UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

DEC 13 2013

Laura Murphy
Environmental and Natural Resources Law Clinic
Vermont Law School
PO Box 96 – Chelsea Street
South Royalton, VT 05068

Anthony Iarrapino
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602

RE: Petition to withdraw approval for Vermont to administer the NPDES program

Dear Ms. Murphy and Mr. Iarrapino:

On August 14, 2008, the Vermont Law School Environmental and Natural Resources Law Clinic ("ENRLC") filed a petition with the United States Environmental Protection Agency ("EPA") on behalf of the Conservation Law Foundation ("CLF") (the "Petitioner"). Subsequently, the Petitioner filed additional materials, as well as supplements on October 21, 2008 and July 21, 2010 (collectively referred to hereinafter as the "Petition"). The Petition asked EPA to withdraw approval for the State of Vermont to administer the National Pollutant Discharge Elimination System ("NPDES") program, based on a number of allegations related to the implementation and enforcement of the program. EPA Region I conducted an informal investigation of the various issues raised by the Petition and had numerous productive discussions with Vermont's Department of Environmental Conservation ("DEC"), ENRLC, and the Petitioner to better understand the issues and to explore potential corrective actions as necessary. Based on that investigation, EPA identified the principal issues in the Petition of concern to EPA to include: public participation; supplemental environmental projects; significant non-compliance policy; concentrated animal feeding operation permitting and enforcement; antidegradation; adequacy of water quality-based effluent limits in permits; the Town of Waterbury wastewater treatment facility permit; and the legislative constraint on regulating municipal discharges of phosphorus.

The discussions among the parties culminated in an Interim Response and Corrective Action Plan ("Interim Response") that EPA sent to ENRLC, CLF and DEC on July 18, 2013, a copy of which is enclosed for your convenience. The Interim Response provides a summary of the petition allegations, EPA's conclusions, and the corrective actions that DEC had already taken and agreed to take in the future to address issues raised in the Petition. DEC has now completed all of the actions that it agreed to take as set forth in the Interim Response's Corrective Action Plan. With the completion of these actions, EPA believes that DEC has adequately addressed all but one of the issues identified by the Region during its informal investigation of the allegations in the Petition. Specifically, DEC has implemented a variety of measures to adequately address the following: public participation; supplemental environmental projects; significant non-

compliance policy; concentrated animal feeding operation permitting and enforcement; antidegradation; adequacy of water quality-based effluent limits in permits; and the Town of Waterbury wastewater treatment facility permit. After careful consideration of all of the information presented in the Petition and the actions that DEC has taken to improve its NPDES program, EPA has decided not to initiate proceedings to withdraw approval of Vermont's NPDES program with respect to all issues except the one discussed below.[1]

The one issue not completely addressed is the legislative constraint on regulating municipal discharges of phosphorus (discussed in detail in Section H in the enclosed document). While DEC has taken interim measures to ensure that DEC can and will administer its permit program consistent with the federal Clean Water Act, a permanent solution will require further action by the State in the form of a legislative amendment. Therefore, the Petition remains open as to this issue, and Petitioner's request that EPA commence withdrawal proceedings on this basis remains pending.

EPA appreciates the collaborative and productive manner in which ENLRC, CLF and the DEC have engaged and believes that the actions taken as a result of the Petition will improve the Clean Water Act permit and enforcement programs and better protect Vermont's waters.

Sincerely,

H. Curtis Spalding
Regional Administrator

cc: Deborah Markowitz, VT ANR
David Mears, VT DEC

[1] The Interim Response stated that EPA would deny the Petition for all but one issue, but the more accurate characterization under EPA's regulations is that EPA has decided not to initiate proceedings to withdraw approval of the State's program as to all but the remaining issue.