

# Bulletin & Legislative Update

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## THIS YEAR'S TOP ISSUES AT A GLANCE:

### VERMONTERS MADE THE DIFFERENCE

The 2002 legislative session will not be remembered for exceptional substance on environmental policy issues. There were some major bills passed that put the environment out ahead, or, at the very least, left it unscathed. But the real winners of the session were the forces that made all of the difference this year: the quiet, unceremonious voices of Vermonters.

Without a doubt, VNRC could not have prevailed on so many fronts were it not for the help of an informed and motivated public. Over the past two years, more than any other in our recent history, VNRC made a commitment to getting Vermonters involved in the process, and it mattered. Legislators heard loud and clear from their constituents that protecting our natural

resources is paramount to life in Vermont.

When VNRC saw the controversy brewing over the West Mountain Wildlife Management Area (WMWMA), where understandable concerns of the hunting and fishing community were used to push for legislation that had more to do with logging, VNRC responded by reaching out to Vermonters who cared. VNRC organized our members and other organizations to contact their legislators. Vermonters responded with over a thousand post cards from citizens and scores of phone calls in support of the Special Treatment Area on WMWMA.

When the battle over the stormwater bill was heating up, VNRC and friends organized a series of Town Hall Meetings in Chittenden County to connect Vermonters with their Senators and create a forum for an informative discussion on the issues around the stormwater controversy. These meetings were not only well attended, but

were hailed by the Senators as a great opportunity to have a productive dialogue with their constituents. The debate was soon re-framed and a new bottom line had to be included in any piece of legislation that passed: clean water. In the end, an agreeable solution was created that will help clean up stormwater pollution in Vermont's beautiful but threatened Lake Champlain.





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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.

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Indeed Vermonters were there to respond on every issue that arose.

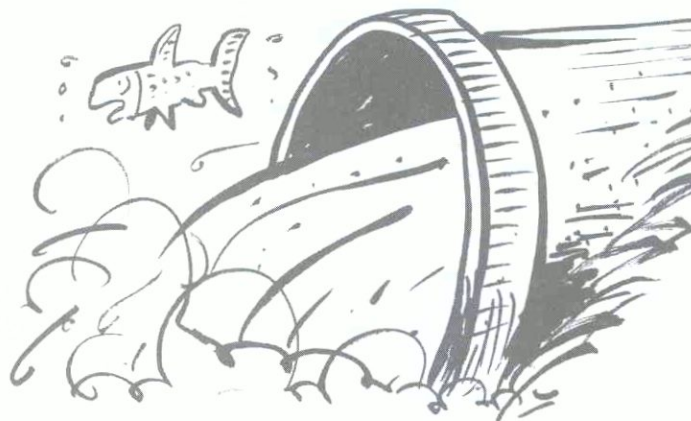
It is also noteworthy that this session marked the establishment of many productive new relationships for VNRC, and a more prominent role as a convener. On a variety of issues over the past two years, VNRC brought together significant coalitions of informed individuals, interest groups, legislators and administration staff that made a huge difference in the outcome of many bills.

Regardless of the approach, however, VNRC is confident that a new standard for citizen involvement and collaboration has been set. If Vermonters want to maintain a high standard of health for our natural resources, it will be critical to maintain this kind of support in the future. For those Vermonters who called or wrote their legislators, attended a hearing, or even testified before a committee, you made all the difference. We thank you very much!

**STORMWATER**

The issue of stormwater, the toxic brew of salt, sediment, oil, and pesticides in rain and melting snow that runs off of parking lots, rooftops, and roads, commanded a large amount of legislative attention this year. In reaction to a ruling last year by the Vermont Water Resources Board that additional sources of pollution could not be permitted in an already-impaired watershed, developers put pressure on legislators to do something to "fix" the Board's decision. VNRC was a key part of ensuring that a "fix" would not weaken Vermont's water quality laws.

The uncertainty, whether real or imagined, following the Board's ruling regarding



future development in watersheds with polluted streams or lakes, fueled a hearty debate that ultimately spilled outside of the State House. Early in the session, a great deal of controversy and animosity among various interests was created when the House produced a bill, H.644, that would have rolled back water quality laws to the days prior to the passage of the 1972 Clean Water Act.

By the time H.644 reached the Senate, however, a groundswell of grassroots opposition to the House bill engendered a shift in the debate. A "Stormwater Town Hall Meeting" organized by VNRC and other environmental groups at the Burlington Wastewater Treatment plant in February had Senators who were present singing a chorus that any bill ultimately had to be about clean water.

Between the Senate's desire for a bill that would not allow more stormwater pollution to dirty Vermont's rivers and lakes, coupled with a timely memo from the U.S. Environmental Protection Agency which opined that H.644 violated the Clean Water Act in a variety of ways, the atmosphere started to change. VNRC, the Vermont

Agency of Natural Resources, and business interests started working together to come up with a bill that everyone could live with: VNRC pushed for language that would improve the treatment and cleanup of stormwater runoff, and the development community pushed for provisions that they believed would give them more predictability in the permitting process. In the end, a solution to the impasse was reached. The Senate passed the collaborative legislation, and the House concurred.

Although we worked hard to find a solution to the stormwater dilemma, VNRC made it clear that legislation regarding stormwater runoff was unnecessary. In fact, the stormwater statute had been comprehensively revised in the 2000 legislative session. The 2002 language did provide some additional benefit, however, including the requirement for all new discharges to meet the improved stormwater treatment standards contained in the 2002 Vermont Stormwater Management Manual. This is a significant improvement over the old performance manual, which, at times, created more stormwater pollution problems than it solved.



The 2002 statute also explicitly allows the ANR to use pollution offsets to ensure that a proposed discharge does not result in a violation of the Vermont Water Quality Standards. New language also provides authority to create stormwater utilities for those municipalities that choose to use them. A stormwater utility, like other utilities, can charge businesses and residents for, in this case, the public service of treating stormwater runoff. Fees are calculated according to the amount of impervious surface area present on a site. This helps create a solution on sites that otherwise would not have the land area or technical facility to treat stormwater. Unfortunately, the new law also includes a provision giving proposed dischargers a presumption of compliance in certain watersheds when appealed to the Water Resources Board. The meaning of this presumption is yet to be determined.

### MERCURY

A bill from the 2001 session that would help reduce the amount mercury in Vermont's waste stream, S.91, briefly resurfaced this year in the Senate Natural Resources and Energy Committee. Although the bill died in the Senate Appropriations Committee last year, S.91 seemed to have some momentum in the 2002 session.

Mercury is a persistent and toxic pollutant that bioaccumulates in the environment and can cause severe growth problems and birth defects. Many steps were taken in the Senate's new version of S.91 to reduce the amount of mercury that is released into our air and water through various waste streams. Removing

mercury-containing products from the waste stream prior to incineration can be a cost-effective way to reduce mercury from solid waste management facilities and from our environment.

Some business interests testified in vehement opposition to S.91, denying that there are significant levels of mercury remaining in production and manufacturing, that labeling of products for consumer education is unwarranted, and that there are no alternatives to mercury in light fixtures. The Senate did not completely accept these arguments and passed revised language that kept intact the widespread benefits such a bill would create. The final language was attached to a House product-labeling bill, H.14, which had already passed that body.

When the revised language from the mercury bill reached the House, some of the hollow arguments offered in the Senate by business interests resurfaced, and in an uncommon parliamentary maneuver the bill was recommitted to the House Natural Resources Committee to die. As a result, the possibility of advancement for the health and safety of Vermonters, especially children and women who are breastfeeding, are pregnant, or may become pregnant was buried in the House.

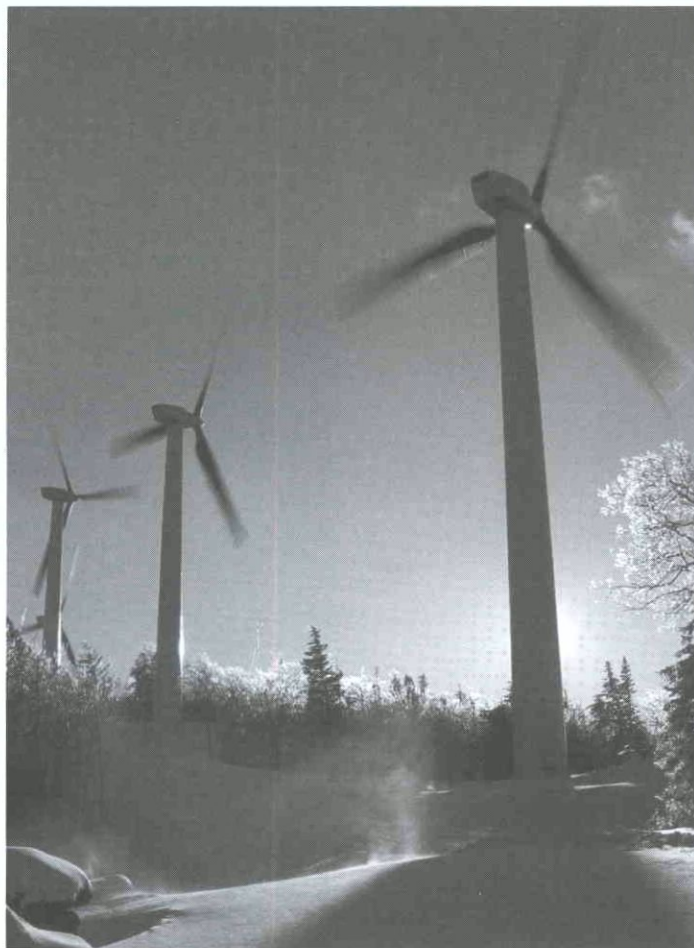
### RENEWABLE ENERGY

In what VNRC considers to be the biggest disappointment of the 2002 legislative session, the House effectively killed a bill that would have created incentives for the

promotion of renewable energy and energy efficiency in Vermont. Going into the session, it seemed as though party lines had started to dissolve as legislators realized that the economic value of enhanced renewable energy programs in Vermont were as valuable as the environmental benefits. Neither mattered in the end, however, as last minute testimony from IBM gave the House the excuse it needed to condemn the bill, S.264, to the House Natural Resources and Energy Committee—where it stayed for good.

As pre-legislative momentum began to build, the Vermont Department of Public Service presented an omnibus energy bill, S.264, which was supported by VNRC. This bill would have represented a small, but important, step towards the promotion of cleaner sources of energy while creating new tools for economic development in Vermont. Provisions in S.264 would have led to more stable energy prices, high-tech jobs, infrastructure tax base, and reduced external environmental costs.

This bill would also have facilitated Vermont's ability to keep millions of energy dollars within Vermont's borders. When Vermont Yankee Nuclear Power plant is sold, out of state and foreign companies will own about 3/4 of Vermont's electric generating capacity. Our electrical consumption accounts for 20% of Vermont's total energy use. The remaining 80% of energy is used for transportation, manufacturing, and heating. This energy is almost 100% fossil fuel derived, all of which is imported over great distances, and is subsidized by the federal government. Vermont is at the end of a fossil fuel supply chain and is consequently at great risk of supply shortages





and price volatility. A main thrust of S.264 was to move toward some modicum of energy independence.

S.264 was voted out of the Senate in huge bipartisan fashion by a 27-1 margin. The six major provisions in the bill would have:

- Created a Renewable Energy Portfolio Standard (RPS) to allow utilities to increase the amount of renewable energy they provide to their customers.
- Released \$750,000 from the Petroleum Overcharge Escrow Account to create a renewable energy rebate program to help businesses and homeowners buy solar and wind energy systems.
- Allowed groups of utility customers to "group net meter". This provision is particularly helpful for dairy farmers investing in methane collection systems.
- Eliminated the sales tax for solar hot water systems and for off-grid installations of solar and wind electric systems. (Currently the exemption is for grid tied solar and wind only.)
- Created rules for utility "green pricing" programs to allow rate payers to voluntarily pay a little bit more on their electric bill to increase the amount of renewable energy their utility buys.
- Created an alternative system for regulating the utilities to allow them more flexibility to develop incentives to increase energy efficiency.

The RPS was the sticking point for some members of the Senate. Opponents argued that a 4% renewable portfolio could have caused an increase in rates. However, analysis of a recent Energy Administration study showed that under a 10% national

RPS, the combined cost of electricity and natural gas would decrease by \$15 billion over the period 2002-2020. By replacing a portion of the total energy portfolio with renewables, the reduced demand on other sources would result in lower prices for those sources, leading to a reduction in overall energy costs. Furthermore, in-state renewable infrastructure would lead to more certainty in reliability of energy rates, as opposed to the long-term price volatility of out-of-state fossil fuel sources.

The Senate was able to work through the roadblock, however, and a compromise was ultimately reached that allowed for the RPS to be more flexible after 2006.

When the bill reached the House Commerce Committee, it changed dramatically. The RPS, the rebate program, and the alternative based regulation were all stripped out of S.264 before it was unanimously voted out of committee.

The watered-down version of the bill then made its way through two more committees before it was killed. The basis for killing the bill came from IBM, who weighed in on S.264 for the first time in the waning days of the session. IBM's testimony hit a different, and unexpected, note entirely. One provision that was left in the bill, green pricing, would have allowed consumers to voluntarily choose to buy their power from renewable sources. IBM claimed that it would look bad in the public's eye if they chose not to buy green power and others did.

Many businesses, large and small, worked with the Public Service Department and environmental organizations to construct a bill that reached an unprecedented balance between economic development and environ-

mental quality. Those efforts culminated in the original Senate version of S.264. VNRC is extremely disappointed that these collaborative efforts that date back more than a year were scuttled at the last minute for reasons that can only be chalked up to politics.

## CHAMPION LANDS

The debate over how the state owned portion of the former Champion Lands should be managed, the West Mountain Wildlife Management Area (WMWMA), spilled into the State House in full force this year. Although the session ended without any legislation passing, the debate may not be over any time soon.

A Special Treatment Area (STA) on WMWMA encompassing 12,500 acres that was outlined in the Vermont Agency of Natural Resources' management plan was at the

heart of the debate. Under the plan, uses within the STA, such as hunting, fishing, trapping, and snowmobiling will remain the same as they had historically, but logging will be prohibited. The remaining 9,500 acres on WMWMA, including over 4,000 acres of identified natural heritage sites that were guaranteed protection by both the 1999 legislation and the ensuing easements, will be actively managed, or logged, for game management. VNRC believes that the final version of the plan represented a predictable compromise that incorporated maintenance of a working forest and continued traditional recreational uses, but falls far short in protecting ecologically sensitive areas.

Some folks felt that the plan went too far in creating the STA in the first place, and dragged their case to the State House. Although hunting, fishing, and trapping were guaranteed in the easements, the concern seemed to be that



Bob Klein



these uses could be phased out over time.

Between resolutions, bills, and riders attached to spending bills, the Champion Lands battle seemed to crop up everywhere. The main vehicle, which VNRC opposed, was a House passed bill, H.567. VNRC's primary concern was that the bill went beyond guaranteeing usage for the sporting community, something that VNRC supported, and would have allowed for logging within the STA, thereby ignoring one of the highest concentrations of natural heritage sites in the state.

The Senate passed a Champion Lands bill of its own that reiterated the guaranteed right to engage in pedestrian recreational use on the entire WMWMA parcel, and set up a committee of interested parties to review the management plan every few years. The bill, S.275, passed unanimously.

Towards the end of the session, the likelihood of a bill passing hinged on the insistence of the House to scrap the STA. Although compromises were offered on other issues, the Senate and Governor Dean held firm on preserving the STA and no agreement could be reached.

While VNRC is pleased that some of Vermont's most precious ecological resources were protected in the end, it is hoped that efforts to manage other public lands in the future can avoid such conflict. The lessons learned on how to improve on a collaborative public process extend to all.

### ON-SITE SEPTIC

After nine years of failed attempts, the Legislature finally passed a major bill in the waning days of the 2002 session that will overhaul the

state's system for managing on-site sewage disposal. VNRC was instrumental in winning support for restrictions against septic systems on steep slopes, enhancement of groundwater protection, and provisions to guide planning in the future.

The bill, S.27, essentially closes the 10+ acre lot exemption in state subdivision regulations for new lots when the bill becomes effective this summer. State subdivision regulations now allow development on lots of 10 acres or larger with no septic system review.

Existing exempt lots can build out through July 1, 2007, without a permit as long as the system design meets the state performance criteria. Any new 10+ acre lots created between the effective date of the bill and November 1, 2002, can build out through July 1, 2007, with a permit that meets the minimum performance criteria.

As part of the bill, the Agency of Natural Resources (ANR) will adopt revised rules allowing the use of advanced technology alternative septic systems accompanied by diminished site conditions such as depth to groundwater and depth to bedrock.

Towns without both planning and zoning will not be able to use the site condition changes for five years. Towns with both planning and zoning can choose to use the updated site condition changes sooner if they wish through amendment to their sewage ordinance or zoning bylaws. After five years, the updated site conditions may apply in all towns. The state Agency of Commerce and Community Development and ANR will provide technical assistance and funds for planning assistance, as available, to help towns with their planning and zoning. Both are needed now that more

land will be come available for development with the site condition changes.

However, one aspect of site conditions that will not change is the 20% slope maximum. VNRC insisted that the 20% maximum slope be written into law, so that no attempts to increase to 30% (or higher), which was proposed in the earlier rules, would be made. It is important to point out that towns may continue to restrict development on slopes of less than 20% through their zoning bylaws.

Another provision of the bill that was essential to VNRC requires ANR to complete groundwater mapping by 2007. Although groundwater mapping has been required by statute since 1985, no completion date had ever been set. ANR must also report on the status of its work by January, 2003.

The legislation also requires the state to develop a model groundwater protection ordinance by July, 2003, in consultation with the Vermont League of Cities and Towns and the Vermont Association of Planning and Development Agencies. It is anticipated that towns will use the model ordinance and mapping information to create zoning overlays to protect their groundwater supplies.

The bill also reforms the permit process so that all septic systems and water supplies are treated consistently under one statute, rather than the current system where they are regulated in four different sections of ANR. The end result of the bill will be universal jurisdiction over septic system installation in Vermont. Either the state or the town, if it wishes to and meets the requirements for delegation of authority, will administer the new program, and only one permit will be needed.

All new septic systems will need to be designed by a licensed engineer or site technician. ANR will develop rules establishing different classes of site technicians and their authority to carry out review of various system types and sizes.

### DOWNTOWNS

A bill to encourage development in downtowns (H. 208) made it through the legislature this year and was signed into law shortly before the session ended. VNRC had worked with the Coalition for Vital Downtowns in developing the bill, particularly an element that would enable communities to implement land value taxation in their downtowns.

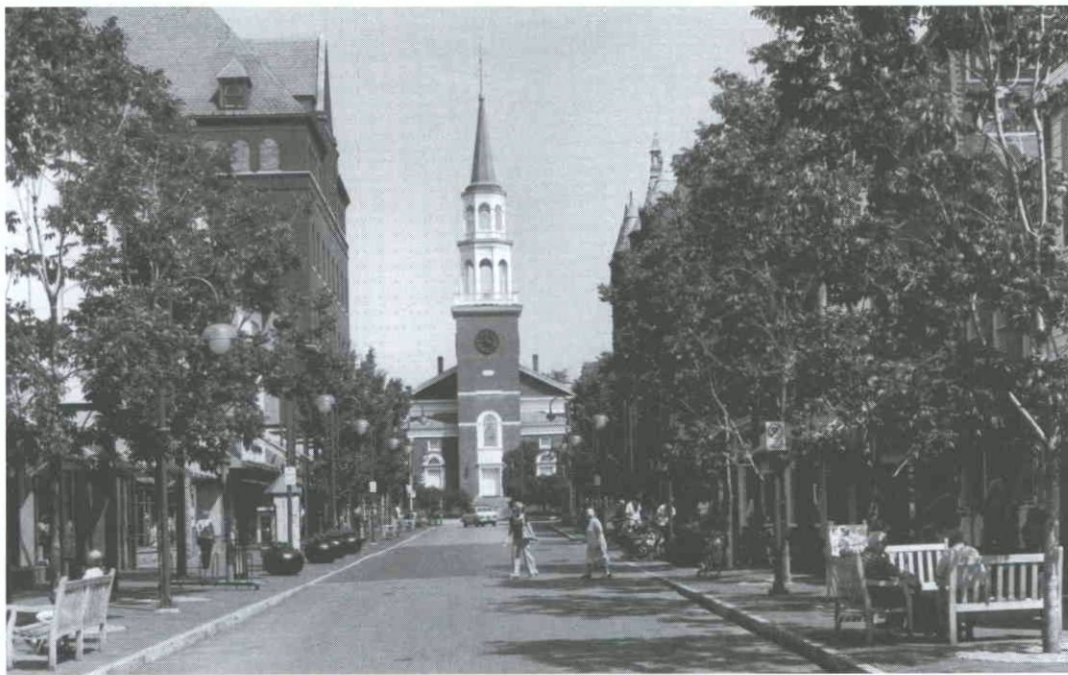
The bill essentially provides a range of enhancements to develop in Designated Downtowns, creates new processes to designate village centers and New Town Centers, and provides limited incentives for development in those places.

Highlights of the new enhancements for downtowns include:

- Creating a 50% income tax credit for construction of elevators, lifts and sprinkler systems
- Expanding the existing income tax credit from 5% to 10%, which is added to an existing federal income tax credit for substantial rehabilitation of qualified historic buildings;
- Creating a priority for state buildings to locate in downtowns

The bill also creates an Act 250 exemption for certain housing projects that provide for mixed income or mixed





housing and commercial in designated downtowns. VNRC did not support this provision, but was able to secure a safety net in the final bill so that developers could not take advantage of regulatory loopholes.

The legislation contains a study of land value taxation (also known as split rate or two-tier taxation) which VNRC had advocated for as part of its work with the Vermont Fair Tax Coalition. The study, to be conducted by the Legislative Council and the Joint Fiscal Office by January 2003, will evaluate the feasibility of enabling communities to levy separate and different rates of taxation on land and buildings in designated downtowns.

Land value taxation could be an important tool in revitalizing downtowns and helping to curb suburban sprawl. Under land value taxation, the taxes on a vacant downtown lot or a lot with a deteriorated, empty building can be almost as high as a similar lot with a high quality building. A system like this could encourage property owners to make the highest

and best use of their property, by building on vacant land, maintaining and renting existing buildings, or selling the land to someone willing to improve it.

### **SALES TAX EXEMPTION ON NON- AGRICULTURAL PESTICIDES AND FERTILIZERS**

One of the top priorities of the Vermont Fair Tax Coalition has been the elimination of the sales tax exemption for non-agricultural use of pesticides and fertilizers. In what VNRC considers a small victory, the elimination won final passage late in the session as part of a bigger bill that included changes to the state income tax and an increase in the cigarette tax to \$.75 over the next two years. The Coalition, led by VNRC, Vermont Businesses for Social Responsibility, Friends of the Earth and the Vermont Public Interest Research Group, advocated closing the loop-

hole as a positive step towards improving water quality.

In Vermont, no sales tax is paid on fertilizers and agricultural chemicals, including pesticides, herbicides and fungicides. Although originally designed to aid farmers, the exemption has been overly broad, extending benefits to commercial lawn applicators, golf courses, ski areas and industrial interests, as well as homeowners who can buy these products off the shelf.

Under the new legislation, farmers will continue to be exempt from the tax, but all non-agricultural sales of these products would be subject to the tax. The goal was to target funds generated from closing the exemption to improving water quality. This would have included stream and lakeside buffer acquisition, including financial and technical assistance to farmers, and through enhancements to the non-point source pollution program, with particular emphasis on storm water management. In the final negotiations, however, the legislature agreed to direct the proceeds to the state General Fund.

### **AGENCY OF NATURAL RESOURCES BUDGET**

It was a tense year for Agency of Natural Resources (ANR). Although Governor Dean had proposed an additional \$2.8 million for ANR, enough federal money had dried up so that they were still in the hole. Cuts in appropriations appeared most notably in the Wetland division at the Department of Environmental Conservation, the division that serves a dual purpose of protecting wetland values and functions while providing technical assistance to folks working on projects in or around wetlands. The goal was to make up the money in the Fee Bill, the bill that sets the permit fees for the Wetlands Division.

Ultimately, the House provided the fees necessary not only to keep the program whole, but also to provide for an additional position that would assist farmers with potential wetland conflicts. The Senate narrowly passed a compromise version that would have cut the program by at least two staff. The House held firm, however, and enough money will now be provided by the fees to keep the program at its current staffing level. (See Wetlands)

This also marked the year where many legislators, and especially those in the business community, realized something that VNRC has known for years: the stormwater permitting division is so dramatically understaffed that over 1,000 stormwater permits have expired. The lack of attention to the stormwater program has been the underlying cause of conflict surrounding permitting of stormwater discharge in Chittenden County. No new money was made available to



help ANR focus more attention on what has become the fastest growing threat to water quality in Vermont, so it will be up to personnel heads to shuffle staff around to cover the stormwater program.

### WETLANDS

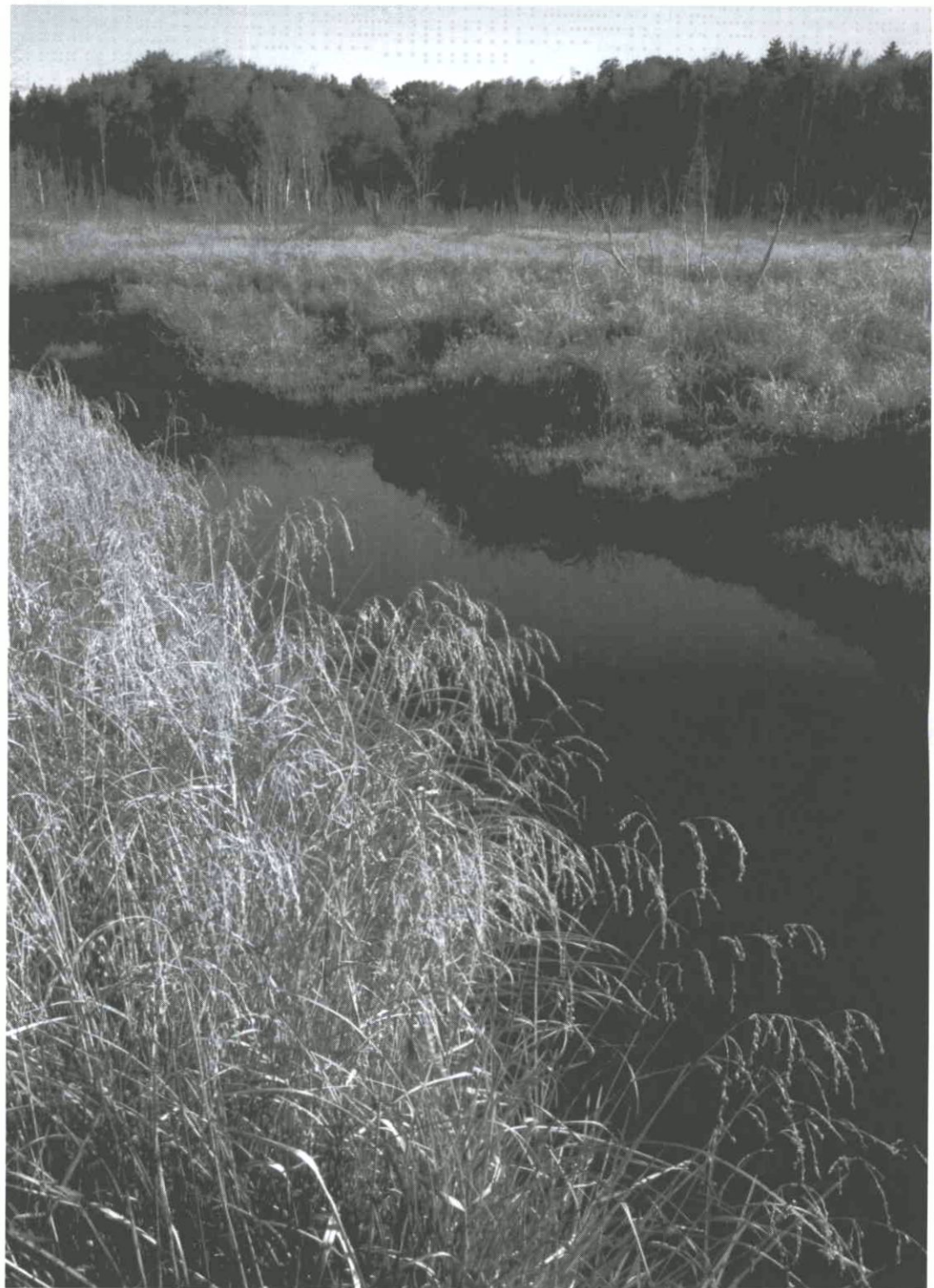
Wetlands received more attention this half of the biennium than usual. On the good side, the legislature finally approved a fee-based funding source for the Vermont Wetlands Program, housed within the Water Quality Division of the Agency of Natural Resources. For years, this program has survived on a shoestring budget, with most of the funding coming from unstable federal sources. Federal sources began indicating that unless the State of Vermont showed some significant interest in the program by providing a stable funding source itself, the federal funds would be harder to secure. The result would have been fewer staff members to implement Vermont's wetland laws. As a practical matter, this meant that the program would have had to devote fewer hours to positive conservation efforts and would have taken much longer to process permits for activities within wetlands or their buffer zones. Thanks to advocacy in the House on the fee bill, those who wish to impact our wetland resources must pay for Wetlands Program review of their proposals. (See Agency of Natural Resources Budget)

On the bad side, Vermont's wetlands were under attack. A few farmers in Franklin County have found themselves subject to enforcement actions by the United States Attorney and the United States Environmental Protection

Agency for alleged willful violations of federal wetlands laws. In one case, as much as 50 acres of wetland were put under the plow. None of the current enforcement actions are pursuant to Vermont law. Nevertheless, an attempt was made to weaken Vermont's

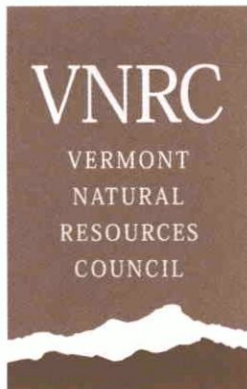
wetland laws. A provision was voted out the House Agriculture Committee that would have exempted most of Vermont's farmers from wetland laws. This evolved into a push to have the legislature endorse a resolution that advocated approval of a

federal permit that would have been in violation of federal law. This very strange resolution was passed by the House, but was substantially modified in the Senate to reflect the appropriate standards from the federal Clean Water Act.



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## HOUSING AND CONSERVATION TRUST FUND

Funding for the HCTF, through a portion of the property transfer tax, was maintained at a reasonable level, slightly over \$11 million, or roughly the same as last year's allocation.

## MUNICIPAL AND REGIONAL PLANNING FUND

In the coming year, municipalities will receive about \$753,984 for planning grants, while the twelve regional planning commissions will share about \$2.6 million to support their activities. These funds represent a proportionate share of the property transfer tax receipts and show

an 8% increase for municipalities and a 5% decrease for Regional Planning Commissions from last year.

## CURRENT USE

Another provision buried in the income tax/cigarette tax bill cuts the penalty for development of lands in the current use program from 20% to 10% of fair market value after ten years in the program. Previously, Vermont statute called for a straight 20% land use change tax whenever the land was developed.

VNRC had supported leaving the land use change tax at 20% in order to ensure the public investment in current use would result in the benefit of land remaining undeveloped over the long term. Proponents of the change to

10% argued that 20% penalty resulted in fewer participants enrolling in the program. Contrary to that argument, however, a legislative study done last year noted that net enrollment in the program

had been increasing steadily from 1997, the year the penalty was changed to 20%.

In the legislative end game, current use became a pawn in a much larger chess match to gain passage of the income, cigarette and other tax measures. Senator Shumlin revived the current use provision, which had passed the house as a reduction from 20% to 10% no matter how many years in the program, to help put the "deal" together. Also included was the elimination of the sales tax exemption on non-agricultural pesticides and fertilizers.

In one of the final pieces to be negotiated, the house-senate conference committee decided on a "compromise" of 20% for the first ten years and 10% thereafter. While not as drastic as the flat 10%, it still represents a step backward for this important program.



Vermont Department of Agriculture