply well has PFAS levels above the applicable regulatory standards in the future?**

ANR Response:

For residences and businesses located within the reclassification area where waterlines were not expanded, a.k.a, Operable Unit B (Attachment A-Map, as defined in the Settlement Agreement), Saint-Gobain Performance Plastics is still obligated to perform the following activities related to drinking water sources:

- Perform long-term PFAS monitoring for all drinking water sources (potable and public);
- Provide bottled water for any drinking water source that exceeds the PFAS groundwater enforcement standard or MCL until treatment is shown to be working or the resident/business is connected to municipal water or a new, uncontaminated source is installed, and sampling shows it will remain below groundwater enforcement standards or MCL.
- Install, monitor and maintain any treatment system at a source location that exceeds the PFAS groundwater enforcement standard or MCL (applicable regulatory standards);
- Assess the feasibility of alternative long-term drinking water remedies, such as replacement wells: and

- Implement an alternative long-term drinking water remedy, if directed by ANR, pursuant to the requirements in the Settlement Agreement and approved corrective action plan(s). If neither connecting to municipal water nor a clean, new well can be installed, then Saint-Gobain Performance Plastics is required to install and maintain a point-of-entry treatment system until such time as the PFAS levels in the water are below the applicable regulatory standards, and long term monitoring shows the PFAS levels in the well will remain below regulatory standards;

For residences and businesses located within Operable Units A, as defined in the Settlement Agreement (Attachment A-Map), Saint-Gobain Performance Plastics is obligated to provide municipal water to existing residences and businesses where waterlines were installed. They are no longer required to monitor or maintain treatment systems for those residences and businesses that chose not to connect to municipal water.

For residences and businesses located within the reclassification area where waterlines were expanded along Chapel and East Road, a.k.a, Operable Units C as defined in the Settlement Agreement (Attachment A-Map), Saint-Gobain Performance Plastics no longer has monitoring or corrective action obligations. ANR had taken the lead for this area in providing the opportunity for all existing residences and businesses to connect to municipal water. If a resident or business chose not to connect to municipal water, then that resident or business will be responsible to continue monitoring and maintaining any treatment system once the waterline work is completed in Operable Unit C. As of October 1, 2021, the waterline is substantially complete. ,.

11. How does reclassification affect the use or status of my existing water supply well and will the status of my water supply well change if property ownership changes?

ANR Response:

The reclassification does not affect the use or status of an existing water supply well nor the ability of a new property owner to use an existing water supply into the future. This order affects the use of new water supply wells. In those areas within the reclassification area where waterlines were not installed, Saint-Gobain Performance Plastics has a long-term obligation under the Settlement Agreement to monitor existing water wells not connected to municipal water. A current property owner will have the data to provide to any potential buyers showing that the well has been “clean” relative to PFAS over time. In addition, potential buyers can access the Settlement Agreement, fact sheets, and other information on ANR’s website. The Settlement Agreement specifies Saint-Gobain’s long-term obligations related to water supply wells not connected to municipal water within the identified impacted area known as the Corrective Action Area.

12. How does this reclassification affect existing shallow springs, including those that are used as a public water supply, such as Morgan Springs?

ANR Response:

The reclassification does not affect the existing use of any water source. The use of Morgan Springs is not prohibited or restricted. As with any existing well, it is an existing “clean” water supply and is on a regular sampling program for PFAS to monitor water quality over time. In 2019, Act 21 was signed by Governor Scott. The act provided a comprehensive framework to identify PFAS contamination in Vermont and to issue new rules to govern acceptable PFAS levels in drinking water. On March 17, 2020, a revised Vermont Water Supply Rule was adopted to establish a Maximum Contaminant Level (MCL), which is 20 ng/L (ppt) for the sum of five PFAS (PFOA, PFOS, PFHpA, PFNA, and PFHxS).

No PFAS has been detected in the Bennington Water Supply, which uses Morgan Springs as part of their supply. The PFAS results for the Bennington Public Water System, or any water system, can be found on the Vermont Department of Environmental, Drinking Water and Groundwater Protection Division. The public water source for North Bennington and Shaftsbury is outside the Reclassification Area and has been shown to be free of PFAS.

13. In lieu of a drilled well, can another option for a long-term drinking water remedy be the hauling of potable water to a cistern or a storage tank for use in perpetuity?

ANR Response:

This option was not considered as a possible long-term drinking remedy due to its prohibitive costs and logistical challenges associated with continuous long-term water hauling. In addition, the Vermont Department of Environmental Conservation Wastewater System and Potable Water Rules do not include water hauling as an allowable option for a potable water source.

14. What is the basis for making the determining that underlying groundwater, particularly shallow groundwater, is above the Vermont Groundwater Enforcement Standards? This proposed reclassification appears too broad.

ANR Response:

It is our understanding of the area-wide PFAS contamination that the PFAS was carried through the air and deposited on the surface soils, then carried down to the shallow groundwater, thereby contaminating it with PFAS. This

understanding was supported when Saint-Gobain's consultant put in about 40 shallow monitoring wells within the area and all the shallow groundwater was found to be contaminated. The reason some of the water supply wells are clean is that the water in these wells is being carried into the area from far away and it is much older, that is, water in the ground before the PFOA was deposited. The reclassification will ensure that drillers and permit writers know to take steps to minimize the potential of carrying this contaminated shallow groundwater into the often cleaner deeper bedrock aquifer.

As stated in our other responses, the Reclassification Order will recognize that potable water is present within the reclassification area, as evidenced by the more than 130 existing water supplies with no detections of PFAS or PFAS levels below the applicable regulatory standards.

15. Is the Class IV designation permanent or is it possible that the Class IV designation can be changed or returned back to a Class III (potable) classification?

ANR Response:

As part of the requirements of the Settlement Agreement and the March 2020 Corrective Action Plan 2, Saint-Gobain Performance Plastics is obligated to perform long-term monitoring. This long-term monitoring will provide ANR with groundwater data to determine whether adjustments to the Class IV boundary can be made in the future. These adjustments could expand, contract, or remove the Class IV area. Adjustments could also be made if there are future changes to the groundwater enforcement standards or MCLs for PFAS. Any change in the groundwater reclassification boundary will require the same public process that was used for this reclassification. The outcome would be a revised reclassification that reflects the change in boundaries.

16. Several Comments stressed the importance of ensure there is proper notification to current property owners, well drillers, realtors, state and local regulators, real estate attorneys, etc. One commenter suggested that a notice should go out to all property owners, at least within the reclassification area, like was done for the original petition. Another commenter requested a updated map should be readily available that shows which wells are considered potable and including the conditions of the reclassifications on the map.

ANR Response:

Once the Secretary signs the final Reclassification Order, the ANR plans to place the official order along with pertinent map(s) that shows the proposed reclassification, provides clarification about the conditions of the reclassification, and shows the locations

of potable water wells within the reclassification order. The notice of the final Reclassification Order and where to find it along with the applicable documents and maps will also be sent to local realtors, attorneys, municipalities, and state well drillers association. Again, the proposed reclassification order provides a formal notification that groundwater not suitable for drinking water is likely present in at least a part of the underlying groundwater due to PFAS levels.

The ANR plans on providing a groundwater reclassification fact sheet that could be provided to a potential buyer after the order is finalized.