

Vermont Environmental Report

Legislative Review - Part II

Beyond the Deer Herd

A sluggish, myopic 1979 legislative session frustrated many environmentalists who had hoped to see the passage of several important measures.

The only bill of any environmental significance to become law was the infamous deer herd bill, which transferred management of the herd from the legislature to the Department of Fish and Game.

While the deer herd question is settled - at least for the time being - other urgent and crucial measures affecting Vermont's environment remain uncertain.

What has come to be called the "primacy bill" is one such piece of legislation.

Primacy Bill

The federal Safe Drinking Water Act of 1974 provides that states may assume primary responsibility (primacy) for administering and enforcing the Act. If a state does not assume primacy by October 1979, the Environmental Protection Agency (EPA) will administer the Act within the state and withhold any further money for state programs.

For Vermont, assuming primacy under the Safe Drinking Water Act requires passing a law. The 1979 General Assembly failed to pass this law - H.445, the primacy bill. There are several reasons why H.445 was not passed, among them: lack of time, lack of recognition of what the legislation means to Vermont's drinking water program, and lack of support from key senators.

H.445 was introduced late in the session, which meant swift passage was critical. The bill received a favorable report from the House Government Operations Committee, but met resistance in the House Appropriations Committee.

Members of the House Appropriations Committee,

with clear conservative sentiments, argued against the bill because it seemed to them just one more onerous federal program that Vermont could do without. The irony of this argument is, of course, that the bill would have given Vermont more control over its own affairs and lessen federal government meddling.

There was also some disbelief expressed in the House Appropriations Committee that the federal government would actually withdraw or withhold funding if the measure were defeated. Rep. Glendon King (R-Washington), a member of the House Appropriations Committee, insisted that the federal government was usually bluffing - that they rarely carried out threats of withholding funds. Unfortunately, Mr. King's assessment of the federal government's behavior is incorrect: as of April 31, EPA revoked \$264,000 from Vermont's drinking water program.

The House Appropriations Committee at first voted to table the primacy bill, but pressure from environmentalists and health officials persuaded the Committee to reconsider and to forward the measure, with an adverse report, to the House floor. After considerable maneuvering by VNRC, the Vermont Public Interest Research Group, the League of Women Voters, and others, H.445 passed the full House.

Once the bill reached the Senate, it received speedy and favorable action by the Senate Natural Resources Committee, but it hit a snag in the Senate Appropriations Committee. Committee Chairman John Boylan (R-Essex-Orleans), an avowed opponent of H.445, refused to allow the drinking water bill to come before the Committee for consideration.

The failure to pass H.445 this session has had an immediate and detrimental effect on Vermont's safe drinking water efforts. State drinking water programs

Continued next page. . .

have been dealt a blow: water sampling and analysis services to towns have been cut to a minimum; the Health Department has had to lay off 6 employees; Vermont's 400 water systems will not be checked as frequently as they were in the past; and towns will no longer be given as much technical assistance. Phoebe Morse, Deputy Commissioner of Health, estimates that if the bill doesn't pass next year, "Vermont could lose up to \$600,000 in funding, and towns could be saddled with extraordinary costs of repairing and rebuilding drinking water facilities if EPA feels they are necessary."

Come January the 1980 General Assembly must move quickly to pass the primacy bill if Vermont's safe drinking water program is going to be salvaged.

Land Gains Tax

In 1973 the intention of the Land Gains Tax legislation was to slow spiraling land prices in Vermont by discouraging speculators from making huge profits on the sale of land. The current law levies a tax of decreasing severity over a 6-year period on the sale of land.

A bill introduced this session, H.343, would shorten, from 6 to 3 years, the period of time land can be subject to the tax, reduce the tax rate, and dispense with the present law's sliding-scale profit schedule. The difference between the current law and the proposed legislation is: under the 1973 law a person who sold land within 2 years but less than 3 and made an 150% profit would be taxed at a rate of 30%. Under H.343 this person would have to pay only 10% on the gains regardless of the amount of profit that was realized.

Since the Land Gains Tax was enacted, it has come under constant attack from real estate interests. In the 1979 legislature its opponents argued that the tax is cumbersome to administer and places a financial burden on property owners who are not speculators.

Those who support the present law argued that the Land Gains Tax contributes to the stability of the state's land market and helps restrain land prices.

Strong support for the present law also came from Henry Ferry, head of the Department of Tax - Lands Gains Division. In testimony before the House Ways & Means Committee, Ferry said, "the tax falls on the short term speculator for the most part," not on the average private property owner. Ferry also warned that if the tax is weakened it will encourage the very thing it was intended to stymie - the short-term, quick buck kind of speculation. Ferry observed, "I think that the situation [mushrooming land speculation] is just waiting to start up again."

Furthermore, Ferry estimates that if H.343 passes the General Assembly next year, the state would lose approximately \$500,000 a year in tax revenues.

As in the past, the effort to weaken the tax originated in the House Committee on Ways & Means. Working with Rep. Norris Hoyt (D-Orange/Windsor), VNRC managed to postpone Committee consideration of the bill until late in the session. When it was finally

brought before the Ways & Means Committee, Rep. Candon (D-Rutland) proposed an amendment that would allocate the entire proceeds of the tax to the property tax relief fund. The amendment triggered the re-routing of the bill to the House Appropriations Committee where it was received with far less enthusiasm than it enjoyed in Ways & Means. The bill languished in Appropriations for the rest of the session.

The real estate interests can be expected to pry H.343 out of the House Appropriations Committee next year and push it along its legislative course.

Local Planning & Zoning Laws

The House Natural Resources and Judiciary Committees gave extensive consideration this past session to adjusting the procedures for adopting town plans and zoning bylaws.

Legislative concern was sparked by recent court decisions invalidating zoning in a number of Vermont communities. The courts found towns were not strictly complying with the state-mandated adoption procedures. A study by VNRC last summer indicated that many Vermont towns were vulnerable to legal challenge. VNRC worked closely with the Vermont Association of Planning and Development Agencies (VAPDA) to draft legislation to alleviate this situation. H.204 was the result.

H.204 provides an administrative process for determining whether a town has followed the correct adoption procedures. This makes it easier and less expensive for a citizen to determine whether a plan or zoning bylaw is valid, since it is no longer necessary to bring a court action. At the same time, if no challenge is filed within 180 days, all future claims that the plan or bylaw is invalid due to procedural defects will be barred by a statute of limitations.

The two House committees seemed to agree with the general concept of an administrative review process and a statute of limitations, but the legislature adjourned before final action could be taken.

Wetlands

Justin Brande, from the UVM Environmental Studies Program, testifying before the House Natural Resources Committee public hearing in February, commented, "For 2000 years we've had nothing good to say about wetlands. This attitude is reflected in our laws and regulations." And it seems, this attitude still prevails in the minds of some of the members of the Vermont General Assembly.

When the wetlands protection bill (H.213) came before a joint session of the House Natural Resources Committee and the House Agriculture Committee, there was little willingness on the part of some of the members to recognize the ecological, social, and economic benefits of wetlands. The fact that wetlands

help control flood waters, act as water purifiers, control erosion and runoff, and provide feeding and breeding grounds for wildlife, and that they are threatened with destruction, seemed of little consequence to some legislators. Instead, some members lashed out against the bill as an unwarranted land use control generating more government interference.

Bob Wanner, Director of the Wetlands Protection Project, sees land use control as the major point of contention in H.213. "People do not like being told what they can or cannot do on their land," said Wanner. He points out that the present bill attempts to minimize the controls. Wanner said there are three aspects in the legislation aimed at the problem of land use control:

- o All wetlands are not considered equal. Only the most ecologically significant and socially beneficial wetlands would come under protection.
- o Not all activities (for example, cutting fire wood, grazing livestock) would require a permit: only those involving earth moving would be regulated.
- o Rather than a blanket restriction on all activities in all wetlands, a permit process would be used to control activities taking place in the areas designated for protection.

Farming and logging interests also presented a formidable obstacle for the bill. In order to assuage these interests, H.213 would exempt farmers from having to obtain a permit if their land is under a Soil Conservation Service plan, and the only logging activity which would require a permit would be permanent road construction.

This summer, under the guidance of Bob Wanner, at least two efforts will be made to help passage of

the wetlands bill next year. Members of the House Natural Resources Committee and the House Agriculture Committee will be taken on a field trip to three valuable wetland areas in northern Vermont. And a comprehensive information report on wetlands is expected to be published early this summer. The report will include: the natural history of wetlands, an inventory identifying the size and location of wetlands throughout the state, a discussion of the alterations to this resource over the last 40 years, and a legal and social interpretation of the bill.

Wilderness

No analysis of the 1979 session of the General Assembly would be complete without mention of the wilderness skirmish.

JRH-20 - the wilderness resolution - was sponsored by 25 members of the House. It supported Secretary of Agriculture Bergland's recommendation that none of the areas in the Green Mountain National Forest, which were studied under the second Roadless Areas Review and Evaluation (RARE II) process, be designated as wilderness. (See *Wilderness* article, p.4.)

VNRC, along with the Vermont Wilderness Association and several other environmental organizations, strongly opposed the categorical quality of this resolution. Wilderness advocates argued that there is a strong current of popular support for additional wilderness areas in the Green Mountain National Forest.

The proponents of the resolution were unwilling to compromise at any point. The resolution passed the House unamended, even though Representatives Lloyd, Riehle, and Nawrath fought hard to soften its language.

The Senate Committee on Energy and Natural Resources was more willing to listen to our arguments.



Some slight modification of the resolution was effected in the Committee before it was debated in the Senate. The Senate passed the amended resolution. The House concurred with the new language, which left the door open for future wilderness designations in the Green Mountain National Forest.

In April President Carter sent his wilderness recommendations to Congress. Surprisingly Carter's recommendations placed two wilderness areas in the Green Mountain National Forest - Breadloaf and Devil's Den - in the "further planning" category. This means that the Forest Service will continue to study these areas, during which time no activities will be permitted in them that would alter their wilderness character.

The bills discussed here represent a very small portion of the legislation that came before the 1979

General Assembly. There were many other issues considered: endangered species, nuclear power, uranium mining, sewage, land conservation, alternative energy sources, and agriculture - to name a few. There were also other groups working on issues of importance to Vermont's environmental quality. VPIRG and the Citizens Coalition for Safe Energy, for example, worked very hard on crucial energy problems, such as nuclear power and CWIP.

The General Assembly has its work cut out for it next year. . . and so do we. We will have to be prepared to act swiftly and decisively.

If you wish more information on a particular bill - one covered here or one you are interested in - we would be glad to try to help you. Or if you wish to become involved in VNRC's legislative phone network during the next session, please call or write us.

VNRC Board Goes Wild

There is just one hope of repulsing the tyrannical ambition of civilization to conquer every niche on the whole earth. That hope is the organization of spirited people who will fight for the freedom of the wilderness.

Robert Marshall, 1930
Explorer

At its April meeting, the VNRC Board of Directors unanimously reaffirmed its support for the National Wilderness Preservation System by urging that the Devil's Den, Griffith Lake, and Breadloaf areas of the Green Mountain National Forest (GMNF) be designated and protected as wilderness. The Board also recommended that three other areas be subject to "further planning" before a formal decision on their use and management is made by the U.S. Forest Service.

Responding to the recent nationwide RARE II (Roadless Area Review & Evaluation) recommendations by the U.S. Forest Service, VNRC released a 600 word resolution explaining its position. Stating that "wilderness areas are essential parts of our natural heritage," the resolution describes the six areas under consideration as representing "a limited resource where the impact of man has been relatively light and transitory." Recognizing that commercial and recreational pressures will increase on our unmolested backwoods, the Council reasoned that it is our responsibility now to leave at least a tiny portion of our environment unspoiled as "a legacy to future generations."

The six roadless areas recently under review in Vermont represent less than 1% of the state's acreage. A small legacy indeed. No private land need be appropriated since all six areas are on land already under U.S. Forest Service jurisdiction. And the

commercial value is limited. Together they represent only 1.2% of Vermont's commercial forest land. According to Carl Reidel, Director of the Environmental Program at UVM, "Most of these lands are at higher elevations, with serious physical limitations for logging or silvicultural improvement."

Late last year the U.S. Forest Service concluded its study of more than 62 million acres of land, representing 2,686 roadless areas nationwide. The purpose of RARE II was to recommend which of these areas are appropriate for federal protection as "wilderness, which should be managed for non-wilderness uses, and which should be studied further."

In its conclusions, the Forest Service did not recommend any additional Vermont wilderness areas beyond the existing tracts, Lye Brook and Bristol Cliffs. This recommendation, submitted through Secretary of Agriculture Bergland, has been amended by President Carter to place two of the six areas in the "further study" category - Breadloaf and Devil's Den. It is now up to Congress. Morris Udall (D-Arizona), Chairman of the House Interior Committee, sees congressional action possibly taking 2 to 3 years. In the meantime, Senator Leahy's staff indicated that he intends to hold hearings in Vermont this summer.

The VNRC resolution cites several specific shortcomings in the review process which may have influenced the inadequate consideration given to the "important resource values and special features of Vermont's RARE II areas." While recognizing "the popularity of snowmobiling and trail-riding, and the importance of forest management and timber harvesting for the economy of the state . . .", the Board concluded that "adequate provision must also be made for [a full] range of wilderness experiences" including ecological research, nature study, and a variety of non-mechanized recreational uses.

● A Call for Nominations

VNRC's 1979 annual meeting will be held in September. Now is the time to nominate candidates for the Board of Directors. The quality of the Council's leadership depends in large measure on the kind of people who serve on our Board. VNRC wants to perpetuate the creative, thoughtful, energetic leadership which has characterized its Board since 1963. Won't you give some thought to it right now?

The term of office for a director is three years. Of the 22 board members, seven have terms which expire this year. The full board meets four to five times a year for half-day sessions to develop and determine VNRC policy on a variety of environmental issues. In addition, there are several special subcommittees which meet periodically to provide guidance in such areas as: public lands, communications, or finances. A seven-member Executive Committee provides administrative and procedural direction to the Council.

The nominating committee's deadline for completing the slate of candidates is **JULY 15**.

We encourage you to send in nominations - your active involvement in VNRC is needed. The Council grows and improves in direct proportion to the vigor and interest of its directors. It is up to you to choose those people you feel will best lead VNRC.

Send your suggestions to: Stanton Allaben, Chairman, VNRC Nominating Committee, Little Pond Rd., Londonderry, Vermont 05148, or to Seward Weber, VNRC, 26 State St., Montpelier, Vermont 05602.

Letters

To the Editor:

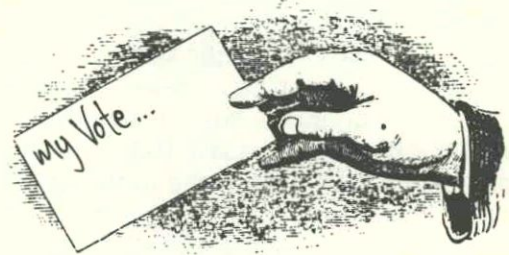
I was glad to be able to read the VER article on the status of environmental bills before the state legislature this year (VER, April 1979). However, the method of reporting leaves the reader in doubt as to what the actual involvement of the VNRC has been. The statement, "An asterisk (*) indicates VNRC has been actively involved with a bill. It does not, however, indicate the Council's support for the measure," makes one wonder what the asterisk really means. It would be more informative to the membership if formal support or opposition was stated and the nature of VNRC involvement described.

Also, I was surprised to see a list of "Nuclear Power and Other Energy-Related Issues," with no asterisks at all. Does this mean that energy issues are not a VNRC priority?

I hope these concerns will be addressed in the preparation of future legislative reports.

Thank you for the opportunity to express my views.

Yours truly,
Diane Geerken
So. Burlington, Vermont



Editors Note:

Reader response to last month's VER questionnaire has been splendid. The returns are still rolling in.

Thanks to all of you who took the time to give us your opinions of the VER and your thoughts as to the shape and scope of the new publication.

In the June/July issue we will give you a run-down on where your suggestions have taken us so far.

And those of you who have not responded yet, please do. We want to hear from you. RD

Conservation Society Summer Camps

This summer, for the 12th consecutive year, the Conservation Society of Southern Vermont will sponsor its environmental studies camps for 9 to 15 year-olds. Each 5-day outdoor experience is "designed to instill in campers a special sensitivity and understanding of ecology and the environment." Under the supervision and counseling of camp naturalists, participants will live in three-sided shelters, prepare their meals over open fires and hike through the 3000 unspoiled acres of Jamaica, Vermont terrain.

Students may sign up for any one of the six 5-day sessions which begin July 8, or participate in a variety of weekend programs, or the special two-week program offered in cooperation with the Merck Forest Foundation. Costs range from \$90.00 for the 5-day experience to \$200.00 for the two-week camp.

For further information, call or write the Conservation Society of Southern Vermont, Townshend, Vermont 05353, (802) 365-7754.

Husbanding Habitats

A Landowner's Guide: Wildlife Habitat Management for Vermont Forests by William Crenshaw, Lawrence Garland, Thomas Myers, William Sladyk, James Stewart, Jeffrey Wallin, Charles Willey of the Department of Fish and Game. Edited by John Hall, Information & Education Specialist.
The Guide is available free from the Department of Fish and Game, Heritage II, Montpelier, Vermont 05602.

"Properly applied, the chainsaw and the axe can lead to more productive wildlife habitat and woodlands," says a new wildlife guide from the Fish and Game Department. **A Landowner's Guide: Wildlife Habitat Management for Vermont Forests** offers people sound, practical advice for improving the wildlife environments in their woodlands.

Chapter I succinctly traces the changes in Vermont's land use patterns and describes the basic requirements for wildlife habitat diversity. The radical changes in land use in the state over the last 150 years—from dense, virgin forests to 70% farmland in the late 1800's, and back to forests again in this century—have also meant extreme changes in animal populations.

When most of the land was used for farming, the **Guide** explains, "wolves, mountain lions, turkeys, and passenger pigeons had disappeared and fisher, beaver and otter, deer and some other animals had nearly been eliminated from Vermont." Then the farmers moved west, and the forests moved in again, reclaiming the land. But, the authors point out, "the forests that replaced the original forested areas were not exactly the same as their predecessors."

For the most part the pre-settlement forests contained the same age, same species of trees. The **Guide** describes these forests as, "largely dense and over-mature with little cover for food on the forest floor." Diversity was present only by the grace of God — hurricanes, forest fires, or floods.

The "new" forests have a greater variety of tree species, more sugar maple, balsam fir, white birch, and aspen, and less spruce and beech, and the trees are not all the same age. This situation has created a variety of different kinds of habitats which in turn encourage a diversity of wildlife.

According to the **Guide**, Vermont has seven regions that can be differentiated in terms of similar topography, climate, soil, and vegetation characteristics. A map of these regions is included in Chapter II of the **Guide**, along with a written description of each. The authors recommend that landowners acquire some knowledge



of the trees and other vegetation, soils and climate to better understand wildlife requirements on their land.

Chapter III, *Wildlife Habitats*, comprises the main part of the **Guide**. It describes everything from the eclectic eating habits of the black bear to how you can insure waterfowl brood cover in a marsh. Eleven different habitats are described. Seven are for specific animals: the white-tail deer, black bear, wild turkey, ruffed grouse, woodcock, cotton-tail rabbit, and snowshoe hare. Four are general habitat types: waterfowl, furbearers (aquatic and terrestrial), non-game birds, and fish. Each description includes habitat requirements (food, brood cover, climate, etc.) and suggestions for habitat improvement (whether clearcutting would help or hinder a particular habitat, how close a road should be to a stream bed, or what kinds of trees should be encouraged or culled).

The **Guide** includes a comprehensive list of foresters and local district conservationists (Chapter IV) who can help landowners assess woodland habitats and offer suggestions for improvement. For further reference, a useful glossary (Chapter V) and suggestions for further reading (Chapter VI) are located in the back of the publication.

The wildlife habitat **Guide** is a pleasant surprise — one not usually expected in state publications. It is well-written, has some wonderful photographs, and gives useful information. The **Guide** is clearly a valuable resource for landowners, but it is also worthwhile for anyone who is sensitive and interested in wildlife habitats.

The Final Shutdown

from VPIRG News

The Final Shutdown: A White Paper on the Decommissioning of Vermont Yankee by Charles Sheketoff. Copies of the report are available for \$2.00 from Vermont Public Interest Research Group, 26 State St., Montpelier, Vermont 05602

Nuclear power plants do not run forever. The Vermont Yankee plant in Vernon has 28 more years before it will be required to close down for good. In the year 2007 Vermonters will be hit with a large decommissioning bill if the state does not begin planning now for the final shutdown. This is the conclusion reached in **The Final Shutdown: A White Paper on the Decommissioning of Vermont Yankee**, a recently released report from Vermont Public Interest Research Group (VPIRG).

Charles Sheketoff, the author of the report and VPIRG's Assistant Director said, "Both the Federal Nuclear Regulatory Commission (NRC) and Vermont Yankee have failed to adequately plan for decommissioning, and the State of Vermont is going to have to require the setting aside of funds for closing the plant. If not, the money may not be there when the time comes to shutdown the facility at Vernon."

The fiasco at the Nuclear Fuel Services plant, an upstate New York nuclear reprocessing facility in West Valley, was cited by Sheketoff as an example of what can happen when no plan for setting aside decommissioning funds exists. In 1976 the owners of the NFS plant announced their decision to close down the facility because it "had become an economic and technological disaster." In the report Sheketoff explains the situation this way, "In December 1980, under the terms of the lease agreement between the state [of New York] and NFS, the state will take over legal and financial responsibilities for the now defunct plant." New York state is suddenly saddled with a clean-up bill that could go as high as \$1.1 billion because there was no decommissioning plan.

The decommissioning of a nuclear plant, the report explains, involves problems not posed by a conventional power plant. These problems are the result of radioactive isotopes called "activation products." The activation products become embedded in parts of the plant as the result of the nuclear reaction. According to the report, one activation product, nickel-59, will remain dangerous for 1.5 million years. Sheketoff explains that decommissioning is difficult and expensive. "Because of the presence of long-lived activation products, the plant will eventually have to be dismantled.

Furthermore, the dismantling has to take place before the plant begins to deteriorate and radiation escapes into the environment."

The current estimated cost of decommissioning Vermont Yankee is \$21.7 million. This figure is based on a 1976 report from the Atomic Industrial Forum (AIF), an industry trade association. The **Final Shutdown** claims that the AIF figure may be too low. Sheketoff says, "By AIF's own admission the costs do not include a contingency factor which should be on the order of 25%, to account for unexpected regulatory or other changes." VPIRG's report also notes that the AIF does not "make any allowance for the sort of escalating transportation, labor, or other costs that have dramatically increased the cost of constructing plants."

The Federal Nuclear Regulatory Commission, says Sheketoff, admits they have dealt with final decommissioning costs, "in only a limited way." He calls Vermont Yankee's handling of the matter "equally as un reassuring." Yankee, he points out, is not collecting funds now, nor do they plan to start doing so until 1999 — only 9 years before the plant's license will expire. Sheketoff warns that, "If for some unforeseen reason, Yankee had to close before 1999, no funds for decommissioning would be available."

The Recommendations

The recommendations given in **The Final Shutdown** are aimed at making sure that Vermont Yankee's owners will be responsible for the plant's eventual decommissioning and that adequate funds will exist to accomplish the task.

The report recommends:

- o The state of Vermont should continue to press forward with its efforts to have Yankee's Capital Funds Agreement, as well as other pertinent agreements, modified to clearly place the financial responsibility for decommissioning the nuclear power plant with Vermont Yankee sponsors.
- o The State should, also, establish a panel that would plan for the Vernon plant's decommissioning. The panel should have the authority to require that funds are set aside and should act in concert with government agencies to ensure decommissioning is accomplished with maximum regard for the health, safety, and welfare of Vermonters.

Workshops

In June two workshops on agriculture and the environment will take place at Shelburne Farms as part of the University of Vermont's summer program.

June 4-8: Environment and Agriculture - Balancing Tradition with Change.

The one-week, intensive course will combine lectures, discussions, and field trips to examine what future choices farmers will have for increasing production and conserving natural resources. Participants will also compare the principles of biological farming with more conventional farming practices.

Instructors: Mark Lapping (Acting Director of Environmental Studies, UVM), Winston Way (Vermont Extension Agronomist), William Darrow (Commissioner of Agriculture), Thomas Daniels (Agriculture Economist), Alan Gotlieb (Plant Pathologist).

Cost: \$124 for residents and \$138 for non-residents for two college course credits. Non-credit \$80.00. Cost includes lunch.

June 18-22 and June 25-29: The Environment and Our Culture

This two-week course will include environmental philosophy, study of natural systems, human needs vs. natural resources, creative personal choices and changes, skills and values.

Instructors: H.W. Vogelmann (Plant Ecologist, UVM),

William Hall (Forester), Chester Liebs (Historic Preservationist, UVM), Lynda McIntyre (Art Educator).
Cost: \$181 for residents and \$202 for non-residents for three college course credits. Non-credit \$120. Cost includes lunch.

For more information: Marilyn Webb, Director of Shelburne Farms Resources, Shelburne, Vt. Phone: (802) 985-3222.

Vermont Environmental Report

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We welcome letters from our readers.

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