

Following are Comments on Act 64 or Vermont's new "Clean Water Act" by James Maroney, of Leicester, VT.

In 2011, the Conservation Law Foundation successfully sued the EPA to revoke Vermont's TMDL, its ineffective plan for regulating pollution in Lake Champlain. In 2014, the state submitted a new plan codified into law as Act 64, which the EPA approved in 2015. The "Clean Water Law" lays out measures the state must take to reduce inflows from the three main sources of phosphorus entering the lake, agriculture, stormwater and municipal wastewater plants. Because they were empirically ineffective, Act 64 also charged the Agency of Agriculture with replacing the Accepted Agricultural Rules, promulgated in 1995, with the Required Agricultural Practices rules. The cost of implementation of Act 64 is projected to be \$1.4B. The Agency of Agriculture, Food & Markets and the Department of Environmental Conservation are required to invite comments from the public on the plan.

Act 138 of 2013 projected the cost of cleaning up the lake at \$156M /year for twenty years or \$3.1B. Act 64 reduces that projected cost to \$1.4B or \$70M/year for twenty years, to be divided roughly in half, with the first for "agricultural runoff" and the other, to redesign and rebuild our stormwater and municipal wastewater infrastructure. This amount is to be raised from a combination of federal money, grant money and state appropriation. Is that right?

Question: How much of this \$1.4B cost do you project that the taxpayers of Vermont will be willing and able to raise for this project and how much has the legislature appropriated for it to date?

The secretary of agriculture likes to say that we must be “all in” to fix this problem. We all had a share in creating it, he opines, we must all put our shoulder to the wheel to fix it.

Never mentioned: there is a major distinction between the systems delivering phosphorus from stormwater and municipal WWTPs and the system delivering phosphorus from conventional agriculture, exquisitely that the first two are unavoidable; it is not going to stop raining, we are not going to stop driving and we are not going to stop going to the bathroom. These systems, which affect all 625,000 or 100% of Vermonters in a roughly equal way, must be redesigned and rebuilt at considerable common expense.

Conventional Vermont dairy, which is the province of about 600 persons, or 1/10th of 1% of the population, is voluntary. We do not need to do it at all. And if we must be “all in” to fix the lake, are we to suppose that Act 64 intends to hold 600 conventional dairy farmers accountable *per stirpes* for their share of the stormwater wastewater half of the problem (the first \$35M) and then 100% of the cost for the their half (another \$35M)? This translates to \$58,000 per farmer per year or more equitably \$259 per head. Either way, this cost is way, way beyond the farmers’ ability to pay. So who then pays for the farmers’ half?

The secretary also likes to say that dairy farming is essential to Vermont and he presents huge numbers that are intended to justify the industry’s place in society. Here is another way to look at conventional Vermont dairy’s contribution to our political economy:

Vermont’s +/-600 conventional dairy farmers are producing 2.3 B lbs of milk, or 23M hundred weights, which they are selling for about \$16/cwt or \$370,000,000. This milk costs them about \$21/cwt or

\$480M to produce, meaning they are each losing about \$5/cwt, or \$100,000 for the median Vermont dairy farmer milking 100 cows. The conventional Vermont dairy industry is on track to lose \$138,000,000 this year. What is more, US dairy production, now at 212B lbs, about 10% of which is surplus, is projected to rise again in 2018 again pushing down dairy prices for all farmers, including Vermont's, the largest of whom are as we speak making plans to expand and consolidate, to build larger barns, to buy more land on which to apply more of the substances that pollute the lake, to grow more crops, to feed more cows, to make more milk that cannot be sold. Indeed, because there was no other market for it, Tom Vilsack, US Secretary of Agriculture, just approved a public expenditure of \$20M to get 11M lbs of surplus cheese off the market. Projections for the FMMO price are that it will continue to fall.

The organic farm price, on the other hand, has been consistently higher, sometimes three times higher and more stable than the FMMO milk price. The organic milk supply is carefully managed to assure that it chases demand, which has been growing for twenty years at the rate of 18-20%/year. Organic dairy does not import 40,000 tons of artificial NPK fertilizer and very little of the 400,000 tons of high phosphorus feed supplements that are necessary components of the conventional dairy modality. These two practices bring along about 6,000 tons of phosphorus, the lion's share of which is applied to corn land along Vermont's rivers and streams. For this reason alone, these two practices are the proximate cause of conventional agriculture being responsible for half the pollution in Lake Champlain. When the state is looking for a reduction of only 250-300 tons of phosphorus, does it not seem odd that the new RAPs make no mention of, let alone any effort to regulate, these two practices?

Hard facts on which the agency is also working to convince the taxpayer to suspend disbelief:

- It is cheaper to produce milk in the American west and Midwest and ship it here than it is to produce it in Vermont.
- No one can responsibly predict the accomplishment of political or market events that will allow conventional Vermont dairy to become profitable.
- Vermont agriculture produces barely 1% of the nation's milk supply and no measurable portion of the nation's supply of meat, vegetables, fruit, fish or fiber.
- Vermonters spend 93-95% of their grocery budgets on food produced out of state.
- We do not farm to produce food: we farm for appearances.
- The State of Vermont has spent forty years subordinating compliance with the Clean Water Act (1972) to futile efforts to protect its conventional dairy industry.
- Phosphorus levels in Lake Champlain have been rising steadily since the 1960s.
- The State of Vermont has spent \$2B since the 1960s trying to defy these ineluctable facts.

In 1993, the conventional Vermont dairy industry, then as now, was polluting the lake, in response to which the legislature inexplicably took responsibility for clean water away from ANR on the premise that ANR personnel did not know anything about agriculture, and gave it to VAAF, whose personnel did. Twenty-three years later the relentless, annual increase in lake pollution is more attributable to this singular fact than to any other.

Assuming for the sake of this argument that all Vermont dairy farmers converted to organic, production would fall by 15% down to 19,000,000 cwts. Operating costs would rise from \$20/cwt to \$32/cwt or \$624,000,000.

But our farmers would sell this milk for \$40/cwt or \$780,000,000, resulting in a profit of \$160,000,000, which would be taxable. The current policy, which on top of the loss to the state's economy of \$138,000,000, costs the taxpayers an additional \$60-80M to support.

I and tens of thousands of others believe that clean water is an absolute value and that all persons and all industries in Vermont must adjust their activities to accomplish it. But the secretary has not only written a policy the first purpose of which is not to clean up the lake but to shield conventional dairy from the kinds of regulations that would, flips this principle on its head and proposes to charge the taxpayers \$70M/year for twenty years into the bargain. This is an abrogation of his duty to defend the public trust.

In sum, for a fraction of the projected \$35M/year for twenty years that Act 64 would charge the taxpayers to clean up the "runoff from agriculture," converting the state's dairy industry to organic would near triple the industry's gross revenue and in the very first year cut by half the "runoff from agriculture" going into the lake. The parts of the TMDL and Act 64 having to do with agriculture, and the MOU that gave responsibility for clean water to VAAFMM should be repealed.