

February 15, 2017

Anson Tebbetts
Secretary
Vermont Agency of Agriculture, Food & Markets
116 State Street
Montpelier, VT 05620

Julie Moore, P.E.
Secretary
Vermont Agency of Natural Resources
1 National Life Drive
Montpelier, VT 05620

Dear Secretary Tebbetts and Secretary Moore:

Conservation Law Foundation, Lake Champlain Committee, Vermont Council of Trout Unlimited, Vermont Conservation Voters, Lintilhac Foundation, Lewis Creek Association, Vermont Natural Resources Council, and Lake Champlain International write in response to the Vermont Subsurface Agricultural Tile Drainage Report (Report) submitted by the Agency of Agriculture, Food & Markets (AAFM) and the Agency of Natural Resources (ANR). We strongly object to the Agencies' attempt to opt out of their mandate to regulate tile drains.

Regulating subsurface tile drains is essential to achieving Vermont's clean water mandates. Tiles alter the hydrology of the landscape by allowing water to move more quickly from farm fields, which leads to erosion and channel destabilization.¹ Tile drainflow can also contain significant levels of phosphorus pollution.² Phosphorus loading into Lake Champlain is of particular concern given the phosphorus pollution limits set by the Environmental Protection Agency (EPA) in the TMDL. Agriculture alone is required to reduce its phosphorus load to the lake by nearly 54 percent.³

To achieve the targets set forth in the TMDL and ensure the health of all Vermont waters, the legislature enacted the Vermont Clean Water Act, or Act 64. As plainly stated in Act 64, "[o]n or before January 15, 2018, the Secretary of Agriculture, Food and Markets shall amend by rule the required agricultural practices [RAPs] in order to include requirements for reducing nutrient contribution to waters of the State from subsurface tile drainage." 6 V.S.A. §4810a(b).

However, despite the statutory mandate from Act 64, the contract with EPA to reduce phosphorus pollution, and the continual "all in" rhetoric, the Agencies seek to avoid tile drain regulations altogether. The Report claims the "recent changes to the RAPs will directly impact tile drain management, and as such, meets the intention of the requirement of Act 64."⁴ This assertion is fundamentally inaccurate considering the RAPs do not even mention tile drains other than to commit to promulgating rules in 2018 and under manure spreading exemptions. Regulating agriculture writ large is distinct from regulating a specific agricultural activity. The legislature tasked AAFM with both developing the RAPs and promulgating a specific rule related to tile drains.

Enough is known about the impacts of tile drain discharge on water quality to include regulations in the RAPs next year.⁵ In letters from several of the undersigned organizations dated December 21, 2015, and April 26, 2016, and in the recent Vermont Tile Drainage Advisory Group Report to the Agencies dated January 9, 2017, a number of possible measures were offered, including mapping, monitoring, installation recommendations, and requiring best practices to reduce polluted discharge from current and future tile drains.

¹ Stone Environmental, Literature Review: Tile Drainage and Phosphorus Losses from Agricultural Land (January 31, 2017) pg 2.

² *Id.*

³ Phosphorus TMDLs for Vermont Segments of Lake Champlain (June 17, 2016) (hereinafter TMDL).

⁴ Vermont Subsurface Tile Drainage Report (January 31, 2017) pg. 31.

⁵ Stone Environmental, Literature Review: Tile Drainage and Phosphorus Losses from Agricultural Land (January 31, 2017) pg 2, 39.

Despite the range of measures that could be included in a rule on tiles, the Agencies have chosen to dodge the issue. Instead, the Report includes additional study, incentives, education, and “strong” implementation of the RAPs without clear regulations related to installation, retrofit, or best management practices for tile drain systems. The Report repeatedly recommends more research before action is taken. While more study is needed in some areas, enough is known of the impacts of tile drains on water quality that regulations shouldn’t be further postponed to curb this polluted discharge. If the Agencies insist on further research with no regulations, then a moratorium on the installation of new tile drains until these studies are complete is appropriate.

AAFM may reopen certain or all provisions within the RAPs in 2018. The Agency requests an extension on this check-in until 2022 citing the potential for “confusion and uncertainty in the farm community.” While we appreciate the rationale behind postponing a complete review of the rule, we also note the importance of accountability and early check-ins to allow the State to course correct as needed. Waiting an additional five years to examine the success of the RAPs seems excessive.

At the time of the RAP check-in, we strongly urge AAFM to compare actual phosphorus reductions with the mandated target of 54 percent. Our understanding is that ANR is developing the Lake Champlain Best Management Practice Accounting and Tracking Tool for this very purpose. Achieving phosphorus reductions in the agriculture sector is crucial to water cleanup in a cost-effective manner. Should the Agencies fail to address their nonpoint source allocations, the State will be forced to foot a much larger bill to upgrade its wastewater treatment facilities.

We again stress the importance of promulgating rules on tile drains in 2018, and strongly recommend this regulation include standards on installation, best management practices, and monitoring.

Sincerely,



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Lake Champlain Lakekeeper
Conservation Law Foundation



Lori Fisher
Executive Director
Lake Champlain Committee




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Vermont Council of Trout Unlimited



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