VERMONT LEAGUE OF CITIES & TOWNS

Serving and Strengthening Vermont Local Governments

September 7, 2016

Alyssa Schuren, Commissioner
Department of Environmental Conservation
Clean Water Initiative Program
Watershed Management Division
1 National Life Drive, Main 2
Montpelier, VT 05620-3522

Dear Commissioner Schuren:

I am writing on behalf of the members of the Vermont League of Cities and Towns to offer comments on the Lake Champlain Phase 1 Implementation Plan and the "All In" Campaign. Agency of Natural Resources staff, local officials, and many interested partners have worked hard to get to this point of implementing a Lake Champlain clean-up plan.

Sources of phosphorus discharges to the lake include agriculture runoff, streambank erosion, developed land (roads, parking lots, lawns, athletic fields, buildings), wastewater treatment facilities, forest harvesting, and historically deposited phosphorus that has collected in bottom sediments in portions of the lake. An analysis of total loads estimated that, each year between 2001 and 2010, 922 million tons (MT) of phosphorus were discharged to the lake, including 213 MT from New York, 77 MT from Quebec, and 631 MT from Vermont. In Vermont, wastewater treatment facility contributions are estimated to be 25 MT per year (3.5 percent of the total), and non-wastewater treatment facility contributions are 606 MT per year (60 percent of the total).

According to the Environmental Protection Agency Phosphorus Total Maximum Daily Loads for Vermont Segments of Lake Champlain's analysis, annual non-wastewater facility contributions include developed lands (114 MT), forest lands, operations and roads (100.7 MT), streambank erosion (130 MT), and agriculture (262 MT). The distribution varies within segments of the lake according to the adjacent land uses and the contours of the lake itself.

These estimates are six to 16 years old and, in the interim – even without a Lake Champlain TMDL – a lot of work has been done to reduce phosphorus discharges to the lake from virtually every contributing sector. As well, ANR staff, the University of Vermont, and the Lake Champlain Basin Program have completed years of analyses of contributions to the lake. More recent numbers would almost certainly alter the number of tons contributed and the obligation to further reduce phosphorus discharges. Are more recent numbers available today on which to base Vermont's work plans? We support the agency's commitment to frequently re-evaluate programs and work plans based on new data derived through tactical basin plan implementation, the Clean Water Roadmap, and project accomplishments as that information becomes available. It is vital to base stormwater management activities on the most current information available.

The Vermont Lake Champlain Phosphorus TMDL Phase 1 Implementation Plan enumerates the major categories to implement the TMDL. They include regulatory requirements, financial incentives, technical assistance, monitoring, assessment and planning, funding, education and outreach. We urge you to affirm that funding, financial incentives, and technical assistance are the highest priority and primary instruments the agency will use to implement the Lake Champlain Phosphorus TMDL.

Because EPA's fallback position is that point sources and more particularly wastewater treatment facilities will need to further reduce their phosphorus discharges if non-wastewater facility

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contributions are not reduced sufficiently, and because wastewater treatment facility discharges are measurable, both the EPA Lake Champlain TMDL and the Phase 1 Implementation Plan focus disproportionate attention on wastewater treatment facilities. As you well know, reducing phosphorus discharges from wastewater treatment facilities will be enormously expensive while reaping very little relative return in most portions of the lake, given that these facilities annually contribute 25 MT of phosphorus out of the 922 MT total. A far greater return will be realized from concentrating clean-up efforts on non-point discharges.

Milestones in the Lake Champlain TMDL Accountability Framework include issuing the municipal roads general permit for implementing stormwater management for municipal roads to all cities and towns in 2016 and 2017; issuing the general permit for stormwater from existing developed lands equal to or greater than three acres in 2016 and 2017; and revising the Municipal Separate Storm Sewer System (MS4) permit to require stormwater control consistent with the wasteload allocation.

The state has made significant progress in addressing non-point sources of stormwater runoff from farms. Act 64 made several statutory changes that are being incorporated in the new Required Agricultural Practices. The draft RAPs require that any ditch that is determined to potentially transport significant waste or nutrients to surface water must be buffered with a minimum of 25 feet of perennial vegetation. In addition, municipalities need clear authority to prohibit runoff from adjacent properties into the municipal right of way and ditches. Once stormwater reaches a municipal ditch, it seems that the state's prevailing sentiment is that the municipality owns it and must manage it, regardless of its source.

It is also vitally important that the legislature eliminate the statutory exemption for agricultural service vehicles from municipal road weight limit statutes in Title 19. Such heavy and oversized vehicles can do tremendous damage to municipal roads in very short order, particularly during wet times of the year, and contribute significant erosion sediment to the waters of the state.

The Lake Champlain TMDL has created a problem that did not really exist before: the potential for an "us versus them" scenario between municipalities and agricultural enterprises, because if major sources of non-point source pollution aren't curtailed, EPA will require wastewater treatment facilities to further reduce phosphorus discharges. Were water quality nutrient trading between municipalities and farms allowed, it would provide needed funding to make improvements on agricultural lands and motivate cooperative working relationships between municipalities and farms in the same watershed.

The Lake Champlain Phase 1 Implementation Plan objectives will not be met solely by edict in a state that already has one of the highest overall tax burdens in the country. "All in" must not be allowed to mean – "all in and you pay."

We are grateful that the agency and the legislature increased ecosystem restoration capital grant funds to $3.75 million in 2015. We believe that as it becomes clearer what is required of cities and towns, and as availability is widely advertised, those grants will be much in demand. Likewise, the creation of the Clean Water Fund and approximately $5 million in each of three years to invest in a series of priorities established in Act 64 is very helpful, no matter it's short-term and applied exclusively to the priorities established in that act.

There must be sufficient funding to pay for stormwater management on municipal roads and developed lands and for reducing discharges from wastewater treatment facilities, and State Treasurer Beth Pearce understands the need for a stable long-term funding source that will not be diverted to other uses. That funding source cannot be the already significantly overburdened property tax.

The VLCT Municipal Water Quality Coordinator works with municipalities and regional commissions on projects that can sometimes be accomplished only by someone outside of ANR. The position must be appropriately funded if it is to accomplish its extensive responsibilities. In the first year of our agreement with the Department of Environmental Conservation, the grant was $55,000 for the period from November 1, 2004, to June 30, 2005. In FY 2006, 2007 and 2008, the position was funded full time at $96,000.By 2010, the annual grant amount from DEC for that position was $64,000. It has been $50,000 ever since 2011, even as the responsibilities, its role in the

Lake Champlain TMDL Plans, and work deliverables have increased. As a certified floodplain manager, the water quality specialist works closely with towns to promote enhanced model bylaws, low impact development, and green stormwater infrastructure initiatives; she also frequently promotes cross-agency and agency-to-town communication, flood resiliency planning, and peer-to-peer learning as well as community progress barometers to increase the adoption of bylaws.

Vermont legislators and the administration have yet to provide a detailed response to the long-term fiscal challenge, and this is our biggest concern. The Phase 1 Plan is ambitious but it will not happen without adequate funding to support its initiatives and programs, many of which apply to local governments.

Thank you for the opportunity to comment.

Sincerely,

Karen B. Horn

Karen B. Horn, Director
Public Policy and Advocacy