

# VERMONT LAW SCHOOL



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June 5, 2012

Deborah Markowitz, Secretary  
Vermont Agency of Natural Resources  
Center Building, 103 South Main Street  
Waterbury, Vermont 05671-0301

VIA ELECTRONIC MAIL

Dear Secretary Markowitz:

Connecticut River Watershed Council submits the attached document as an Appendix to the February 2012 report by Midwest Biodiversity Institute, *Selection of Representative Important Species for the Connecticut River in the Vicinity of the Vermont Yankee Electric Generating Facility (RIS Report)*. The Appendix contains three major components: a narrative section describing the relevant methodology, a key to the footnotes in the thermal tolerance table, and a table with thermal tolerance temperatures for New England freshwater fish species, including forty-two of the potential RIS species identified in the *RIS Report*.

As discussed in the *RIS Report* and in this Appendix, the thermal tolerance temperatures are intended for use in the Fish Temperature Model developed by Chris Yoder, which can in turn be used to develop seasonal temperature criteria for specific water bodies or to assess site-specific impacts of thermal discharges. In this case, we would recommend using the Fish Temperature Model in a broad-based effort to develop protective temperature criteria for Vermont's rivers and streams, including the Connecticut River. The information could also be used to more specifically evaluate and address Vermont Yankee's impacts on the thermal regime and fish species of the Connecticut River. However, we wish to emphasize that these recommendations need not be carried out prior to the issuance of Vermont Yankee's renewal NPDES permit. Rather, as we have previously stated, Vermont Yankee has not met its burden to prove that it has not and will not harm the aquatic species in the Connecticut River. Thus, the renewal NPDES permit should be issued without a variance at this time.

Thank you for your consideration, and please do not hesitate to contact us with any questions.

Sincerely,



Laura Murphy, Staff Attorney & Assistant Professor

Cc: VT: Ken Cox, Rich Langdon, Lael Will, Carol Carpenter, Catherine Gjessing; NH: Gabe Gries, David Neils; MA: Caleb Slater, Gerry Szal, Bob Maietta; USFWS: Ken Sprankle, Melissa Grader