

From: Mears, David [David.Mears@state.vt.us]

Sent: Wednesday, May 14, 2014 2:58 PM

To: Miller, Elizabeth; Allen, Susan; Markowitz, Deb; Porter, Louis; Ross, Chuck; Mackay, Noelle; Minter, Sue; Leriche, Lucy; London, Sarah; LaClair, Jolinda

Subject: Lake Champlain Briefing Materials

Attachments: 2014-05-15 Lake Champlain TMDL Meeting Agenda.docx; 2014-05-15 Summary of EPA Comments on Lake Champlain Phase One Plan.docx; 2014-05-15 Lake Champlain TMDL Draft Governor Letter.docx

Dear Colleagues: I am attaching some briefing materials that I will be using in our discussion tomorrow (Thursday) afternoon in the off-chance that you have time to read them between now and then. Attached are the following:

- (1) Rough agenda
- (2) Draft letter from Governor Shumlin to EPA
- (3) Summary of EPA's recent comments

If you are feeling ambitious, you can go to DEC's webpage for Lake Champlain which includes lots of background documents: <http://www.watershedmanagement.vt.gov/erp/champlain/>.

Please call if you have any questions or comments. Sincerely, David

David K. Mears, Commissioner
Vermont Department of Environmental Conservation

Agenda: Lake Champlain TMDL Briefing
May 15, 2015

- I. Summary of EPA Comments
- II. Review Draft Governor's Commitment Letter
- III. Review Draft Briefing Material for Governor Shumlin
- IV. Outreach and Communications
 - a. Stakeholder discussions prior to May 30 release
 - b. Media (press conference?)
 - c. Friends of Northern Lake Champlain Tyler Place Event

Summary of EPA Comments (May 7, 2014 Letter and Attached Comments)
On Vermont's Draft Phase One Plan
May 15, 2015

I. Cover Letter

- a. Funding: EPA is willing to accept Vermont's Phase One Plan without a specific description of the funding and staff resources required. EPA does ask, however, for two changes to the Plan:
 - i. Removal of any statements conditioning action to address phosphorus pollution on obtaining funding and replacing those statements with a commitment to seek the necessary funds and resources;
 - ii. A detailed description of the steps that the state will take to obtain the necessary funds and resources with deadlines in a "Resource Plan" to be submitted as one of the deliverables under the Phase One Plan.
- b. Milestones:
 - i. EPA has agreed that the State can take up to 20 years to complete the Plan;
 - ii. EPA asks for more a more detailed schedule with deadlines indicating that the state will be diligently acting to reduce phosphorus pollution throughout the full 20 year life of the Plan.
- c. Accountability and Backstops: EPA encourages the State to identify interim steps that the State could take if the proposed actions in the Plan are not implemented, prior to EPA taking its own actions. An example of this, suggested by EPA, would be where the State commits to expand regulatory approaches where voluntary or incentive-based programs fall short.
- d. Wastewater Treatment Plants: EPA states that it is "highly unlikely" that the final TMDL would allocate no phosphorus reduction obligations on wastewater treatment plants particularly in certain targeted watersheds (Main Lake, Shelburne Bay, Burlington Bay, St. Albans Bay). EPA indicates that the Phase One Plan does not need to address the loads from "point sources," including wastewater treatment plants, but encourages the State to offer ideas for ways to address this category of pollution.
- e. Modeling and Allocations: EPA acknowledges that the efforts to model the reductions that the State will achieve through the Phase one Plan are not yet final and indicates that EPA will provide the State with the opportunity to modify the Phase One Plan if the final models are significantly different.
- f. Revised Deadline: In light of the time it took EPA to provide comments on the draft Phase One Plan, EPA has given the State until May 30 to submit a final Plan and accompanying letter of commitment from the Governor.

II. Highlights of the Detailed Comments

- a. General:
 - i. For a number of specific Plan elements, EPA asks for further explanation regarding how the proposed actions under the Plan will achieve the necessary reductions;
 - ii. In some instances, EPA asks for more detailed estimates regarding the level of implementation that will be achieved under the Plan (e.g. land area covered by certain practices).
- b. Stormwater: EPA asks for more detail about how Vermont will expand the use of “MS4” (municipal separate storm sewer systems) and “RDA” (residual designation authority) authorities to address stormwater runoff from developed land. These are federal Clean Water Act permitting authorities. The State is requested to explain the degree we will use federal permitting authority versus state permitting authority.
- c. Agriculture: EPA asks how the State will meet the necessary reductions in phosphorus in the so-called “Gap” watersheds, namely the watersheds feeding into the Missisquoi Bay and South Lake segments. Meeting the phosphorus reduction targets in these segments will require a substantial commitment to address polluted runoff from agriculture in these segments beyond what is required in other segments.

[Governor 's Letterhead]

[Date]

[EPA Region One Administrator Curt Spalding or Administrator Gina McCarthy]
[Address]

Dear [Spalding or McCarthy]:

Please find attached a Phase One Plan developed by my Administration to indicate the steps that Vermont is prepared to take to reduce Vermont's share of the pollution into Lake Champlain. We share the national interest in returning this treasured body of water to full health.

I appreciate the opportunity to work with you to protect clean water in Lake Champlain. As the sixth largest freshwater lake in the United States, and the source of vital economic, recreational and cultural opportunities, Lake Champlain is a water of critical importance to Vermont, the region and our nation. Your Agency, along with other federal agencies, is providing vital support to Vermont's efforts by providing funding and technical resources. Federal government involvement is also necessary to ensure that the State of New York and the Canadian Province of Quebec contribute to reducing their respective contributions of pollution to the Lake.

Vermonters have been working hard for the past forty years, under the auspices of the federal Clean Water Act in close coordination with your Agency, to reduce the levels of pollution into the Lake. We have imposed stringent standards on our wastewater treatment plants achieving dramatic reductions in a range of pollutants including phosphorus. Vermont has also taken significant steps to reduce polluted stormwater runoff from urban and suburban development, our transportation network, and Vermont's working farms and forests. While I am proud of the great work of Vermont's communities, builders and developers, foresters and farmers, I know that we have not yet reached our goal of a clean Lake Champlain. For that reason, I have asked my Cabinet to work together across our agencies of agriculture, transportation, commerce and natural

resources to achieve this goal. In response, they have developed a strategy that is at once comprehensive, covering the major sources of polluted runoff, and targeted, taking advantage of information and tools developed over the past decade to address the most critical sources of pollution. This strategy is described in the attached Phase One Plan.

As indicated in your Agency's recent letter commenting on our draft Phase One Plan, Vermont does not yet have the capacity to fully implement this Plan. For this reason, I commit to seeking the authority, resources and funding necessary to implement this Plan. In this endeavor, my cabinet and I will work with your Agency, other federal agencies and Vermont's Congressional delegation to tap into the significant resources and capacity of the United States government to provide funding, technical assistance and training. I will also work with other statewide elected officials, the Vermont General Assembly, our towns and cities, and with a broad array of Vermonters to ensure that Vermont does its fair share to ensure a clean Lake Champlain through the contribution of state, local and private funding and resources.

The only way the phosphorous impairment in Lake Champlain can be successfully addressed is through a partnership among the States of New York and Vermont, the Province of Quebec, and the federal government. Collectively, we must work together to ensure that there is adequate funding to reduce pollution into the lake as necessary to meet Clean Water Act standards. In the absence of this partnership, the State of Vermont will not be able to successfully meet required pollution reduction targets.

Over the summer, your Agency will be finalizing the scientific modeling and information necessary to predict the necessary levels of pollution reduction. The attached Phase One Plan is premised upon the modeling and cost estimates developed by EPA to date. In the event that the modeling substantially affects our shared understanding of the State's proposals to reduce polluted stormwater runoff, we expect to engage in further discussions with EPA about the extent and nature of those proposals.

On a related note, in response to EPA's comments, we have included a proposal to explore reductions in the levels of phosphorus pollution discharged from wastewater treatment plants in certain targeted watersheds. In developing this proposal, we have taken into account the significant work already done by Vermont's communities and businesses as well as the significant cost to further reduce this source of pollution. While willing to explore options for addressing this source of phosphorus, we are seeking an approach that is cost-effective, practical, and maximizes the flexibility for communities to spread the cost of any required improvements to wastewater treatment systems over time. If EPA does not accept the State's proposal in this regard and requires significantly more expensive pollution controls in a manner that is not cost-effective, then I will ask my agency secretaries to reexamine the other commitments we are making in the Phase One Plan.

I look forward to working with you to implement Vermont's Phase One Plan once approved and to ensure that one of our nation's crown jewels is protected so that children for many generations to come will be able to enjoy the clean water of Lake Champlain.

Sincerely,

Peter Shumlin
Governor