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OFFICE OF THE REGIONAL ADMINISTRATOR

**MEMORANDUM OF UNDERSTANDING AMONG THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 1,  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2, STATE  
OF VERMONT, AGENCY OF NATURAL RESOURCES,  
AND  
STATE OF NEW YORK, DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION  
WITH RESPECT TO THE ALLOCATION OF PHOSPHORUS IN  
THE LAKE CHAMPLAIN BASIN**

**WHEREAS**, Section 303 of the Clean Water Act requires a state to develop a Total Maximum Daily Load (TMDL) for a waterbody that does not meet the water quality standard for a specific pollutant of concern. A TMDL includes “wasteload allocations” for all point sources of pollution (e.g., wastewater treatment plants), “load allocations” for all nonpoint sources of pollution (e.g., agricultural runoff), and a margin of safety. A state submits the TMDL to the United States Environmental Protection Agency (USEPA) for review and approval. If approved, the TMDL is effective for Clean Water Act purposes;

**WHEREAS**, in 2002 the Lake Champlain Phosphorus TMDL (2002 TMDL) was developed jointly by the States of New York and Vermont<sup>1</sup> but approved separately by USEPA Regions 1 and 2 (USEPA R1 and R2). The goal of that TMDL is to reduce the discharge of phosphorus to Lake Champlain so that the lake attains and maintains applicable water quality standards of both Vermont and New York. The 2002 TMDL covered 13 segments of Lake Champlain and established allocations for each wastewater treatment facility in Vermont and New York, as well as allocations for stormwater runoff related to agricultural, developed land and forested land in each segment of Lake Champlain;

**WHEREAS**, after commencement of litigation, in 2011 USEPA R1 disapproved the Vermont portion of the 2002 TMDL, and is in the process of issuing a new TMDL for the Vermont portion that satisfies the Clean Water Act;

**WHEREAS**, USEPA R1 developed a draft revised Phosphorus TMDL, for the Vermont portion of Lake Champlain, that was publicly noticed on August 14, 2015 at <http://www3.epa.gov/region1/eco/tmdl/lakechamplain.html> (draft 2015 TMDL). Following consideration of public comment, USEPA R1 intends to issue the TMDL in 2016 (the “2016 TMDL”). In developing the draft 2015 TMDL, USEPA R1 determined that Lake Champlain was capable of assimilating an additional 144 metric tons per year of phosphorus, as compared to the phosphorus loading capacity in the 2002 TMDL, without exceeding water quality standards. This determination is based on changes in the modeling results between the 2002 TMDL and the draft 2015 TMDL;

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<sup>1</sup> Vermont has a separate agreement with the Province of Quebec regarding Missisquoi Bay (August 26, 2002).

**WHEREAS**, in developing the draft 2015 TMDL, USEPA R1 also determined that sources in both New York and Vermont are contributing higher amounts of phosphorus to Lake Champlain than were determined in the 2002 TMDL;

**WHEREAS**, in the draft 2015 TMDL, USEPA R1 made all of the additional loading capacity of 144 metric tons per year of phosphorus available to Vermont pollutant sources and none to New York pollutant sources. USEPA R1 developed the TMDL for the Vermont portion of the Lake Champlain only. New York did not update the New York portion of the 2002 TMDL;

**WHEREAS**, on October 15, 2015 the State of New York, Department of Environmental Conservation submitted comments to USEPA R1 on the draft 2015 TMDL, asserting, among other things, that USEPA R1's approach to the additional phosphorus loading capacity and allocations between New York and Vermont was not fair and equitable; and

**WHEREAS**, the USEPA enters into this Memorandum of Understanding (MOU) pursuant to Section 104(a) and (b) of the Clean Water Act, which authorizes EPA to encourage and cooperate with, and render technical services to, individuals, as well as public and private sector entities, to promote the coordination and acceleration of demonstrations, studies and training related to the causes, effects, prevention, and elimination of water pollution.

**NOW, THEREFORE**, as described herein, the parties have reached agreement concerning the following intentions and expectations:

**ARTICLE I. Commencement**

This MOU will commence on the date the last party executes the MOU.

**ARTICLE II. Scope of MOU**

- A. The 2002 Lake Champlain Phosphorus TMDL will continue to be the applicable TMDL with respect to wasteload allocations and load allocations for New York sources contributing phosphorus loadings to Lake Champlain, and water quality impacts resulting from New York phosphorus loadings to Lake Champlain, until such time as the New York finalizes any revisions made by the New York to its 2002 TMDL and USEPA R2 approves those revisions;
- B. To allow for a joint evaluation of phosphorus management and phosphorus pollutant allocation for Lake Champlain, when New York initiates a revision to its 2002 TMDL, Vermont will concurrently initiate work on a new TMDL that would, if approved by USEPA R1, replace USEPA's 2016 TMDL. New York and Vermont also will simultaneously submit their draft revised and new TMDLs to USEPA R2 and R1, respectively, for approval;
- C. In recognition of the concerns outlined above with respect to USEPA R1's approach to

apportioning the additional loading capacity in the draft 2015 TMDL, the parties to this MOU will mutually address the fairness and equitability of such apportionment between the states in the revised and new TMDLs developed by the states to update the 2002 New York TMDL and the USEPA 2016 TMDL;

- D. New York and Vermont will commence development of their respective revised and new TMDLs within 10 years of the commencement of this MOU;
- E. In consideration of the terms of this MOU, despite New York's comment submission regarding the draft 2015 TMDL, New York will not commence or join a judicial challenge to USEPA R1's issuance of the 2016 TMDL, provided that document is issued without substantial change(s) to the content publicly noticed on August 14, 2015; and
- F. USEPA R1 expects to provide Vermont and New York with technical support in accessing, to the extent still scientifically valid and relevant, the data and modeling used in developing the 2016 TMDL, and USEPA R1 and R2 expect to provide regulatory or policy advice the states may request in preparing any future revised and new TMDLs.

### **ARTICLE III. Representations**

Basil Seggos, Commissioner of the New York State Department of Environmental Conservation; Alyssa B. Schuren, Commissioner, Vermont Department of Environmental Conservation; Curt Spalding, Regional Administrator for USEPA R1; and Judith Enck, Regional Administrator for USEPA R2 are the authorized representatives and will be responsible for the administration of this MOU.

### **ARTICLE V: Compliance with Laws**

It is the intent of the parties to comply with the provisions of all State and Federal laws, local statutes, ordinances, and regulations that are applicable to the performance of the activities described in this MOU.

### **ARTICLE VI. Termination**

This MOU will terminate at such time as USEPA R2 and R1 approve revised and new Lake Champlain Phosphorus TMDLs for the States of New York and Vermont, respectively, as outlined herein in Article II, or upon mutual agreement by all of the parties.

### **ARTICLE VII. Limitations**

All commitments made in this MOU are subject to the availability of appropriated funds and each party's budget priorities. Nothing in this MOU, in and of itself, obligates the parties to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or other financial obligation. The parties agree not to submit a claim for compensation for services rendered to USEPA in connection with any activities carried out in furtherance of this MOU.

This MOU is neither a fiscal nor a funds obligation document. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity

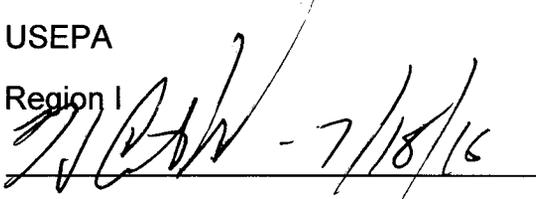
against the parties or USEPA, their officers or employees, or any other person. This MOU does not direct or apply to any person outside the parties and USEPA.

In **WITNESS WHEREOF**, the individuals listed below are authorized to sign and execute this MOU among their respective agencies, on the date appearing below their respective signatures.

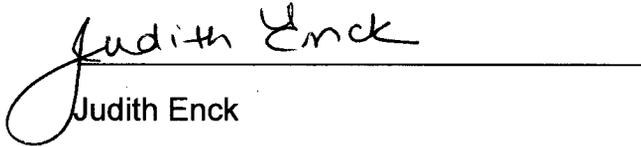


Curt Spalding  
Regional Administrator  
USEPA

Region I

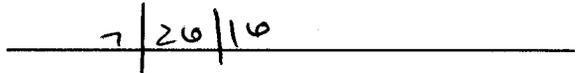


Date



Judith Enck  
Regional Administrator  
USEPA

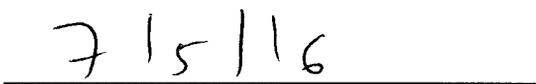
Region II



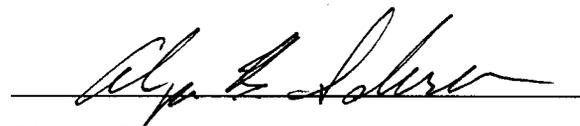
Date



Basil Seggos  
Commissioner  
State of New York  
Department of Environmental Conservation



Date



Alyssa Schuren  
Commissioner  
State of Vermont  
Department of Environmental  
Conservation



Date