



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

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OFFICE OF THE
REGIONAL ADMINISTRATOR

April 2, 2018

Julie Moore, Secretary
Agency of Natural Resources
1 National Life Drive
Davis 2
Montpelier, VT 05620-3901

Anson Tebbetts, Secretary
Department of Agriculture, Food and Markets
116 State Street
Montpelier, VT 05620-2901

Re: Report Card on Vermont Lake Champlain TMDL Phase 1 Implementation Plan Milestones

Dear Secretary Moore and Secretary Tebbetts:

Thank you for submitting the 2018 Accountability Report on March 7, 2018, and for your extensive efforts to implement the Lake Champlain TMDL. First and foremost, EPA is pleased with the overall magnitude and quality of Vermont's accomplishments since the passage of Act 64 in 2015. Your staff have clearly been working hard to get new programs off the ground, rapidly award large amounts of new funding to priority phosphorus reduction projects, ramp up inspection programs, and establish the new comprehensive tracking and accounting system. The many milestones that have been completed reflect this excellent progress.

EPA committed to issue a final report card in 2018 assessing Vermont's success in meeting the TMDL Phase I Implementation Plan milestones. Vermont successfully completed 25 of the 28 TMDL milestones and is making strong progress on the remaining targets. With the successful completion of all 2016 targets and most of the 2017 targets, EPA is giving Vermont a "provisional pass" for its TMDL Phase 1 compliance.

This assessment of "provisional pass" is contingent on EPA's review of Vermont's progress on the three remaining Phase 1 milestones by mid-2019, by which time they are all anticipated to be complete. A summary of the status of each of the milestones is included in Attachment A. EPA plans to revisit the provisional pass again in mid-2019, at which point we will review progress toward completion of the three remaining Phase 1 milestones in addition to our review of the Phase 2 Missisquoi and Lamoille tactical basin plans.

Of the three outstanding milestones, EPA is encouraged that progress has been made toward completion of each. First, for the required new Municipal Separate Storm Sewer System (MS4) permit, EPA has been told that a final permit is expected to be issued on April 13, 2018. While this permit is behind schedule, EPA is pleased that the bulk of the work has been completed and that it is expected to be issued very soon. Second, for the final Developed Lands General Permit, EPA urges the state to issue it before the mid-2019 report card update, based upon the jurisdictional clarity that you anticipate receiving from the legislature at the conclusion of the current session. Third, on the establishment of long-term revenue sources, EPA is encouraged that short-term funding in the Capital Bill has been secured through 2019 and that the property transfer tax surcharge has been renewed providing revenue to the Clean Water Fund through 2027 (detailed in Appendix A). It is important that the State establish a long-term revenue source as identified in the TMDL accountability framework, since this is critical to successful and full implementation of the TMDL. EPA intends to evaluate the State's progress to complete this long-term funding milestone in mid-2019 as mentioned above.

We commend the state for all the good work completed to date. Programs such as the Municipal Roads Grant-in-Aid program, which has provided incentive funding to 186 early adopters of road best management practices (BMP) projects, are impressive examples of the breadth of the commitment to restoration work at both state and municipal levels.

Thank you for your commitment to restoring Lake Champlain. As always, we look forward to continuing our regular, informal coordination and technical exchanges as you continue to implement the TMDL.

Sincerely,



Alexandra Dapolito Dunn
Regional Administrator

Enclosure

cc: Joe Flynn, Secretary, Vermont Agency of Transportation
Emily Boedecker, Commissioner, Vermont Department of Conservation

Attachment A

Status of 2016 and 2017 Milestones in the Lake Champlain Phosphorus TMDL Accountability Framework

In the TMDL Accountability Framework, EPA included 28 milestones that the State of Vermont committed to meet by December 31, 2017. Sixteen of these were scheduled for completion by the end of 2016, and the remaining 12 were scheduled for completion by the end of 2017. Together, these 28 milestones were intended to capture key components of the first phase of TMDL implementation – the phase focused primarily on getting new permits and programs in place to support much of the longer-term implementation work.

Year 1 (Due December 30, 2016)

No.	2016 MILESTONE	EPA ASSESSMENT OF STATUS
1	Required Agricultural Practices (RAP) revisions adopted (with expected elements)	Complete <ul style="list-style-type: none">- RAPs were revised; effective date: 12/05/2016.
2	Small Farm Operation Certification program rule adopted	Complete <ul style="list-style-type: none">- RAPs include a Small Farm Operation Certification Program;- CSFOs to file self-certifications by 1/31/2018;- Annual recertification;- Over 250 farms have self-certified to date.
3	Livestock exclusion incentive program in place	Complete <ul style="list-style-type: none">- RAPs contain requirements for livestock exclusion;- To encourage early compliance, AAFM contracted with University of Vermont Center for Sustainable Agriculture Pasture Program to implement a declining cost-share program. The program is in place and field work is set to begin during the 2018 field season;- Declining cost share program offers 90% of the cost of installing livestock exclusion system in the first year, and declines by 5% each subsequent year to a minimum of 75%, with the intent of incentivizing early adoption.
4	Develop matrix and small farm template for nutrient management planning	Complete <ul style="list-style-type: none">- AAFM developed a matrix of NMP requirements for small, medium, and large farm operations.- Large, medium, and certified small farm operations are required to implement a US Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Nutrient Management Practice Code 590-standard nutrient management plan (NMP);- Farms that are smaller than certified small farm operations must meet the nutrient management planning requirements in the RAPs;- AAFM has also developed a small non-dairy farm operation draft template for NMPs.
5	Develop Environmental Stewardship Incentive Program in priority watersheds	Complete <ul style="list-style-type: none">- Program created in 2016, offering additional incentives and recognition to farmers implementing agricultural conservation practices in addition to the RAPs;- Enrollment open;- 13 farms have applied to date;- Field work set to begin during the 2018 field season.

No.	2016 MILESTONE	EPA ASSESSMENT OF STATUS
6	Mandate certification of custom manure applicators	Complete - AAFM obtained authority under Act 64 to create a custom manure applicator certification, and worked with the UVM Extension Service to run a certification program for custom manure applicators, began in 2016 and continues.
7	Develop requirements for farmer training programs	Complete - Farmers are required to obtain 4 educational credits every 8 years; - Process created for partner organizations to have their programs approved for educational credit eligibility, and approved programs are advertised through the Agriview publication.
8	Issue Final Transportation Separate Storm Sewer System (TS4) permit	Complete - Completed and adopted on 12/28/2016; - Effective date: 12/28/2016; - The TS4 permit was appealed; ANR settled the appeal, and reissued the TS4 permit, incorporating revisions agreed to pursuant to the settlement. The revised TS4 permit was adopted November 29, 2017.
9	Adopt final Vermont Stormwater Management Manual	Complete - Completed and adopted through the state administrative rule-making process on December 28, 2016; - Manual became effective on 7/1/2017.
10	Forestry Acceptable Management Practices (AMP) for Maintaining Water Quality on Logging Jobs revisions completed	Complete - Rule complete and adopted through the state administrative rule-making process; - AMPs took effect on 10/22/2016; - Undergoing second rule-making process for minor modifications; - Those revisions are to close a regulatory gap that was discovered after most recent revisions to the AMPs.
11	Legislature establishes Clean Water Improvement Fund	Complete The Clean Water Fund was established through the passage of Act 64 (2015), signed on 6/16/2015.
12	Tactical Basin Plans (Phase 2) complete for Lamoille and Missisquoi basins	Complete The Plans were approved on December 28, 2016.
13	Updated Report to the U.S. Environmental Protection Agency (EPA) with spending plan cap	Complete - The report addressed the State's investments made in clean water projects, state agencies' staffing capacity and water quality budgets; - Submitted to EPA on December 30, 2016.
14	Issue new Combined Sewer Overflow (CSO Rule), replacing 1990 CSO Control Policy	Complete Rule was adopted through the state administrative rule-making process on August 25, 2016 and took effect on September 15, 2016.

No.	2016 MILESTONE	EPA ASSESSMENT OF STATUS
15	Develop TMDL implementation tracking and reporting system	<p>Complete</p> <ul style="list-style-type: none"> - Tracking, accounting and reporting system was developed June 30, 2016; - Enhancements and refinements are ongoing; - System allows for efficient tracking and accounting of phosphorus reduction activities.
16	Revise ANR/AAFM Memorandum of Understanding (MOU) for agricultural nonpoint source program	<p>Complete</p> <ul style="list-style-type: none"> - MOU completed on 3/17/2017; - Integrated three MOUs: (1) CAFO and relationship with state large, medium and small farm operations, respectively, (2) enforcement, and (3) nonpoint source pollution.

Year 2 (Due December 30, 2017)

No.	2017 MILESTONE	EPA ASSESSMENT OF STATUS
1	Nutrient Management Plan (NMP) milestones completed	<p>Complete</p> <ul style="list-style-type: none"> - Many of these nutrient management elements were included in the new RAPs; - Other elements addressed by previous notes relating to NMP matrix milestone (no. 4 in previous table), farmer trainings (no. 7) and custom manure applicator certification (no. 6); - AAFM has supported the development of GoCrop NMP development software and the courses for farmers through the Clean Water Fund grants program.
2	Targeted funding for agricultural BMP and Nutrient Management Plan implementation provided in Missisquoi Bay, St. Albans Bay and South Lake Champlain basin	<p>Complete</p> <ul style="list-style-type: none"> - Inspections, Revised Secretary's Decision (RSD) and federal priorities have led to increase in conservation practice enrollment through cost-share programs; - AAFM contracted with three partners to provide case management in these watersheds; - AAFM has given priority to these watersheds in the new Agriculture Clean Water Initiative Grant Program; - USDA-NRCS Strategic Watershed Planning effort has focused on sub-watersheds within these priority areas, resulting in increased program sign-up and implementation.
3	Report to Legislature on recommendations for tile drains	<p>Complete</p> <p>Report completed on 1/31/2017.</p>
4	Issue Final Municipal Roads General Permit	<p>Complete</p> <p>Permit signed by DEC Commissioner and effective on 1/26/2018.</p>
5	Issue Final Developed Lands General Permit	<p>Incomplete</p> <p>The developed lands permit is behind schedule and this milestone is not anticipated to be complete until sometime in 2019. This permit is part of the State's commitment to achieving needed phosphorus reductions from developed land so it is important to keep making progress on the issuance of this permit.</p>

No.	2017 MILESTONE	EPA ASSESSMENT OF STATUS
6	Tactical Basin Plans (Phase 2) completed for South Lake (includes Poultney- Mettawee and Lower Lake Champlain basins)	<p>Complete</p> <ul style="list-style-type: none"> - Tactical Basin Plans scheduled for 2017 (South Lake Champlain as well as an update to North Lake Champlain) were completed; - The Plans were approved on December 31, 2017.
7	Establish long-term revenue source to support water quality improvements via CWF	<p>Incomplete</p> <p>EPA interprets the following accomplishments reported by the state as only partially achieving the milestone. The steps accomplished thus far (below) provide some near-term relief, but long-term revenue sources remain undetermined.</p> <ul style="list-style-type: none"> - The Clean Water Fund was established through the passage of Act 64 (2015), signed on 6/16/2015; - The Fund's revenue source is a property transfer tax surcharge; - Governor Scott and Vermont Legislature directed an additional \$48 million above baseline spending in state fiscal years (SFY) 2018-2019 to support water quality improvement costs identified in the Office of the State Treasurer's Clean Water Report; - The \$48 million appropriated above baseline spending is associated with: (a) Act 85 of 2017 (Relating to making appropriations for the support of government) extended the property transfer tax surcharge repeal from July 1, 2018 to July 1, 2027 to provide \$8 million in SFY 2018-2019 (\$4 million annually); (b) Act 84 of 2017 (Relating to capital construction and State bonding) appropriated \$25 million additional capital dollars in SFY 2018-2019; (c) Act 38 of 2017 (Relating to the Transportation Program and miscellaneous changes to transportation-related law) appropriated \$13 million additional transportation fund dollars in SFY 2018-2019; (d) Capital Construction and State Bonding Adjustment Bill for SFY 2018-2019 proposes \$2 million additional bond premium funds from bond sale; - Legislative Report by State Treasurer on clean water funding options completed (1/15/2017); - Legislative Report of the Working Group on Water Quality Funding 2017 Act 73, Section 26 completed 11/15/2017.
8	Revise Municipal Separate Storm Sewer System (MS4) General Permit to require existing regulated small municipalities to control discharges consistent with the TMDLs' wasteload allocations	<p>Incomplete</p> <p>This permit was posted for public comment on February 14, 2018 and ANR intends to issue the permit as soon as possible after the close of the public comment period. According to the State's TMDL Accountability Report, this permit is targeted for final issuance on April 13, 2018. While this permit is behind schedule, EPA is pleased that the bulk of the work has been completed and that it's expected to be issued very soon.</p>
9	Propose amendments to RAPs to include requirements for reducing nutrient contributions from subsurface tile drainage	<p>Complete</p> <ul style="list-style-type: none"> - AAFM recently proposed amendments to Required Agricultural Practices to include requirements for reducing nutrient contributions from subsurface tile drainage; - AAFM pre-filed their proposal for rule-making with the Interagency Committee on Administrative Rules (ICAR) on January 16, 2018; - ICAR approved the draft rule on February 12, 2018; - AAFM formally filed the rule on 2/16/2018; - Public Hearings on proposed rule set for 3/30, 4/2, and 4/5/2018; - Filed rule includes management requirements for fields with tile drains installed, and additional requirements for new tile drain installation.

No.	2017 MILESTONE	EPA ASSESSMENT OF STATUS
10	Update the Vermont Water Quality Standards, including anti-degradation, by adding a new tier that will allow for an upward reclassification of designated uses to a new, more protective class	<p>Complete</p> <ul style="list-style-type: none"> - VT Water Quality Standards rule completed and adopted by state on 11/17/2016; - Added a new tier that will allow for an upward reclassification of designated uses to a new, more protective class, and made clarifying changes to the Anti-Degradation Policy; - Vermont Water Quality Standards were updated through the state administrative rule-making process and took effect January 15, 2017.
11	Complete education, outreach and compliance activities with farms in the Missisquoi Bay watershed, as detailed in Section III, 6 in the Secretary of AAFM February 3, 2016 Decision (RSD)	<p>Complete</p> <ul style="list-style-type: none"> - AAFM Completed education, outreach, and compliance activities with each livestock operation in the Missisquoi Bay watershed in 2015 and 2016 as detailed in Section III, 6 in the Secretary of Agriculture, Food and Markets February 3, 2016 decision; - AAFM visited every livestock operation in the Missisquoi Bay watershed in 2015 and 2016 to help them understand their farm assessment needs, and the pending RAPs and CLF petition; - AAFM is working with the Conservation Law Foundation to ensure the effort is aligned with the Revised Secretary's Decision (RSD); - Education, outreach, and inspections are ongoing to ensure farms comply with the RAPs and achieve the goals of the RSD.
12	Commence notification of affected farms about the Assessment and Plan process as detailed in Section III, 7 in the Secretary of AAFM February 3, 2016 Decision (RSD)	<p>Complete</p> <ul style="list-style-type: none"> - AAFM commenced notification of affected farms about the Assessment and Plan process within one year of the February 3, 2016 decision, as detailed in Section III of the Revised Secretary's Decision (RSD); - AAFM sent letters out to all farms in Franklin County to let them know about the RSD; - Included RSD in nearly all presentations in the Franklin County (RAP, custom manure applicator, tile drainage, etc.).

Acronym Key

AAFM:	Agency of Agriculture, Food and Markets
ACCD:	Agency of Commerce and Community Development
ANR:	Agency of Natural Resources
AoA:	Agency of Administration
BMP:	Best Management Practices used to reduce pollution loading into surface waters
CAFO:	Concentrated animal feeding operation
CLF:	Conservation Law Foundation
DEC:	Department of Environmental Conservation at ANR
FPR:	Forests, Parks and Recreation Department at ANR
LFO:	Large Farm Operations Program at AAFM
MFO:	Medium Farm Operations Program at AAFM
MOU:	Memorandum of Understanding
RAPs:	Formerly Accepted Agricultural Practices; now referred to as Required Agricultural Practices
RSD:	Revised Secretary's Decision, the AAFM Secretary's decision regarding Conservation Law Foundation Settlement for Best Management Practice implementation in the Missisquoi Bay watershed
SFO:	Small Farm Operations Program at AAFM
TMDL:	Total Maximum Daily Load
TS4:	Transportation Separate Storm Sewer System General Permit, Issued by ANR/DEC
VTrans:	Vermont Agency of Transportation