

Bulletin

PUBLIC HEARING ACT 250 STUDY COMMITTEE

7:00 pm, Wednesday October 6, 1999

Room 11 Statehouse - Montpelier

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Vermont
Natural
Resources
Council,
Inc.

Once again, Act 250 is under the political microscope. If you're concerned about Vermont's landmark land use and development law, you might want to keep an eye on a special committee looking at the law this fall.

Late in the session the Vermont House adopted a resolution setting up an Act 250 study committee. The committee is charged with conducting a comprehensive review of Act 250 looking at its governance, implementation, its effects on the environment, people, and economic development of the state.

The House Act 250 Study Committee has eight House members appointed by the Speaker of the House so that no party has a majority. Representative William Johnson Chairs the Committee. He is joined by Reps. Mary Sullivan (Vice Chair), Patricia Smith (Clerk), Phil Angell, Thomas Koch, Albert Perry, Michael Quaid and David Zuckerman.

The first meeting was held on July 21st and featured presentations by former Chair of the Environmental Board, Art Gibb and Vermont Law School Professor, Richard Brooks.

On September 1st, the Committee heard from attorneys who have had experience with Act 250: Stephanie Kaplan, former General Counsel for the Environmental Board; John Marshall, former Chair of a District Commission; John Ponsetto, representing Associated

Industries of Vermont; and Andy Raubvogel, ANR General Counsel. Also, Marcy Harding, Chair of the Environmental Board; Mike Zahner, the Board's Executive Director; and several District Commission Coordinators presented testimony.

It appears that the Committee will focus on at least the following issues:

- Predictability of permit process
- "On the record" hearings and appeals
- Act 250 Criteria
- ANR permit processing times/
need for personnel and resources
- Cumulative impacts of development
- Planning
- Party Status
- Expanded jurisdiction of Board
- Political influences/
appointment procedure
- Junkyards

Future meetings will be in the Statehouse Room 11:

- Wed. Oct. 6 - 10:00 am
- Wed. Oct. 6 - 7:00 pm
(public hearing)
- Wed. Oct. 20 - 10:00 am
- Wed. Nov. 3 - 10:00 am
- Wed. Nov. 17 - 10:00 am
- Wed. Dec. 1 - 10:00 am

The Committee is staffed by the Legislative Council and the Joint Fiscal Office and is charged with submitting a report with draft legislation to the General Assembly by January 15, 2000.

Contact Steve Holmes at VNRC for more information.

THE VALUABLE ROLE OF CITIZENS IN ACT 250

VNRC's new report documents the value of direct citizen involvement in the Act 250 process. Call Joyce at our Montpelier office to order your copy.





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The Vermont Natural Resources Council, Inc., is a nonprofit environmental organization founded in 1963 to protect Vermont's natural resources and environment through research, education, and advocacy.

VNRC is the Vermont affiliate of the National Wildlife Federation.

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For an individual membership, send \$35.00 to VNRC.

The *Bulletin* is printed on recycled paper with soy-based ink. However, please recycle this issue by sharing it with your family and friends!

ENVIRONMENTAL BOARD ACT 250 RULEMAKING

A public hearing on September 22 concerning Act 250 rulemaking is taking place as we go to press. The deadline for written public comment is on Friday, October 1, 1999. VNRC is concerned about the proposed changes.

The Environmental Board has filed proposed revisions to Act 250 rules with the Secretary of State. Many of the new rules are minor "housekeeping" changes. However, a few substantive changes deserve close scrutiny:

- **Party Status Will Be Affected**

The rules propose to change who can participate in Act 250 hearings and who can appeal district commission decisions to the Environmental Board.

Rules 2(S) dealing with the term "interest" (eg. interested

in or affected by the outcome of an Act 250 hearing), and Rule 14(B) are being amended in tandem.

Rule 14(B)(1), "interested" parties by permission (eg. you are permitted to participate in an Act 250 hearing) now includes "individuals or groups" and will be revised to include "individuals, groups, or organizations."

This rule is to be read in conjunction with Rule 2(S). The term "interest" is being defined as "any personal, local, regional, statewide, or property interest under the criteria of the act, with respect to a request for permissive party status under Rule 14(B), which may be affected by the outcome of the proceeding."

Rule 14 (B)2 - Materially assisting parties will be eliminated. However, non-parties will be allowed to participate in a proceeding "if it is continually demonstrated that such participation: will materially assist the board or commission by providing testimony, cross-examining witnesses, or offering argument or other

evidence ...; is not duplicative of statutory or permitted party participation; and will not unduly delay the proceeding."

- **State and Local Permits To Be Given More Weight**

Rules 19(F) and (I) deal with the presumption of compliance created by various state agency and municipal permits in Act 250 hearings. The current standard for rebutting a state or local permit is by a "preponderance of the evidence". The new standard would require "clear and convincing evidence" to rebut a permit, presumably adding greater weight to the presumption and making it more difficult for a successful rebuttal to occur.

VNRC will be presenting testimony to the Board, and we encourage you to voice your opinions. If you would like more information, please contact Steve Holmes at VNRC.



TAX SHIFTING COALITION FORMED

VNRC, together with Friends of the Earth, Vermont Businesses for Responsibility, Research and Education Foundation, and Vermont Public Interest Research Group, has formed the Vermont Fair Tax Coalition.

The tax reforms proposed by the Vermont Fair Tax Coalition all stem from a three pronged concern: how can we make the tax system in Vermont better for the economy, the environment and Vermonters, without increasing tax revenues? All the Coalition's proposals address these three sets of concerns. Each tax reform proposed in the coalition's recently published booklet, *Tax Reform That Agrees with Vermont* is paired with other elements to address economic, environmental and social concerns. If a tax reform can't be orchestrated in a way that meets our three criteria, then it isn't a good tax reform. The three criteria distinguish these proposed reforms from any other tax reform movements.

TAX SHIFTING REPORTS AVAILABLE

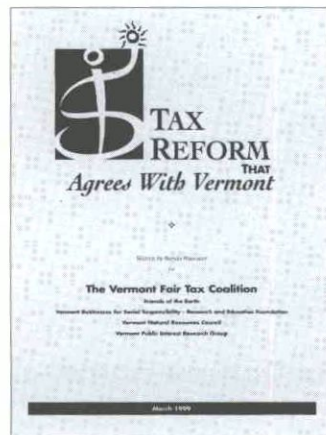
The topic of taxes has the power to produce blank stares and yawns, as well as impassioned emotions, complaints and arguments. Many individuals and businesses believe taxes are too high and too complicated, and that nothing can be done to change them.

Tax Reform That Agrees with Vermont shows there's good reason to overcome the boredom, set aside the preconceived ideas, and reconsider just how taxes work and

how they could work better — better for the economy, the environment, and for Vermont families.

This easy-to-read booklet explains how the power of taxes could be better harnessed to improve the public good with lasting benefits for the economy, the environment and all members of society.

Call Joyce at VNRC to order your copy, or Steve Holmes if you have questions about tax shifting.



FREQUENTLY ASKED TAX REFORM QUESTIONS

1. What kind of reform are we talking about?

One that uses the power of taxes to improve the public good. One that shifts taxes away from things we want to encourage like income, property ownership and employment. One that places taxes on activities society wants to discourage like carbon dioxide emissions, water and air pollution or the use of highly toxic materials.

2. Will These Reforms Increase Taxes?

No. A central idea of tax shifting, the name of these kind of reforms, is to raise the same amount of revenue.

What will change is where the revenue comes from, not the total bottom line.

3. Why Tax Reform Now?

Vermont is in the midst of tax restructuring, due to the need to fund public school education in new ways. Tax restructuring is already on the political agenda in Washington and in many other states.

4. Will Tax Shifting Increase the Unfairness of the Tax Burden?

Not if any tax reform is structured according to the three criteria of improving the economy, social equity and improving the environment. Taxes which require polluters to pay their fair share are inherently equitable. Some taxes that address environmental harm would disproportionately affect Vermonters with lower incomes unless they are structured to offset unfair impacts by the way revenues are used to lower other taxes or recycled to taxpayers.

5. How Will Tax Shifting Affect Businesses?

As with individuals, most businesses will find that while some costs and taxes increase others, such as payroll taxes for instance, will go down. Tax shifting will make it financially rewarding for businesses to use as little energy and contribute as little harm to the environment as possible. Evidence suggests that most businesses will see an overall decrease or neutral effect. In places that have implemented tax shifts, exceptions or phase in periods for certain highly impacted businesses have been used. This kind of tax reform allows the market place to encourage the most efficient and socially beneficial means of production, without cumbersome regulations.

6. Will Tax Revenues Become Less Predictable?

That is not likely. For instance, revenue from the motor fuels tax is currently easier to predict than revenue from income taxes. While these kind of tax shifts will decrease the harmful behavior on which they are based, the economy will expand in other areas resulting in higher tax revenues from other taxes. It may also be possible to reduce the complex web of environmental regulations that require government expenditures to enforce.

7. Will Tax Shifting Complicate My Tax Return?

No. Many of the tax reforms proposed are taxes that get paid as you engage in certain behaviors, just like the sales tax gets paid every time you buy certain items. Other reforms will change the amount of taxes you pay, such as reducing the self employment tax. But this will not complicate your tax returns.

8. Where Else Has This Been Tried?

Vermont has already begun a tax shift. In 1997, the state shifted a portion of education funding from Vermont's high property tax to a collection of other taxes, including the gasoline tax and the motor vehicle purchase and use tax, while making the property tax partially income sensitive. Many states use one or more of the tax structures recommended in the report *Tax Reform That Agrees with Vermont*. Several countries with healthy economies such as Germany and the Netherlands have shifted their tax base to discourage environmental damage while encouraging economic growth.

ALTERNATIVE SEPTIC TECHNOLOGY STUDY COMMITTEE

One of the most controversial parts of the debate over reform of Vermont's patchwork of sewage disposal policies has been the use of alternative technologies for the onsite disposal of wastewater.

Currently, in addition to conventional in-ground septic systems, the state allows mound systems and sand filters. The 1996 changes to the Environmental Protection Rules (known as Phase I Rules) allowed modifications to mound systems and added sand filters to the list of approved technologies.

However, the changes made it possible to construct new wastewater systems on soils that could not have been built on in the past.

Recently, the Agency of Natural Resources has been pushing for allowing additional on-site disposal systems. These "Alternative Technologies" include constructed wetlands, waterless toilets, overland flow, and small package treatment units, to name a few. The proposed Phase II Rules, designed to permit these alternatives, would further reduce site standards beyond the changes made in Phase I. These changes would include reducing the minimum depth of soil to groundwater and allowing building on steeper slopes. And like the Phase I Rules, reduced standards to allow alternative technologies will open up even more land for development.

As a result, the legislature has established a committee to look at the environmental and

land use impacts associated with allowing the use of these new alternative technologies in Vermont.

The committee has been appointed consisting of two legislative members, two state agency representatives and 11 persons appointed by the governor representing various interests as well as the general public.

Their charge is to report back to the General Assembly

by January 15, 2000, with alternatives, initiatives and recommendations on the use of alternative technologies and the land use impacts associated with them.

The first meeting was scheduled for September 14th, and several more will be held this fall. VNRC will be closely tracking the committee's activities. Let Steve Holmes know if you're interested in getting involved.

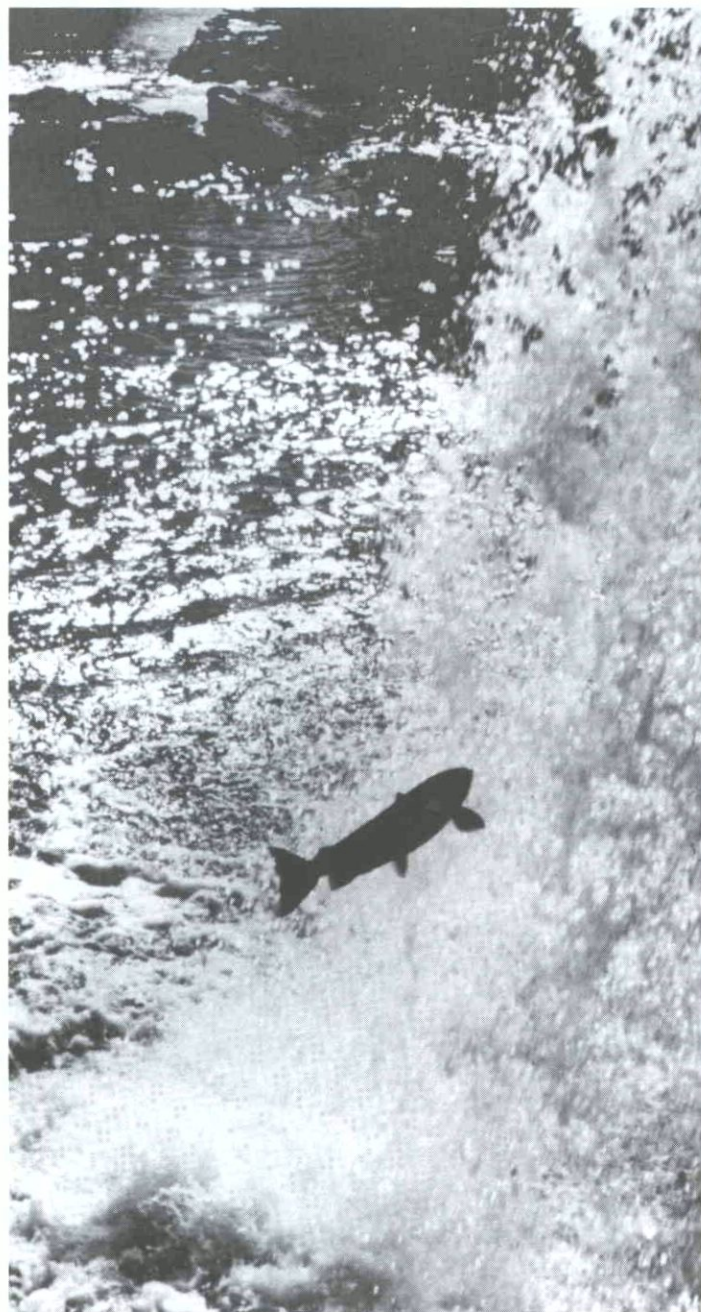
GOOD LUCK CHRIS!

A lifetime of fly-fishing taught Chris Kilian a thing or two. One, a river flows continually (unless it's dammed, of course.) And two, if you keep on casting, you're bound to get a bite eventually. The tenacity and patience that are the skills of a good fisherman also enable Chris to be a highly effective advocate for all that is natural in Vermont.

Chris's hard work during the past seven years at VNRC is commemorated in the forested mountains and the pure waters that have formed this state. In August, Chris began utilizing his skills as an environmental attorney at the Conservation Law Foundation (CLF). "VNRC has greatly appreciated Chris's hard work through the years," says Elizabeth Courtney, VNRC Executive Director. "I'm happy that he has only "moved across the street" so to speak, as VNRC has now gained an excellent friend and supporter at CLF."

During his tenure at VNRC, Chris spent countless hours ensuring that Vermont's precious natural resources were not put in a compromising position when it came to over development, pollution, and exploitation. His commitment to the land was kindled during a childhood spent fishing and hiking through the woods of rural upstate New York. "I come from a family that has strong ties to the land. We were taught that environmental values are represented in what we do and how we live," says Chris.

Perhaps Chris's commitments to Vermont are best exemplified by the crucial role he played in the removal of Newport Number 11 dam on the Clyde River. Soon after



Atlantic Salmon Federation

joining VNRC in 1991, Chris learned of the struggle taking place across Vermont as citizens attempted to clean up the waters that flowed through their communities.

Chris remembers attending a meeting held by the Clyde River Committee. "It was so obvious to me that there was a huge cadre of support at the local level for restoring this river, but that they were having trouble maneuvering through the minefield of technicalities and legalities. Plus, they were talking about taking the dam out which was very exciting." So Chris started casting for solutions.

He started by urging the state not to reissue a license for Newport Number 11 to the Citizens Utility Company, owners of the dam. But an unexpected flood turned the situation around when the dam was washed out in the rain. "I knew then there would be a huge fight over whether or not the dam would be rebuilt," says Chris. He was right. The skirmish turned into a six month running battle that involved litigation at both the state and federal level.

Finally, Chris went to the EPA and argued under the Clean Water Act that the dam should have to obtain certain permits from the state in order to keep operating. Eventually, the EPA ruled that Citizens Utility was not exempt from the Act and issued a cease and desist order. Then, in September 1997, the dam was dynamited.

Unfortunately, Chris was not there to see the concrete behemoth explode in a cloud of dust. Instead, he was in a courtroom, representing VNRC in yet another battle to protect Vermont's waters.

"For me, it was first and foremost about seeing the river restored. I go up there

now, and it's so different. It's hard to remember how awful and ugly the dam used to look, and how damaging it was to the surrounding ecosystem," says Chris.

"It also felt great to help the people who care so much about their river. It was really powerful to see them vindicated."

Another battle waged during Chris's years at VNRC involves the Lamoille River. Along its winding path lies Fairfax Falls and Milton Gorge, both of which are breathtaking natural features of the river. Unfortunately, in addition to other dams, the lower Lamoille also contains four dams which are owned by Central Vermont Public Service (CVPS). "These dams have converted the river from a flowing system to a series of ponds, pipes and generators." During the relicensing process, CVPS proposed flow conditions for the Lamoille that would never exist in nature. "They really were a drop in the bucket," says Chris.

Again, Chris took the lead. After hours of hearings in front of the Water Resources Board, an environmentally sound decision was handed down in 1996. The decision also included an important explanation of Vermont law with regard to water quality of the state's rivers. "It was a tremendous undertaking but we got 99.9% of what we wanted," he says. (See Summer 1999 VER issue about VNRC's current involvement with the Lamoille River.)

Throughout his years with VNRC, Chris has worked to understand and articulate the issues for concerned citizens, workers for state agencies, non-profits staff members, scientists, and others. "I have great respect for Chris," says



John Kassel, Secretary of the Agency of Natural Resources. "He is a passionate advocate for environmental quality and for species that can't advocate for themselves. There are many often conflicting perspectives on the issues we deal with in this business and a full policy debate cannot be had without informed, well-prepared views being expressed from all sides. Chris brings experience and energy to the debate and I appreciate it.

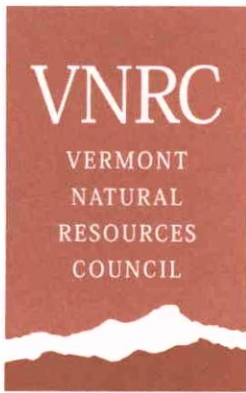
Chris came to VNRC first as Water Program Associate, then as Legislative Director, followed by Water Program Director and Staff Attorney, and finally as General Counsel. Chris has spent countless hours working behind the scenes to ensure that clean water is the norm in Vermont, and not the exception. "I think the water program at VNRC is vital, and has been leading the debate on water resources policy issues for many years," says Chris.

He also points out the role that VNRC has played in shaping Vermont for over 35 years. "VNRC is an incredibly

important institution. It gave me an opportunity to use whatever skills and energy I have to make sure that Vermont continues to be a place where people want to be."

In looking back at his years spent working with VNRC, Chris cannot help but look forward, too. "I want my kids (Becky, 5, and Jonathan, 2) to have a better quality of life in terms of environmental health than I do. I want them to be able to see salmon restored to the Connecticut and to the other rivers here. To know that there is a viable population of wolves in Vermont. To know that our forests aren't dying from acid rain. To know that Lake Champlain isn't slowly being poisoned. VNRC gave me the chance to work with thousands of people across the state who care about this place and have this same dream for the future of Vermont."

Thanks for all your hard work Chris!



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VNRC INFORMATIONAL MEETING ON POSSIBLE ACT 250 CHANGES

On October 6th, at 6:30, VNRC is organizing an informational meeting to take place on the steps of the State House before the Act 250 Study Committee public hearing. We will provide information to concerned citizens about the changes taking place, and Act 250 experts will be available to answer any further questions. Citizen input is crucial to the success of Act 250. Join us to share your voice!

JOIN US AT THE VNRC OPEN HOUSE!

Please help us celebrate the completion of the renovations to the VNRC office on October 23 from 4:00 to 6:30! After four months of construction, 9 Bailey Avenue in Montpelier has additional space for increased staff, has now substantially improved its energy efficiency, and looks great! Take a tour through the building, and hear about the environmental construction efforts used to preserve and enhance VNRC's historic building. Then, walk to the Senate Chambers in the State House (one block down from the VNRC office) and welcome Keynote Speaker Lieutenant Governor Doug

Racine.

We will also announce the permanent installation of the Molly Beattie Internship. For the past three years, we have offered the Mollie Beattie Internship to interested citizens. The internship has focused primarily on policy and legislative issues. We have recently acquired funding

from three sources to enable us to offer this internship for many years to come.

We'll be sending out more information about the Open House within the next few weeks. If you have any questions, please call our Montpelier office at 802-223-2328.



All VNRC staff hands were needed to frame this summer's addition.