

December 4, 2013

David Mears, Commissioner
Vermont Department of Environmental Conservation
National Life Building, 6th Floor
Montpelier, VT 05620

Chuck Ross, Secretary
Vermont Agency of Agriculture, Food & Markets
116 State Street
Montpelier, VT 05620

RE: State of Vermont
Draft Proposal for a Clean Lake Champlain, November 20, 2013

Dear David and Chuck:

Excepting one euphemism that the lake has been “slow to recover,” I appreciate the candor in the introduction to the Draft Proposal, such as your acknowledgement that “we have not done enough,” that “phosphorus loading is dominated by “non-point sources” and that “EPA must find “reasonable assurances” that the necessary phosphorus reductions will actually occur.”

No one underestimates the difficulty of achieving “a clean Lake Champlain.” **But candor in the introduction cannot disguise a fatal flaw in the Draft Proposal, which, at its point of departure, reasserts the primacy of conventional agriculture, the proximate, *i.e.*, preventable cause, of the problem.**

That flaw is why I do not see particulars to explain how “new and increased efforts” will achieve the goal; why I do not see justification for relying upon the empirically ineffective Accepted Agricultural Practices rules or data to support how “*enhanced* compliance” with the AAPs will now achieve “a clean Lake Champlain;” and most of all, why I do see the reappearance of ambiguous terms such as “*reasonable* schedules” and the unarguably infinite “*ultimately*.” My concerns arise out of the ashes of “new efforts” and vague timelines the state has proposed over the past fifty years, all of which have cost the taxpayers hundreds of millions while failing to achieve results.

I do not see in the Draft Proposal any mention of: (i) the failure of the MOU entered into on April 16, 1993, that shifted responsibility for water quality from ANR and ill advisedly awarded it to VAAF&M; (ii) the failure of the broad exemption the legislature provided to agriculture and silviculture in Vermont’s land use regulations and in Act 250; (iii) conventional agriculture’s profligate consumption of petroleum products and its share of responsibility for the generation of greenhouse gases; (iv) conventional agriculture’s

dependence upon state and federal subsidies—which farmers convert to new capacity—and without which, the industry would collapse; (v) whether it might be the paradigm conventional farming itself that is responsible for the increasing rate of pollution in Lake Champlain; (vi) whether Vermont farm attrition and the degradation of water quality in the lake are themselves inextricably linked or; (vii) correlated with the historical trend to adopt conventional farming; (viii) no mention of cover crops, soil carbon, stocking rates, liquid manure, high phosphorus feed supplements and (ix) no attempt to quantify the costs to taxpayers of the Draft Proposal’s remedies, or how these costs are to be met, an omission with Pyrrhic implications.

The Draft Proposal does not chart a new path for Vermont farming, which means that even if—or regardless of whether—the “new efforts” in the Draft Proposal are adopted, our farms will continue to ship \$20-22/cwt milk into \$15-18/cwt demand, will continue to over produce their markets, to close at the rate of 5-8%/year, to expand and consolidate their neighbors, to apply the very pollutants that are found in rising concentration in the lake, to be exploited by out of state milk processors and to ignore 40M of the world’s most prosperous demographic, living along the eastern seaboard in New York, Boston and Philadelphia, who want increasingly to buy milk products that *fairly reward farmers and do not pollute the lake*.

According to the Farm to Plate Strategic Plan,¹ Vermont dairy farmers had \$1,471,587,701 in capital assets (2007), some (shrinking) portion of which is equity, the other, (increasing) portion, debt. That capital, even if invested passively in productive assets, like mutual funds, would return 2.5%/annum or \$36.7M.

That it is invested in conventional dairy farming producing no profits for the majority, is not only a staggering waste of capital, it adds \$36.7M—not to mention the \$140M cost to taxpayers for remediation to clean up the pollutants conventional dairy discharges into Lake Champlain—to the opportunity cost to the community of conventional dairy farming. Compounding this sum over the last thirty years comes to a truly staggering opportunity cost.

It might be contended that Vermont’s largest and most “efficient” conventional dairy farms make profits in good years. But profitable farms comprise perhaps 1% of the 6,000 farms VAAF&M says operate in the state. And even with generous state subsidies, the “profitable” few operate at such a low rate of return that over the last twenty-five years they retained no earnings before interest, taxes, depreciation and amortization (EBITDA) nor did they even meet the cost of capital.

If we count, among a farm’s cash expenditures, the value of the farmer’s labor and internalize, as costs, the value of benefits derived from state property tax relief programs (Current Use),

¹ Farm to Plate Strategic Plan, *Appendix B: Revitalizing Vermont’s Dairy Industry*, (Montpelier: Vermont Sustainable Jobs Fund, 2012) p. 116

Vermont state and local sales tax exemptions, cost sharing for manure digesters, manure lagoons, ditching, emergency relief, fencing, the value of university extension programs for advice and research, etc., and then deduct from the revenue side outright cash disbursements such as the \$11M the state tendered to 1,200 dairy farmers in 2005, EBITDA made by even the largest and most “efficient” conventional Vermont dairy farms disappears entirely. Because it does not address the economics of Vermont farming—or because it defends a tiny minority—the Draft Proposal institutionalizes the status quo for the vast majority.

Lastly, the Draft Proposal is conceived without regard to ecological, social and economic *sustainability*, or to Vermont’s Act 113 (May 2012), by which the state adopts the Genuine Progress Indicator, defined as “the well-being and long-term prosperity of our state’s citizens, calculated through adjustments to gross state product that account for positive and negative economic, environmental, and social attributes of economic development.” *Id.* In distinguishing between GDP and the new GPI, the act repudiates mid-twentieth century business models—conventional agriculture’s is a prime example—predicated upon extracting the maximum amount of natural resources, maximizing production and externalizing wastes into the lake.

For the reasons given above, I am yet confirmed in the belief—which this Draft Proposal does nothing to diminish—that by claiming the legitimacy of balancing the requirement to meet federally mandated water quality standards with its faltering efforts to preserve conventional agriculture, the State of Vermont wishes—once again—to help the lake accommodate conventional agriculture, not the other way round, a policy for which the state has no legal, ethical, social or economic justification. My specific comments, on those sections of the Draft Proposal that are related to agricultural pollution, follow.

Respectfully,

James H. Maroney, Jr.

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2.1. Water Quality Permitting Programs

Permitting farms is not tantamount to stanching NPS pollution flowing from them. There is no empirical link, either here in Vermont or in other states, between permitting and the attainment of water quality. It is irrelevant what the LFO permit allows or does not allow; it is irrelevant how many inspections VAAF&M agents conduct on farms for permit compliance. Permits cannot attain WQSs without *effluent limitations*, specified in the Clean Water Act, or without Best Available Technology, also specified in the CWA but nowhere mentioned in the Draft Proposal. Permits without limits or control technology is tantamount to posting a sign on the Interstate that reads “Speed Limit.”

2.2. Accepted Agricultural Practices rules, Update and Compliance

VAAF&M’s duty under the MOU was to “develop by rule, implement and enforce agricultural land use practices in order to *reduce* the amount of agricultural pollutants entering the waters of the state...[to] *achieve* water quality standards, to protect the biological, physical and chemical integrity of the water and to *protect* public health.” (MOU)

In order to assess its progress, the legislature instructed VAAF&M to “determine the effectiveness of land use practices to reduce the release of agricultural pollutants and for compatibility with sound agricultural practices.” Yet, in the face of empirical evidence, previously cited, that the rules were not advancing the purposes of the statute or of the MOU, VAAF&M had the duty, in 2005, if not sooner, to revise the rules to accomplish those purposes. Petitioners find VAAF&M sought no such determinations nor made any such revisions.

VAAF&M has a clear conflict of interest between accommodating the motivation of the conventional dairy industry, which is to increase production, and the plain purpose of 6 V.S.A. § 4810, 10 V.S.A. § 1259(i), the Vermont Water Quality Standards, and the MOU, which is to “*reduce* the amount of agricultural pollutants entering the waters of the state.” VAAF&M’s bias toward conventional dairy frustrates the purposes of the law, and effectively prevents it from carrying out its duty under the MOU.

The AAPs were promulgated in 1995, at a time when Vermont had 2,047 dairy farms and when water pollution was increasing. Today Vermont has 55% fewer dairy farms than when the AAPs were promulgated and lake pollution is still increasing in every sector. The empirical evidence is crystal clear: the rules do not “provide clear, consistent and enforceable standards for the permitting and management of discharges” nor do they, in view of clear, empirical data indicating otherwise, cited *infra*, “*reduce* the amount of agricultural pollutants entering the waters of the state,” or “promote a healthy and prosperous agricultural community.” 10 V.S.A. § 1250.

The AAPs were tailored for median flows, but increasingly, NPS pollution occurs at high flows. They have been in effect for 18 years and have empirically stanching neither farm attrition nor water pollution. What is more, “Reduce” is a relative term nowhere quantified in the AAPs. Arguendo, “reduction” can be achieved on any scale without failing to meet the *de minimus* goal of the AAPs. Nor does “reducing pollution” by the minimum satisfy the AAPs or bring the State of Vermont into compliance with the Clean Water Act, or with Vermont's federally mandated WQS, 6 V.S.A. § 4810 and 10 V.S.A. § 1259(i).

Conventional farming was designed to boost production and lower costs, which it effects by externalizing its costs into the lake. If the regulations had been drafted to meet WQSs, the rules would have regulated production. The empirical evidence is again crystal clear: milk production in Vermont is up. There is no evidence that the AAPs—irrespective of whether farmers comply with them or not—can deliver a clean lake. *The rules were not conceived to protect the waters of the state, let alone meet WQSs; they were conceived to shield Vermont dairy farmers from environmental regulations that would suppress production. Reasserting their primacy subordinates the attainment of clean water for 600,000 to the interests of a few dozen dairy farmers and fertilizer dealers.*

The state must abandon the premise that it can achieve water quality compliance while permitting its farmers to overstock their farms, to overproduce their markets, to grow row crops in or near the annual flood plain, to apply to their fields 80M lbs of the very same pollutants that are found in abundance in the lake, to import high protein, high phosphorus feed supplements grown conventionally in other states and to otherwise operate in accordance with the precepts of the conventional paradigm.

If, as it appears, the Draft Proposal's main remedy for farm attrition and lake pollution is compliance, and inspections for compliance, with the AAPs, then the DEC and VAAF&M should make available the empirical evidence in support of such a conceit. *The rule making process proposed in the Draft must open the AAPs not to “update” or “modification,” but to full, judicial review.*

2.3. Livestock Exclusion from Surface Waters Program

This section of the plan is iniquitous. There is, first, no empirical evidence that fencing livestock out of state waterways, a good idea in and of itself, will achieve WQSs. Second, there is no justification for believing, while the state is facing in the current fiscal year a \$70M budget shortfall and a similarly alarming shortfall as far out as one could reasonably project, that the legislature will allocate *any* portion, let alone 90% of \$33-78M for fencing. Neither is there, third, any justification to believe that, for an industry already receiving from the state \$50M in sales tax deferments and property tax exemptions, further tax subsidies will incentivize farmers to shift their priorities from production to the attainment of WQSs.

There is a popular adage that imposes environmental costs back upon polluters, the underlying assumption being that a business owner pollutes to lower his costs and increase his profits. In the instant case, society has already driven dairy farmers to the brink of insolvency; the average Vermont dairy farmer has cut his/her costs to the bone and makes no profits. Offering a declining share of the cost of fencing and calling it an “incentive” is akin to resentfully granting Bob Cratchit one day off a year, on Christmas, then half a day.

State and federal policies compel dairy farmers to overproduce their markets, to keep milk prices down, which, because it was designed to lower costs by polluting the lake, compels them to apply the conventional paradigm. Society is fine with dairy farmers working fifteen hours a day every day, with their selling milk below cost, with denying them every privilege of middleclass, American life. But society now discovers that the lake is polluted and demands that farmers pay for fencing; they must, however, and they will, still work fifteen hours a day every day, still over produce their markets, still sell their product below cost and still apply the conventional paradigm, which pollutes the lake. This is not just adding insult to injury; the draft plan proposes to increase taxes on Vermonters to, in effect, *augment* the problems—farm attrition and lake pollution—the draft proposal pretends to stanch. This goes well beyond bad policy; by failing to regulate the toxic effects of conventional farming, public officials abrogate their duty to protect the public trust. If that weren’t enough, they shift the cost of their dereliction onto taxpayers, which borders on malfeasance.

2.4. Nutrient Management Plan (NMP) Assistance and Requirements

This section is bloated with precatory language. There is no empirical link, either here in Vermont or in other states, between Nutrient Management Plans, livestock exclusion, the winter spreading ban, 10-25 ft. field-specific buffers and the attainment of water quality standards, most especially not when the standard is as high above base loads as it is currently in Lake Champlain. This, and section **2.5. Small Farm Certification Program**, constitute another, unvarnished defense of the conventional agricultural paradigm, dressed up as “new and increased efforts” to attain water quality standards.

The science and value of eating organic

Thu Dec 5 2013

Think a family on a budget can't eat all organic all the time? Think again. With proper planning and preparation, families of four can enjoy three organic meals every day for less than \$25, according to tips and recipe suggestions offered by the [Organic Trade Association \(OTA\)](#), the leading voice for organic trade in the United States.

And, according to [The Organic Center](#), the trusted source of information for scientific research about organic food and farming, families who eat all organic on a budget can also enjoy the full nutritious, sustainable benefits that organic diets offer and the integrity and reliability the USDA Organic seal provides.

"Organic food sales are increasing by double digits annually, and more than 80 percent of parents reported buying organic food for their families last year," said Laura Batcha, Interim Co-Executive Director for OTA. "While there's great momentum for organic sales, the overwhelming reason people give for not purchasing organic is because it's too expensive. But there are many ways families can enjoy all-organic meals every day for about the same cost as conventionally produced food."

Seven tips for making organic food more affordable:

- **Buy in bulk.** A mantra for all food purchases, but nowhere will the value be greater than with organic.
- **Buy in season, then store for the off season.** Organic produce is more affordable while in season, and holds its full nutritional benefits when frozen or stored for enjoying when not in season.
- **Plan for the month, not just the week.** By planning meals as far out as possible, you can curb your costs by finding multiple ways to incorporate organic spices, oils, nuts, dried beans, flour/grain, frozen produce and other ingredients many times over the month.
- **Explore private label ingredients,** which have gone through the same rigorous USDA organic certification procedures as name brand organic products, and are often even less expensive than their conventional products.
- **Join buyers' clubs and loyalty programs.** Many buyers' clubs ship organic food wholesale to doorsteps—and many organic food producers and retailers' websites and social outlets feature frequent coupons, offers and other incentives. Also, joining organic farm CSAs not only saves you money, but directly supports your local economy.
- **Shop at two destinations.** With organic food available at most grocers, consumers now have the opportunity to comparison shop at multiple locations to keep their prices down. One strategy could be purchasing fresh produce at organic-focused markets, and packaged, canned and shelf-stable items at larger discount retailers.
- **Go by/buy the books.** For extra inspiration, discover helpful cookbooks with recipes and ideas for organic on a budget, such as the newly released *The Essential Good Food Guide* by Margaret Wittenberg and *Wildly Affordable Organic* by Linda Watson.

Organic – It's Worth It for Breakfast, Lunch and Dinner

Families of four can enjoy all organic on budgets of \$25/day or less, and still reap organic's full nutritional and sustainable benefits. [To show you how, OTA offers menu ideas for all-organic breakfast, lunch and dinner, while The Organic Center highlights their scientific benefits*](#).

BREAKFAST: Organic Strawberry-Oatmeal-Yogurt Muffins

Families can bake and enjoy a dozen heart healthy fresh muffins every morning for \$3.55. According to The Organic Center, organic strawberries have higher Vitamin C and phenol levels than conventional strawberries. And, the organic oats prohibit the use of herbicide 2,4-D, which has been linked to an increased risk in non-Hodgkin's lymphoma.

LUNCH: Organic White Bean-Tomato-Spinach Soup

This lunch is not only warm and filling for your family, but also sustainable for the planet—all for \$7.06. Recent studies have found the organic spinach in this soup has higher levels of ascorbic acid and flavonoids—and lower nitrate levels. Meanwhile, organic celery is grown without the use of organophosphate insecticides such as malathion—linked to developmental problems.

DINNER: Organic Chicken Tamale Pie

A delicious dinner for about \$12.19 that just may leave you with leftovers for the next day, Organic Chicken Tamale Pies are also delicious for what they don't include. Organic bean production prohibits insecticides and fungicides, organic dairy avoids exposure to growth hormones, and organic chicken has lower rates of antibiotic-resistant bacteria than conventional poultry.

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing over 6,500 organic businesses across 49 states. Its members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's mission is to promote and protect the growth of organic trade to benefit the environment, farmers, the public and the economy.

The Organic Center's mission is to convene credible, evidence-based science on the health and environmental benefits of organic food and farming, and to communicate the findings to the public. As an independent non-profit 501(c)(3) research and education organization, operating under the administrative auspices of the Organic Trade Association, The Center envisions improved health for the earth and its inhabitants through the conversion of agriculture to organic methods.

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