

CLF, VNRC, LCC De-delegation Petition to EPA

Elena Mihaly, Esq.

Vice President and Director, CLF Vermont

March 29, 2022



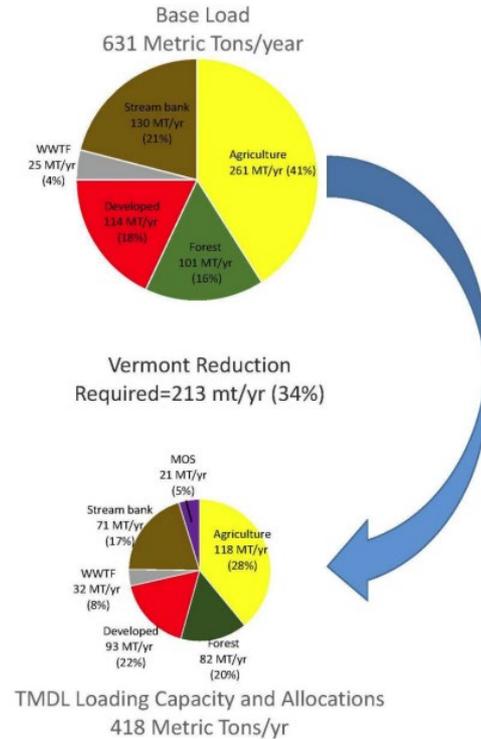
Overview

- The problem with the status quo
- Background/how did we get here?
- Public records investigation
- Findings (substance of Petition)
- Request to EPA
- Timeline of next steps



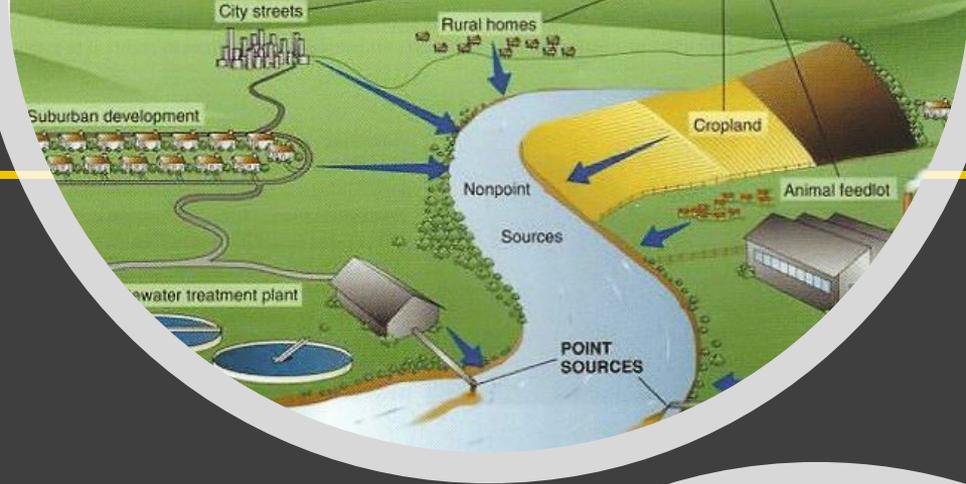
The problem

- Farms have made great progress achieving phosphorus reductions to Lake Champlain.
- But longstanding turf war between ANR and AAFM is putting progress at risk



Background

- In 1974, EPA grants authority to ANR to administer the CWA
- CWA requires ANR to exercise control over “**point source**” discharges → state law requires ANR to delegate authority over “**non-point source**” pollution to AAFM



Split Jurisdiction Criticism

- No other state splits jurisdiction like Vermont
- Despite decades of efforts at collaboration (including three separate MOUs), people complained of the agencies' poor relationship



Public Records Investigation

- 2016-2021 public records review
- All inspection reports & investigations conducted by AAFM
- All correspondence between ANR and AAFM regarding ag water quality



Findings -

Finding #1: Division of authority hurts farmers and leads to more pollution.

ANR concluded **this “legal construct . . . has led to tension and conflict between the agencies, regulatory uncertainty for farmers, and more time-consuming outcomes for water quality resulting in more pollution.”**

MEMORANDUM

To: Suzanne Young, Secretary, Agency of Administration
Mike Smith, Secretary, Agency of Human Services

From: Julia S. Moore, P.E., Secretary, Agency of Natural Resources *JM*

cc: Anson Tebbetts, Secretary, Agency of Agriculture, Food and Markets

Date: October 9, 2020

Re: Proposal to Restructure ANR AAFM Water Quality Staff

Overview/Background

Regulation of agricultural water quality is currently divided between the Agency of Natural Resources (ANR) and the Agency of Agriculture, Food, and Markets (AAFM), depending on whether the water quality concern is being driven by a “point source” (ANR) or a “non-point source” (AAFM) of pollution. The distinction between point and non-point sources is a legal construct, established in the Clean Water Act, at a time when water quality concerns were largely focused on municipal wastewater treatment facilities and factories and, as such, has considerably less practical and often confusing effect in an agricultural setting. The proverbial round peg being pounded into a square hole.

As there is often no bright line that exists between point and non-point sources in agricultural settings, both agencies routinely receive and investigate complaints from the public that fall outside their jurisdiction. Such complaints are then referred to the other agency, requiring additional (often redundant) investigation in order to resolve the complaint. Clearly, this division of responsibility between ANR and AAFM’s jurisdiction is both fact-intensive and time-consuming. It also results in lack of clarity for the farming community.

Further complicating matters, the distinction between point and non-point sources in agricultural setting can be changeable, depending on both weather and field conditions. And while this distinction is important from the perspective of the legal framework, it has no practical effect in terms of water quality - neither the receiving water nor the public care whether pollution emanates from a point source or a non-point source, but only that it is occurring.



Findings -

Finding #2: Farmers are caught in the regulatory crossfire.

Farm leaders have stated that “farms get buffeted, not knowing where to go, not knowing who to talk to” and that **“farmers are the pinball being batted around.”**



Findings #3-9:

- ANR has concluded that its broken relationship with AAFM prevents it from controlling agricultural point source pollution
- AAFM disagrees with ANR on what constitutes a point source
- AAFM routinely ignores ANR's status as the sole decisionmaker regarding the existence of a point source
- AAFM regularly fails to refer evidence of point source discharges to ANR
- AAFM routinely fails to refer agricultural point source discharges to ANR in a timely manner
- AAFM routinely fails to finalize farm inspection and investigation reports until months after the inspections and investigations
- 76% of AAFM farm inspections in 2019-2021 documented Nutrient Management Plan deficiencies, which prevents ANR from monitoring ag point source discharges resulting from overapplication of amendments

Our Request to EPA

- Petition EPA to require corrective action or withdraw VT's authorization to administer the NPDES program
- Corrective action could be legislative act to move authority of farm water quality regulation (non-point source pollution control) to ANR

Timeline

- Wait for EPA to respond to Petition
- Meetings with EPA and ANR to discuss corrective action
- Likely action from Legislature next session





Petition summary documents

Submitted with my testimony today:

- Petition to EPA
- Two-page summary
- Frequently Asked Questions



A scenic photograph of a sunset over a large body of water, likely a lake or bay. The sun is low on the horizon, partially obscured by a range of dark mountains. The sky is filled with soft, golden light and wispy clouds. The water in the foreground is dark blue with gentle ripples.

Thank you & Questions?