

Testimony by James H Maroney, Jr., before Senate Judiciary on the Right to Farm Law, February 18, 2022

Thank you, Senator Sears, for this opportunity to address your committee. I am assuming your members are not experts in agricultural matters so I am going to begin with a brief history.

Farming in Vermont was essential in the 1790s, because all food had to be produced locally. But with the opening of the Erie Canal in the 1820s, foodstuffs produced in the Midwest became cheaper than what Vermont farmers could produce. The expansion of railroads in the 1850s, the introduction of steam powered machinery in the 1880s and the huge water reclamation projects of the 1930s, all increased the western farmer's competitive advantages. The introduction of conventional farming in the 1950s also favored midwestern farms, greatly increasing their output and lowering their costs. Vermont farmers could not compete on cost. Vermont farming was no longer essential. To the conventional Vermont agricultural community this is blasphemy, but this is an incontrovertible fact.

Conventional, or chemical intensive farming, was predicated on the notion that farmers did not need to rely on the slow, natural methods they had relied on for millennia; they could import nutrients made from cheap, plentiful petroleum. The new paradigm offered farmers the welcome opportunity to exchange costly, time-consuming crop rotation and mechanical weed control with chemicals. The paradigm worked wonders for early adopters: yields rose and costs fell. But the chemicals did not, as we had all been told, dissipate harmlessly; they were toxic, and they were accumulating in the atmosphere and water. More troublesome for farmers, higher yields for early adopters translated into surpluses that drove down farm prices for all. Farmers were famously advised to 'get big or get out.'

The arrival in Vermont of the Interstate highway in the early 1960s worried legislators, who were concerned that developers would buy up fallowed farmland; without its farms, Vermont was going to "look like New Jersey." The Vermont legislature initiated a sixty-year effort to conserve farmland, an effort spawning three dozen programs, rules and/or laws.

But allocating taxpayer dollars to dozens of programs designed only on their faces to "save farming and protect the lake" failed to do either. The farm problem at its root was the widening disparity between the cost of production on western and Vermont farms. The lake problem at its root was the application to farmland of petroleum-based nutrients, which fed the growth of algae in the lake. In the mistaken belief that farming was conservation, the legislature enacted laws to marginally lower the farmers' costs, exempting them from sales and property taxes, labor laws and liability from nuisance. But farmers applied the savings to pay for new capacity, sending more and more milk to markets already saturated, and more and more poison into the already polluted lake and atmosphere. These laws, costing taxpayers from the 1960s to the present roughly \$3B, have never been scrutinized, so they're all still in effect. The undeniable result is a severely polluted lake, an existentially polluted atmosphere and a dairy industry reduced from 11,200 farms in 1945 to only 650 today, an attrition of 94%. Almost no one benefitted.

A regression analysis of the data would undoubtedly reveal that the farm problem and the lake problem are highly correlated, their common denominator being conventional farming. Both could, therefore, be solved by discontinuing the three practices conventional dairy farmers have deployed since the 1950s, which are, in this order, the proximate causes every year of 45% of the pollution entering Lake Champlain, 16% of the GHG emissions in the atmosphere and the loss of 8-10% of our dairy farms:

1. The importation of +/-600,000 tons of conventionally grown, phosphorus and calcium-rich grain
2. The importation of 40,000 tons of artificial petroleum-based fertilizer and who knows how many tons of artificial petroleum-based herbicides
3. The stocking of more than one cow for every three acres under management on which that cow's feed is harvested and her manure is spread.<sup>1</sup>

Discontinuing these practices would lower production, raise costs, clean up the lake and the atmosphere, but have no effect on milk prices, not a good result for Vermont farmers. But if Vermont dairy farms were all converted to organic, discontinuing these practices would lower production, raise costs, clean up the lake and the atmosphere and *double* farm prices, a veritable win for the environment, a win for the taxpayers and a win for the farmers. Yet, no one in Montpelier has ever proposed this solution. Why? Because it would upend Vermont's habitual subordination of our water quality standards to the exigencies of conventional dairy. This is also precisely why none of these practices is mentioned, let alone, regulated in Act 64, Vermont's vaunted "clean water law." And *because Act 64 leaves these practices in effect, Vermont has no practicable mechanism for reducing agriculture's contribution to lake or atmospheric pollution.* The roughly \$35M Act 64 allocates to reducing the 45% contribution from agriculture is spent on projects like planting trees, collecting old tires, cover cropping, restoring wetlands, all good ideas but they have nothing to do with—in fact they distract our attention away from—preventing conventional farmers from importing toxic, petroleum-based substances and applying them to their fields.

In January 2022 the *Task Force to Revitalize Vermont Dairy* issued its report, which puts the blame for dairy's troubles on numerous, outside factors. Its authors, all appointed by Governor Scott, proposed no substantive solution. They do not suggest that if they want to survive, Vermont's dairy farmers must simply adapt to market forces. Instead, they recommend Vermont's dairy farmers buy risk management insurance. The governor's *Task Force to Revitalize Vermont Dairy* does not mention global warming.

In February 2022 the Vermont legislature passed the Global Warming Solutions Act, to reduce in-state GHG emissions attributable to fossil fuel burning for transportation, fossil fuel burning

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<sup>1</sup> See "Dairy Farm, Characteristics and Managed Flows of Phosphorus," published in 2000 by UVM Professor of Plant and Soil Science Fred Magdoff, (retired). Professor Magdoff concludes that conventional farming deposits an order of magnitude more pollution in the soil than organic farming.

for heating and fossil fuel consumption by conventional dairy. The legislature passed the bill but Mr. Scott vetoed it; the legislature then overrode the governor's veto so GWSA became law without the governor's support. The GWSA states that Vermont *shall* reduce its GHG emissions by 26% by 2025, 40% by 2030 and 80% by 2050. These targets are ambitious but they are not only mandated, they are backed by the empowerment of ordinary citizens to sue the state if it fails to meet the targets. That provision was added because the state presumably knows it has been trying unsuccessfully for sixty years to reduce lake pollution from conventional dairy; it presumably also knows that the 2015 TMDL tasked conventional dairy with reducing its contribution by a whopping 66%; and it presumably also knows that in seven years dairy has achieved but an 11% reduction.<sup>2</sup> The legislature does not appear to know that all its efforts going back sixty years to 'save agriculture and protect the lake' were similarly designed to subordinate the attainment of our water quality standards to the exigencies of conventional dairy.

Keeping faith with this history, the Climate Council in its first articulation of what we *must* do to meet GWSA's ambitious targets, gave conventional dairy yet another pass: it suggests that since farming has the ability to sequester carbon (true) conventional dairy should not just carry on with business as usual but be given additional state support. The Climate Council does not appear to understand that if our farmers continue to farm conventionally, Vermont dairy will continue to be a major carbon emitter not a carbon sink. That is because the three practices listed above are integral to conventional farming and cannot be alienated from it; without them the farmer is—farming organically.

Just last week I received the Governor's *Report on the Future of Vermont Agriculture* (February 8, 2022), a thirty-one-page report replete with words such as robust, vibrant, strong, vital, dynamic, resilient, sustainable, high quality, innovative, profitable and my two favorites: Vermont agriculture is making a shift to "climate smart" practices in order to achieve an "ever-more symbiotic relationship with the environment." The ostensible purpose of this report was to extoll the necessity for Vermont farming and to put forward a plan for its future. But this report is not a plan; it is the latest installment in the disinformation campaign and a 180° inversion of the truth. Why won't Vermont legislators acknowledge the dismal results of their farm and lake pollution policies?

Because if they did, they would discover that sixty years of data abound with evidence in support of the allegation. This report says dairy is the "backbone of our rural economy," but in what economic skeleton can an operating loss of \$1-6 on every cwt of milk it produces<sup>3</sup> be

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<sup>2</sup> Vermont has spent \$254M (2015-2021) to get a 38T reduction of phosphorus in Lake Champlain. Not nothing, but just 16% of its 200T target.

<sup>3</sup> Conventional Vermont dairy produces 2B lbs/yr of milk or 20M cwt. The median farmer (100 cows) produces 2M lbs of milk or 20k cwt. His/her cost of production is \$20-24/cwt which sells for \$17/cwt for a loss of \$3-7/cwt. Vermont has about 650 dairy farmers left of which 150 are organic and 350 are conventional. The organic farmers are mostly making money. Of the 350 conventional only the largest of the 100 milking 799 cows or more, who make half the total supply or 10M cwt, are making a slim profit or breaking even; the other 250, who milk fewer than 799 cows, make the other 10M cwt, of whom most are losing money. The largest 100 with an average cost of \$17/cwt, which sells for \$17/cwt are breaking even. The smallest 250 make 10M cwt with an average cost of \$22/cwt, which sells for \$17 cwt or a -\$5/cwt loss. As a whole, the conventional Vermont dairy industry losses (10M cwt x -\$5) = -\$50M.

construed as its backbone? There is but one mention of pollution, disingenuously listed as one of many “long-term threats to the state’s natural and working lands,” *i.e.*, not something Vermont agriculture is contributing *to* but something Vermont agriculture is hard at work protecting us *from*. There is in thirty pages but one mention of organic in a case study to illustrate how “logistical and infrastructure barriers have prevented farmers from expanding sales across the northeast.” Notably, there is no mention of the Global Warming Solutions Act, or of fossil fuels, or of conventional farming’s substantial dependence on products made from them. Most astonishing, this report is signed by not only Anson Tebbetts, the Secretary of Agriculture, but by Lindsay Kurrle, the Secretary of Commerce and Community Development. Why does the legislature not ask the Secretary of Agriculture to explain why he thinks the taxpayers pay him and his staff to gaslight them?

Perhaps this meeting indicates that we have reached a tipping point. There is a bill before the legislature to strengthen the Right to Farm Law (1982), the stated legislative intent of which was to protect farmers from nuisance suits brought by neighbors who object to noise and/or pollution generated in the course of doing the farm’s vital work, *i.e.*, producing our food. But Vermont agriculture does not produce “our food.” It produces barely 1% of the nation’s milk supply and a vanishingly small part of the nation’s supply of meat, vegetables, fruit and fiber. The Right to Farm Law’s first intent was to suppress development; its second was to protect the stream of taxpayer support to an industry losing money and polluting the lake. Its third was to provide farmers with an assurance that they were free to apply chemicals and toxins to our soil, water and air. And its fourth was to shore up the state’s flimsy contention that its Required Agricultural Practices rules were saving agriculture and protecting the lake. A live example of this point of view is the state’s implicit support of the Vorstevelds, the target of a suit brought by a neighbor alleging that defendants are allowing run off from their farm to transit plaintiff’s land and flow into Lake Champlain. Both sides have stipulated there is pollution coming off the farm; the court will undoubtedly find the Vorstevelds have inadvertently broken some minor rule but are otherwise in compliance with the RAPs. The court will require them to adjust their practices before going on about their business as usual.

Conventional farming’s supporters want to strengthen the Right to Farm Law to avoid suits like this. But, chiefly, they want to avoid opening up the RAPs or any kind of examination of Vermont’s agricultural policies dating back sixty or seventy years. These same people are urgently petitioning the legislature to allocate even more tax dollars to support not Vermont dairy but the illusion that the industry is robust, vibrant, strong, vital and resilient. These same people, if they have thought about it at all, are unconcerned that the purposes of the Right to Farm Law and the Global Warming Solutions Act are contra-indicated and cannot be reconciled; they urge us to pay conventional dairy farmers for so-called “eco-services” *i.e.*, pay them extra to continue farming conventionally. These same people want VAAF to double down on its disinformation campaign, to keep the public from knowing how the state has for sixty years shielded conventional Vermont dairy farmers from the inescapable laws of economics.

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More blasphemy? Distinguished Members of the Senate Judiciary Committee: I Implore you to stop and consider what the data tell us about what over sixty years of Vermont's agricultural policies hath wrought. In your own lifetimes, 94% of Vermont's dairy farmers have watched as a flood of cheap, toxic chemicals, all permitted in the RAPs, reduced years of hard labor and billions of dollars' worth of farm capital to ashes. Three billion taxpayer dollars up the flue and the state still permits this industry to send its wastes into the lake and the atmosphere. Who wanted this result—and was it an accident or could it have been avoided?

No, not an accident and yes, it could have been avoided. I readily admit, the social, economic and ecologic consequences the conventional paradigm entrains may not have been apparent seventy years ago. But it was common knowledge forty years ago that chemical-intensive farming was *designed* to over supply its markets, *designed* to lower farm prices, *designed* to drive farm attrition and *designed* to externalize its wastes into the environment. It was also common knowledge that conventional farming cannot be applied without inviting these societal and economic disorders, and is not, therefore, compatible with conservation. To remedy these disorders Vermont must first face these facts, then repeal its Required Agricultural Practice rules—written to prevent our facing the facts—and then adopt the National Organic Program, which was exquisitely based on rules designed in the 1950s to address the damages conventional farming was even then predicted to incur. No one who reads the GWSA could fail to see that its goals and conventional farming are incompatible; and since they cannot both obtain in the same state at the same time, we must acknowledge that the majority of the legislature and by extension the majority of Vermonters support spending money to achieve our GWSA goals rather than to support conventional farming to ensure that we don't. I am hoping the passage of the GWSA signals the end of the sixty-year period of rules designed only on their faces to "save agriculture and protect the lake" while accomplishing neither. I am hoping the passage of the GWSA signals the beginning of the period of real reform. I can assure you the Right to Farm law, originally intended to protect the farmers' right to pollute the commons, has no power to make farming either economically or ecologically sustainable. In fact, it guarantees the opposite. Take comfort in the knowledge that a better future for Vermont agriculture lies just around the next corner. But to realize that future, you must not strengthen the Right to Farm law. You must repeal it, root and branch. It is time to transform the state's largest money loser and most dedicated polluter into an industry making \$78M/year in taxable income. Converting the Vermont dairy industry to organic will be a heavy lift, but every journey of a thousand miles begins with a single step. Today, the members of the Senate Judiciary Committee have the opportunity to take this step, and when you have, Vermont will be on its way to a robust, vibrant, strong, vital, resilient, profitable and sustainable farm industry. Those interested in the details of my plan can find them broadly described in a document at this link:

<https://www.dropbox.com/s/7nrylzy4sze1d37/Remedy%2C%20The%20Proposal%20for%20debate%20response%20to%20F2P%20RFP.docx?dl=0>