



# Lake Champlain

International

Clean Water. Healthy Fish. Happy People.

January 13, 2014

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RE: State of Vermont Draft Proposal for a Clean Lake Champlain

Dear Ms. Dolan,

We are immensely disappointed that at this point in the process the Draft Proposal for a Clean Lake Champlain will not lead to the phosphorus reductions required for a healthy Lake Champlain short or long-term; two essential pieces are missing from this draft proposal that leads us to this belief. First, there is no set plan to reduce phosphorus loading in Missisquoi Bay to the level identified by EPA modeling. Second, the plan does not mention a plan for reducing phosphorus to the required level in South Lake B. The identified phosphorus levels must be met, or the revised TMDL will not serve its overarching purpose. Feasible and effective plans to reach the necessary phosphorus reductions in Missisquoi Bay and South Lake B must be included in the final version of the TMDL. We expect that the plans for Missisquoi Bay and South Lake B will require innovative solutions consisting of technology, incentives, regulatory “sticks,” and meaningful partnerships.

With that said, it is obvious that a lot of hard work has gone into the draft proposal. For this, we applaud all those involved for dedicating their time and effort to solve Lake Champlain’s immense phosphorus challenge. The first step in working toward any kind of recovery is first to recognize the fact that a problem exists. The statement on page three of the proposal supports that the State is committed to a clean Lake Champlain:

*“Efforts to reduce all these sources of phosphorus have accelerated over the past ten years but the lake has been slow to recover. There are many reasons for this and some are beyond our immediate control, but the biggest reason is that we have not done enough.”*

However, we are troubled by the use of the phrase, “slow to recover.” We are unaware of any evidence that suggests that Lake Champlain has shown signs of recovery. Use of this phrase suggests that some denial still exists within state government. This denial is further bolstered by

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subsequent statements that clearly list pollution sources not in order of importance relative to the magnitude of pollution delivered by each source, such as the last paragraph on page three:

*“These proposed policies address all major sources of phosphorus to Lake Champlain and involve new and increased efforts from nearly every sector of society, including state government, municipalities, farmers, developers, and homeowners. All of us contribute to the phosphorus problem and we must commit to act together.”*

Although we agree that all sources of phosphorus pollution must be addressed through a holistic solution, it is recognized in the second-to-last paragraph on page three that non-point agricultural sources of phosphorus are the “dominant” contributors to phosphorus runoff into the lake. Yet, repeatedly the Agency of Natural Resources in this document and elsewhere continues to list pollution sources “out of order” relative to the magnitude of pollution delivered by each source.

To advance phosphorus pollution reductions in the most effective means possible, the dominant sources of pollution must be clearly identified and addressed. The State, or anyone for that matter, cannot continue to group sources of phosphorus pollution in a way that grants the prominent sources of pollution fewer resources and/or less attention than the sources that are of lesser pollution significance. Whatever the reason, whether political, social, or economic, the long-term gains of accurately portraying and addressing the foremost pollution sources momentarily outweigh the short-term gains of not accurately identifying and addressing these sources.

We advise that you consider these points as you move forward with this proposal. Failure to solve or improve the Lake Champlain pollution problem is not something that will be overlooked or hidden.

Specific issues, as opposed to our general concerns outline above, will be addressed for the remainder of this letter.

The draft proposal recommends to relax or eliminate the winter manure spreading ban, as described on page eleven:

*“The current winter spreading ban poses the unintended consequence of increasing the risk of soil compaction as well as spreading during the wetter times of the year. The ban forces farmers to spread manure at very high rates using heavy tractors and tanks in the spring -- the time of year when the soils are often wet and the risk of increases in runoff and concurrent bankfull flows are the greatest. For AAP and state permit-compliant farms, a third party Technical Service Provider (TSP) can develop a NMP that identifies fields that: (a) are not adjacent to surface waters or contains setbacks greater than 150 feet; and, (b) have slopes of 3 percent or less and ensure manure application rates are no greater than 3,000 gallons per acre.”*

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It appears that the winter spreading ban has not been enforced by the Agency of Agriculture. According to the Agency of Agriculture's records, every farmer who applied for an exemption from the winter spreading ban in the winter of 2012/2013 was granted an exemption (approximately 40 exemption applications were received in the winter of 2012/2013). This fact makes it seem as though the winter spreading ban is not enforced by the Agency of Agriculture.

Eliminating or loosening the winter spreading ban contradicts the draft proposal's stated goal of cleaning up Lake Champlain. It does not provide to the EPA a reasonable assurance that the necessary nonpoint source phosphorus reductions will occur. Agricultural agencies across the country recognize that, "The fate of manure spread on ice and frozen ground is unpredictable at best." Depending on weather conditions, this practice is known to result in major pollution events (please refer to references listed on the attached page to this letter).

Allowing exemptions to the winter spreading ban is akin to requiring everyone to dispose of garbage properly and subsequently granting exemptions to allow roadside dumping to any exemption applicant who has more garbage than will fit in his/her garbage can.

Maintaining a winter spreading ban does not benefit our waters if it is not enforced. Failure to enforce this ban makes a winter spreading ban an ineffective regulation to prevent pollution. A farm should not be allowed to have more animals than it has manure storage capacity to handle and contain manure and leachate properly. Winter manure should be stored until such time when it can be used on the farm without contributing to pollution runoff, or transported off the property. Application for exemption from the winter spreading ban should be recognized as evidence that adequate storage capacity does not exist on the applicant's farm. That evidence should automatically require an immediate reduction in the number of animals until such time that proof of adequate storage capacity is demonstrated.

A major concern lies within the Small Farm Certification Program section of the draft proposal, located on page 13:

*"Owners or operators of small farms, as defined in the revised AAPs, will need to certify every five years that they comply with the Accepted Agricultural Practices (6 V.S.A. Chapter 215). The certification will document the number and type of animals and acreages in agriculture. The certification will also specify that the farm does not directly discharge wastes into surface waters from a discrete conveyance such as a pipe or ditch."*

Agricultural ditch water is arguably the primary conduit for phosphorus and sediments into Lake Champlain, as well as other Vermont waterways. Ditching and pond building are Acceptable Agricultural Practices as identified in the AAP Regulations from 2006 (see references page for a

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link to the document). Every ditch discharging from every farm into a stream does and will continue to discharge sediments and phosphorus at some level of concentration.

It is not clear in the draft proposal exactly how these ditches will be properly addressed to prevent an enormous amount of phosphorus from getting into the lake. These ditches need to be specifically identified and addressed if phosphorus loads are to be reduced assuredly. “Acceptable” loss of soils from crop lands is described in tons per acre per year. However, agricultural ditching and ditch management remains vague in this draft proposal. We recommend that you specifically address agricultural ditches so that this proposal may provide the necessary reasonable assurances.

The pie chart titled “Sources of phosphorus in the Vermont portion of the Lake Champlain Basin” (EPA – Tetra Tech, 2013), on which priorities of the draft proposal are partially based, is a concern. We believe this chart to be inaccurate where phosphorus loads from streambanks are overstated and phosphorus loads from cropland is understated. Much of the streambank erosion from which phosphorus enters the lake is associated with cropland activities. Therefore, a portion of the streambank source of phosphorus should be included in the cropland source. Once corrected, regulations, policies, and priorities will become more accurate and phosphorus prevention work will be more effective.

Addressing the stormwater and phosphorus loading from Vermont’s roads is a necessary endeavor. Doing so through a new permitting program may be necessary, but we are concerned about the effectiveness of the program once existing. While realizing that current permitting programs and regulations are not fully enforced within the Agency of Natural Resources and Agency of Agriculture already, we are hesitant to place our confidence in a newly formed permitting system’s ability to be properly enforced. We understand that resources are limited, so before implementing new permitting programs, only to have the program fail due to a lack of enforcement, we encourage you first to ensure that the required financial, human, and logistical resources are confirmed before implementation. The underlying concern is that if a program fails, phosphorus reduction goals will not be met. This stands true for all other new permitting programs in addition to roads.

This draft proposal does not adequately address stormwater from existing developed lands, as described on page 16:

*“The first stage of implementation will require permit coverage for all stormwater discharges on sites where impervious surfaces exceed (3) acres. Additionally, impervious surfaces discharging to municipal stormwater systems where such impervious surfaces exceed 15 acres, in aggregate, and the density of impervious surface is greater than 7%, shall be addressed by a stormwater permit, issued to the municipality and requiring implementation of a stormwater management and phosphorus control plan.”*

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Thousands of homes and commercial sites consist of less than three acres of impervious surfaces, leaving a wide gap from which phosphorus will continue to flow into Lake Champlain. Although the Green Infrastructure Initiative described on pages 18 and 19 attempts to address the phosphorus from the sites not covered by the Existing Developed Lands section of the proposal, the GI Initiative is subjective and without identifiable, tangible phosphorus load reductions. We recommend that you revisit how phosphorus will be appropriately reduced from existing lands through a mechanism that addresses the impervious surfaces of the thousands of homes and businesses in the Lake Champlain Basin that are not covered by this draft proposal.

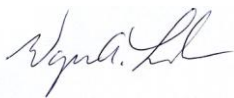
This draft proposal explains the importance of minimizing river corridor and flood plain encroachments well, but a few concerns remain unaddressed. Cropland and other agricultural sites border rivers throughout the Lake Champlain Basin in Vermont, and this is not mentioned in the River Channel Stability section of this proposal, including both subsections Minimizing River Corridor and Flood Plain Encroachments and Preventing Adverse River Channel Modifications. Attention must be drawn to this significant source of phosphorus loading, which is relevant to the inaccuracy of the EPA – Tetra Tech chart mentioned earlier in this letter. Under the implementation steps for minimizing river corridor and flood plain encroachments, we encourage you to be more specific; for instance, “develop better...” is vague and still does not provide assurance that “better” meets the goals of our phosphorus reductions.

Your hard work on redeveloping the Lake Champlain phosphorus TMDL should be commended, while recognizing that there is still more work to be done. We thank you for the opportunity to share our concerns and are eager to continue to be a part of the solutions to a clean and healthy Lake Champlain. Our state’s economy, public health, and well-being depend on a successful Lake Champlain phosphorus TMDL.

Sincerely,



Ross Saxton  
Director of Conservation & Education



Wayne Laroche  
Staff Scientist

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## References

Winter manure spreading

[http://www.maeap.org/uploads/files/Livestock/Keeping-Land-Applied-Manure-in-the-Root-Zone\\_Frozen-Snow-covered-Ground.pdf](http://www.maeap.org/uploads/files/Livestock/Keeping-Land-Applied-Manure-in-the-Root-Zone_Frozen-Snow-covered-Ground.pdf)

<http://www.animalagteam.msu.edu/uploads/files/20/Part.pdf>

<http://midwestadvocates.org/issues-actions/actions/manure-spreading-on-frozen-ground-banned/>

<http://www.agronext.iastate.edu/immag/pubs/imms/vol3.pdf>

[http://www.pennfuture.org/media\\_pfr\\_detail.aspx?MediaID=24](http://www.pennfuture.org/media_pfr_detail.aspx?MediaID=24)

Accepted Agricultural Practice Regulations

<http://agriculture.vermont.gov/sites/ag/files/ACCEPTED%20AGRICULTURAL%20PRACTICE%20REGULATIONS.pdf>

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