

Bulletin & Legislative Update

THIS YEAR'S TOP ISSUES AT A GLANCE:

PERMIT REFORM DERAILED BY POLITICS

Water Board Stands Up For Clean Water

The 2003 legislative session ended on Friday, May 30th at around 7:30 p.m. While conclusion was reached on many hotly debated issues, the wrangling over reforming Vermont's environmental permitting process was left unreconciled.

House and Senate negotiators could not agree on the underlying problems in the permit process, let alone how to consolidate the appeal process for contested environmental permits. During the waning hours and minutes of push and shove on "permit reform," the administration did little more than watch from the sidelines.

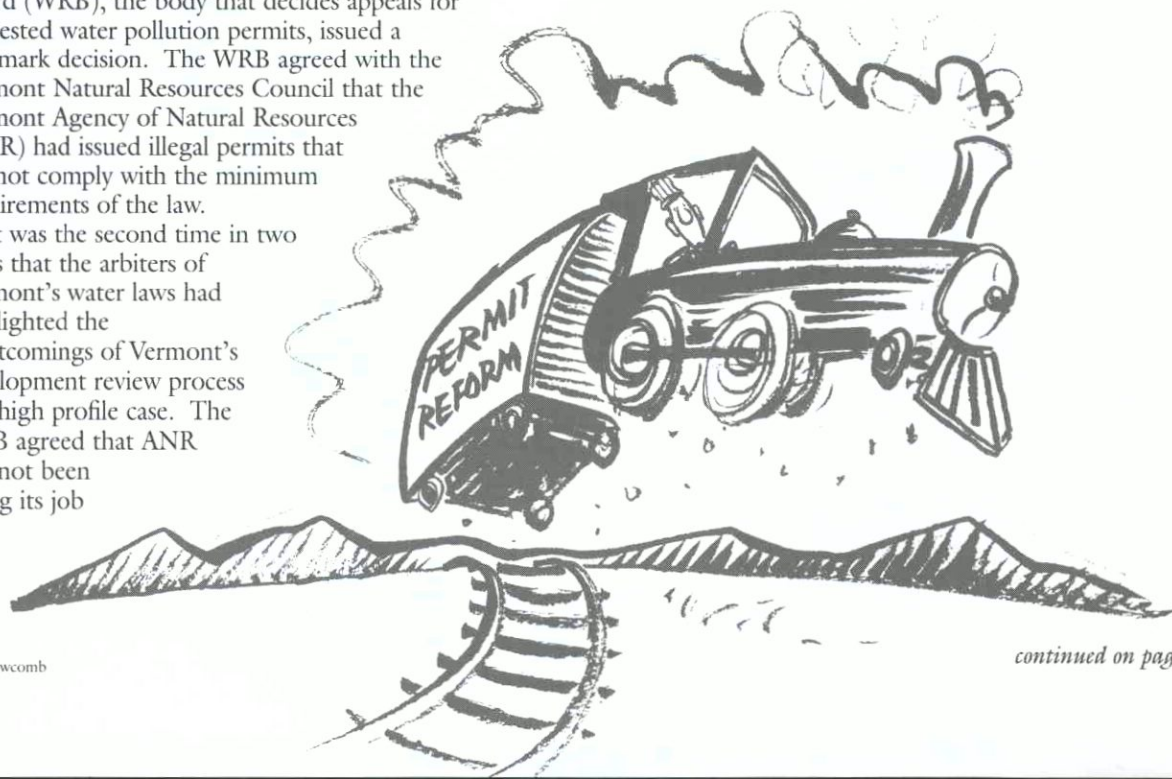
On the following Monday, the Water Resources Board (WRB), the body that decides appeals for contested water pollution permits, issued a landmark decision. The WRB agreed with the Vermont Natural Resources Council that the Vermont Agency of Natural Resources (ANR) had issued illegal permits that did not comply with the minimum requirements of the law.

It was the second time in two years that the arbiters of Vermont's water laws had spotlighted the shortcomings of Vermont's development review process in a high profile case. The WRB agreed that ANR had not been doing its job

of protecting Vermont's environment and was ignoring the laws designed to protect the waters of Vermont.

In a classic case of perfect timing, the WRB has inadvertently shown that the Governor had missed the mark with his proposal for permit reform.

The Administration's proposal focussed on the tail end of the process, the appeals level, by funneling all local, state, and Act 250 decisions to one understaffed, underfunded court—a recipe for a permitting quagmire. As the WRB showed, the Administration's plan struck out on resolving real issues because it failed to address one of the true underlying problems in the permit



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2003 LEGISLATIVE UPDATE



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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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process: the Governor's own Agency of Natural Resources.

Ironically, the H. 175 creed of consolidating all local, state, and Act 250 appeals as the panacea for solving (what are actually national) economic woes was false. H. 175 did not consolidate appeals. H. 175 took all of the appellant bodies for contested permits and shrunk them into one court, consolidating permitting staff, but not appeals. Under H. 175, there were no mechanisms to actually reduce appeals. H. 175 would have done little to change the status quo.

The Administration also wanted to make ANR permit decisions for air and water pollution unchallengeable in Act 250 cases. Since 1993 ANR decisions have been challenged in Act 250 only eight times. In six of those cases, ANR's determinations were overturned, leaving ANR with a discouraging .250 batting average for decisions to protect our environment. And even though ANR's excuse for issuing illegal permits is a lack

of resources, the Governor proposed to cut ANR's budget by 8%.

Another provision included in the Administration's plan that VNRC opposed was a provision called "on the record." This would turn the currently informal meetings at the District Commission level into formal, legalistic hearings, and intimidate regular Vermonters from participating in the permit process. A less onerous pilot program for "on the record" has been available over the last two years and no applicant has ever used it.

The House passed the Governor's proposal, in the form of H. 175. On the floor, the provisions for consolidated court and making ANR decisions final were almost stripped out. In the end, H. 175 passed by two votes more than a bare majority.

The Vermont Senate took a different approach to permit reform. The Senate unanimously passed a bill that took over two years to craft, was widely supported by a

broad spectrum of interests, and repaired the foundation of the permit process by tackling the difficult local issues first.

Unfortunately, the Senate's proposal was buried by a procedural move. The House attached to H. 175 and held it as leverage until the session ended.

The upshot is that during the 2003 legislative session, "permit reform" did not seem to be about policy. Instead, the debate became a case of politics trumping policy.

It didn't have to be this way.

Before the start of the session, VNRC worked diligently with business leaders to craft meaningful, thoughtful solutions for making Vermont's system of permitting development projects work better for the environment and businesses. That process was derailed when the Administration presented its proposal, one that lacked creativity and consensus. There actually seemed to be an underlying strategy of dividing Vermonters over an issue rather than bringing them together.

The Governor's proposal was designed to kill the messenger by cutting the citizens who help protect Vermont's environment out of the process.

VNRC believes that the process of reviewing development projects can be more effective, efficient, and predictable, without compromising citizen participation and environmental protection.

Incorporating better and more coordinated planning could help remove the "yellow light" that leaves applicants wondering whether or not a project is appropriate for a location. It also would allow citizens the opportunity to get involved in how they shape their communities. Act 250 criteria could be strengthened to help curtail sprawling development projects that tap resources for infrastructure, infringe on wildlife habitat, and impact water resources. Budget decisions can reflect the staffing and financial needs at ANR's permitting and environmental protection

divisions. Better enforcement would not only level the playing field for responsible development projects but also ensure that degradation of our natural resources does not go ignored. None of these ideas are on the table.

But now permit reform hangs in limbo. Governor Douglas has said that he will call a special legislative session where members of the House and Senate conference committee can work out their differences. However, the H. 175 Committee of Conference is focussed on a narrow set of issues which do not address the real problems of environmental permitting in Vermont. VNRC believes that such a strategy will sell short both our economy and our environment. There is more that can be, and should be, done to bring Vermonters together and put permit reform behind us once and for all. VNRC is eager for real collaboration and is looking for the leadership that is needed to get the job done.

RENEWABLE ENERGY BILL SQUEAKS THROUGH

It finally happened. After years of effort, VNRC was able to push a renewable energy bill through the legislature and to the Governor's desk. Special thanks goes to our friends in the Renewable Energy Coalition including Vermont Businesses for Social Responsibility, Renewable Energy Vermont, and the Vermont Public Interest Research Group.

While this year's bill is only a small step towards promoting Vermont's renewable energy future, at least Vermont can start the process of catching up to other states in New England. Among other policies, most neighboring states have implemented a "renewable portfolio standard" (RPS) which requires that a certain percentage of the state's energy load comes from renewables. Unfortunately,

Vermont will have to wait a little while longer.

A good renewable energy bill made it through the Senate last year just one vote shy of a unanimous endorsement, only to die in the House. This year both chambers used the 2002 legislation as the starting point, and passed fairly similar bills in 2003. The major difference was over the RPS, a key provision supported by VNRC. While the Senate opted to include the RPS, which was endorsed by the Senate Natural Resources committee under the leadership of Senator Ginny Lyons (D-Chittenden), House sponsors realized that it would be a tougher sell in the House.

Lead sponsors in House, Commerce Committee Chair Mark Young (R-Orwell) and Representative Tony Klien (D-Montpelier), convened a stakeholders group early in the session to build consensus and momentum in the House. While the RPS was ultimately not included in the House



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bill, H. 248, Representative Young deserves a lot of credit for taking a leadership role on the issue and helping to avert the death sentence that befell the renewable bill in 2002. Instead of implementing an RPS immediately, the House bill directed the Public Service Board to draft a proposal for a Renewable Portfolio Standard to be reviewed by the legislature when they reconvene in January. The House version is what passed by session's end. There still hope for Vermont.

Other provisions in the final bill included:

- A Green Pricing program allowing customers to voluntarily choose to purchase their energy from renewable sources.
- An Alternative Based Regulation incentive to reward utilities for investing in energy efficiency and renewable energy
- \$626,000 dollars in a rebate plan for investment in renewable energy infrastructure.

ANR BUDGET FALLS SHORT

After several years of essentially flat funding, the Agency of Natural Resources (ANR) received its first significant funding increase last year. Unfortunately, much of this increase evaporated in the interim, leaving ANR with a struggling financial situation. The administration recommended cutting the budget by 8%.

In addition, the administration budgeted to fund only 50% of the Pay Act in 04 -- which means all agencies will have to find the other 50% within their already reduced budgets.

Taking these two actions

together, the upshot for FY 04 is that ANR will face some pretty large funding cuts, a development that will effect ANR's ability to protect the environment and review permits in a timely fashion.

Other ANR Budget Items of Interest:

- The Senate agreed to a House proposal for a wildlife management biologist, but not before the job description was altered so that when crafting management plans, consideration must be given to both active management and passive management.
- The House removed the remaining \$59,000 of a \$100,000 fund which ANR was slowly using for a survey of the former Champion lands in the Northeast Kingdom.
- The Senate added language ordering a report from the secretary on what actions are being taken to make the permit process more efficient, more timely, and better coordinated within ANR. Interestingly, despite all the rhetoric about "permit reform," the administration proposed no new money and no new positions to help accomplish this goal.
- The Senate proposed funds for two new permit specialist positions but withdrew the proposal when no progress was made in the permit reform conference committee.
- The House added an Act 250 exemption for work on snow mobile trails and parking lots. The best the Senate could do was put a two-year sunset on the exemption.

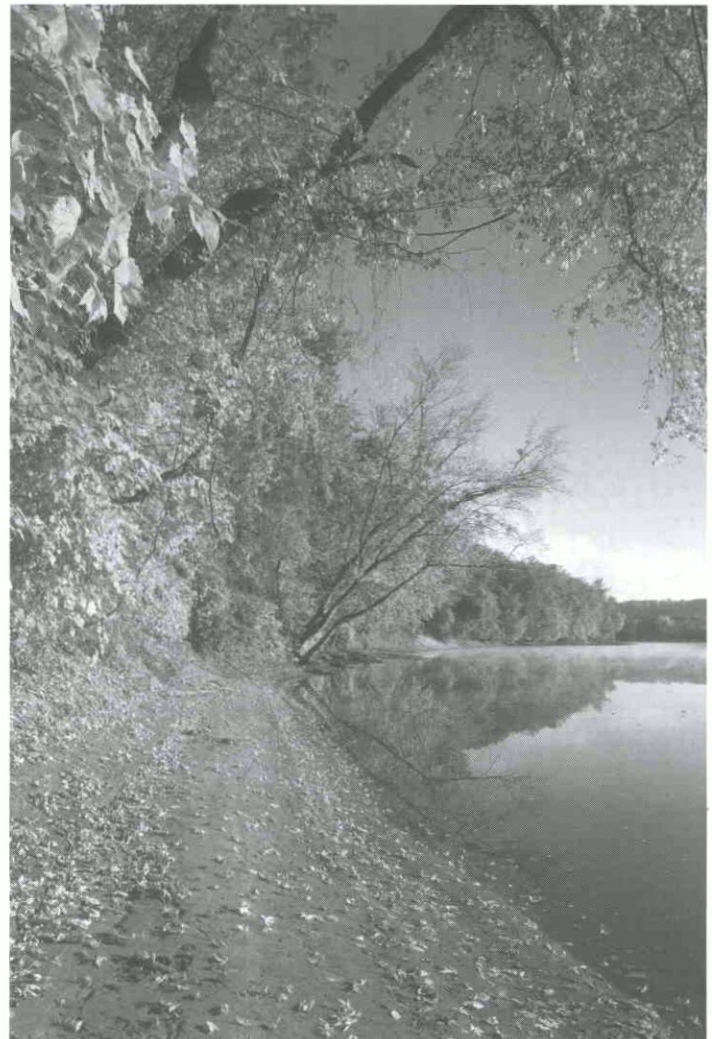
MANAGEMENT POSITION FOR STATE LANDS

VNRC has long been supportive of increasing staffing and financial assistance for state land management planning. This goal finally a jump-start when budget negotiators agreed to include a new position for the Vermont Department of Fish and Wildlife (DFW). The new Lands Management Wildlife Biologist will assist the DFW Commissioner in developing lands management plans and in managing land owned by the DFW.

The original intent of the legislation was to fund the position through a land management account made

up of revenues from timber sales on DFW lands. In other words, funding for the position would have been solely tied to revenues created from logging on Wildlife Management Areas. VNRC was concerned that such a funding scheme could create an incentive to promote logging over other land management techniques to finance the position.

VNRC testified that management planning for wildlife areas must consider many aspects of forest management including non-game management and sustainable harvesting techniques. VNRC offered two possible solutions. First, VNRC recommended that the sustainable "certification" of state lands by a third party



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would be one way to ensure proper land management while funding a DFW position. Another option was to find another revenue stream.

The House Fish and Wildlife Committee, under the bipartisan leadership of Chairman Steve Adams (R-Hartland) and Vice-Chairman Mark Larson (D-Burlington) chose the latter suggestion and modified the bill so that the position be funded solely through the general fund with no strings attached to timber harvesting.

The language was further strengthened by Senator Dianne Snelling (R-Chittenden) and Senator Gerry Gossens (D-Addison) when a provision was added stating that "in developing lands management plans, and in managing land owned by the department of fish and wildlife, the commissioner of fish and wildlife and the lands management wildlife biologist shall ensure that consideration is given to both active and passive management."

Passive management requires allowing natural processes to shape the landscape. VNRC is pleased that the Department will have additional staff to promote the development of management plans for wildlife areas, and we are encouraged that the Legislature recognized the need for balanced consideration of wildlife management planning.

HOUSING AND CONSERVATION TRUST FUND

As a member of the Housing and Conservation Coalition, VNRC helped secure adequate funding for the Housing and Conservation Trust Fund

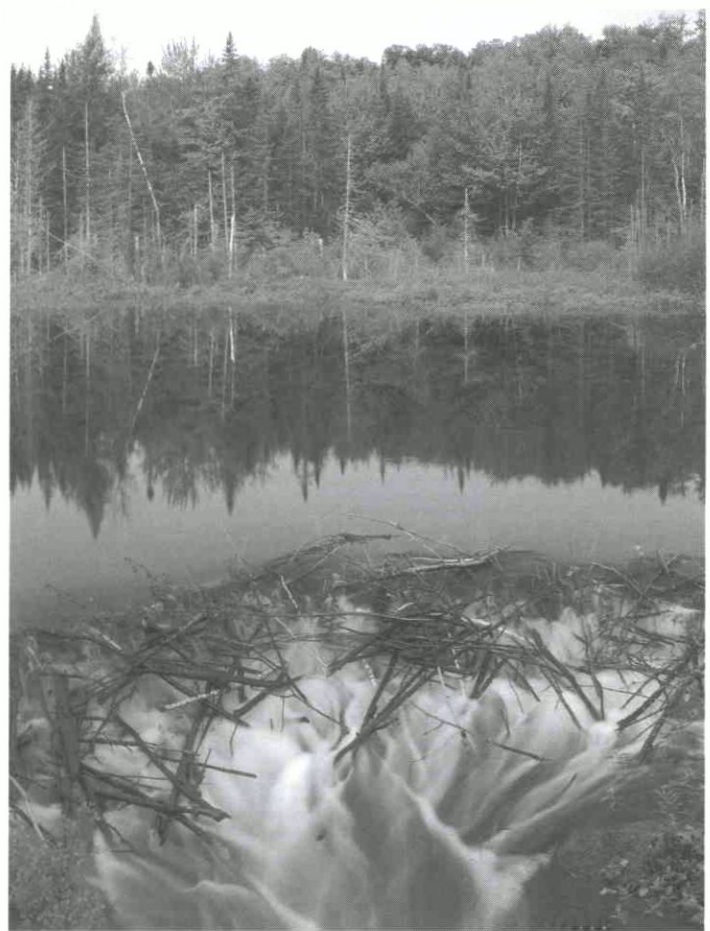
(HCTF), despite the worst attack on the fund since its inception in 1987.

This year, the HCTF will receive slightly over \$11 million from the property transfer tax proceeds, an amount higher than that recommended by the Administration and the House. Although the Trust Fund's projected statutory share would be \$14.2 million, pressures on the overall state budget resulted in diversion of property transfer tax funds to the general fund.

If the property transfer tax revenues come in higher than projected in January, the amount accrued over the projection will go into the formula set out in statute for dedication to the HCTF and municipal and regional planning. There will also be a diversion of \$100,000 of non-profit capacity grants for a management review of housing non-profits by the Agency of Administration.

MUNICIPAL & REGIONAL PLANNING FUND

Cities and towns, regional planning commissions, and the Vermont Center for Geographic Information will all receive the same amounts in 2004 as they did this year. This is not as stellar as it may sound. The source of the funds, the property transfer tax, is performing very well. Approximately \$965,000 that should have gone into the fund for FY 04 was diverted to the General Fund instead. Several local and regional planning projects that were in the hopper will not receive funding. The challenge next year will be to rededicate the property transfer tax revenues to planning.



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CAPITAL BILL RIDERS... AGAIN

It was deja-vu all over again on the floor of the Vermont House as debate raged over environmental issues tacked onto the Capital Bill, a must-pass piece of spending legislation. Unfortunately, trying to extirpate environmental policy out of the House Capital Bill has become an annual rite for VNRC.

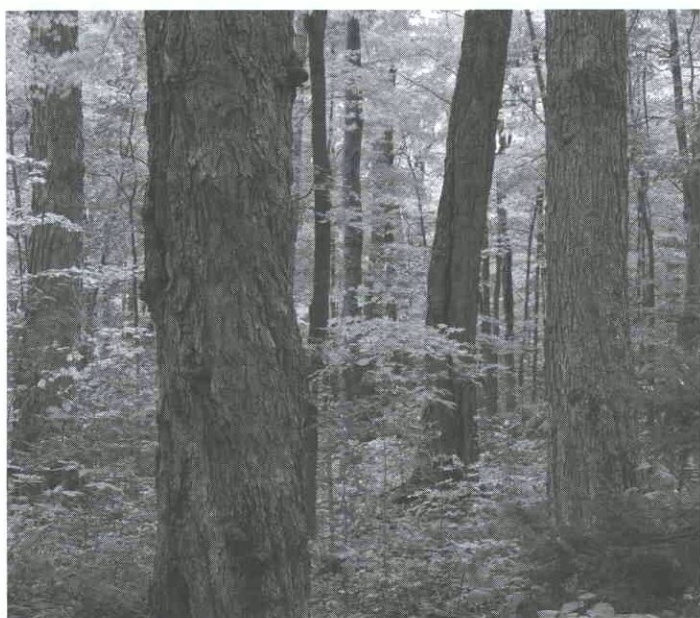
Smart Growth Sewer Rule Threatened

In 2001 the Dean Administration initiated a redesign of the state's process for funding wastewater projects based on a priority system. The Legislative Rules Committee approved the rule in August 2000 after 18 months of meetings and

public hearings by both the committee as well as a stakeholder group with over 50 members, including VNRC.

The goal of the rule is to encourage smart growth, protect the environment, and protect public health through the management of the capital fund program for wastewater projects. The rule encourages state funding on sewer projects in downtowns and growth centers, and makes it more difficult to fund sewer lines that will encourage sprawl. This year the House sought to repeal the rule. By the time the legislative soup was cooked, the Capital Bill conference committee agreed to preserve the rule, but allow for a study by the Agency of Natural Resources to identify any problems that might exist with the rule and then report back to the legislature in

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December. This may included a reconvening of the original stakeholders group. VNRC will continue to track this issue over the next year.

Public Lands Giveaway

In what VNRC billed as the Great State Lands Giveaway of 2003, the House debated a proposal that would have shifted sole authority over the sale of public land, specifically for private commercial and residential development purposes, to town selectboards and the Secretary of the Agency of Natural Resources.

Representatives Willem Jewett (D-Ripton), Robert Dostis (D-Waterbury), Margaret Hummel (D-Underhill), Floyd Nease (D-Johnson), and Mary Peterson (D-Williston) offered an amendment to kill the policy rider, a move that inspired a heated floor debate and the request for a roll call vote. The fate of the provision was decided by one vote, with the Speaker of the House Walter Freed (R-Dorset) casting the final vote to ease the privatization of public lands for commercial purposes.

In a surprising move the

following day, Representative George Cross (D-Winooski) offered an amendment to strip out all of the bad privatization language. The proposal passed, leaving the language all but meaningless. Local selectboards will still be able to identify specific parcels of state lands that might be appropriate for return to private ownership, but all existing criteria and legislative oversight related to land transfers will remain on the books.

JOBS BILL PASSED

This year's legislature also passed a job creation and development bill that includes a new sustainable technology research and development tax credit, as well as a sustainable technology export tax credit. The credits may be received against income tax liability in the amount of 30% of expenditures for design, development, or manufacture of computer software, machinery, or equipment used to generate electricity using renewable energy sources. The bill also increases the loan amount that a business can receive from the Vermont

Economic Development Authority for a building that incorporates energy efficiency and renewable energy measures.

ACT 60 CHANGES MADE

This year the legislature made significant changes to the education funding law (Act 60). These changes maintain equal access to educational resources for all Vermont students and put approximately \$50 million into property tax reduction.

The state per student grant to schools was increased to \$5810 for the 2003-2004 school year. This will have the effect of reducing the tax rate by 3.9 cents below Town Meeting projections in most towns.

In a nutshell, the new law (H.480):

- Creates a two-part statewide school tax: residential and non-residential
- Represents a tax shift by lowering property taxes for schools and increasing the sales tax from 5 to 6 %
- Continues to allow most Vermonters to pay for schools based on their income
- Establishes obvious tax consequences for each town's education spending decisions
- Demonstrates clear relationship between local spending for education and education tax bill
- Provides for additional study of policy issues.

The law also includes a new term - "homesite" - which will mean a house and two acres. The value of that

property will be used in income-sensitivity calculations. The new definition of "homestead" is a house and all contiguous land. Land beyond the two acres of the homesite will be taxed at the residential rate, and a \$10 per acre rebate will be given for the first five acres.

GMO SEED BILL DIES IN THE HOUSE

Concern over Genetically Modified Organisms (GMOs), a hot topic in Europe for years, found in its way into the Vermont State House, specifically relating to genetically modified seeds. The Senate passed a bill, S. 182, that would have created a definition of genetically modified seeds, required manufacturers to label those seeds appropriately, and required that the amount of GMO seeds sold in Vermont be reported to the Department of Agriculture. The bill did not require identification of farmers who bought the seeds, and did not place any burden on seed dealers.

VNRC supported S. 182 not only for reasons of public interest and the rights of Vermonters to know how their food is produced, but also for the potential advantages to Vermont farmers who would have the opportunity to tout their products as "GMO free." The niche for GMO free products is growing in the United States.

Agriculture Secretary Steve Kerr, Governor Douglas, and House leadership opposed the language as unnecessary, and as a possible mechanism for more stringent regulation in the future. As a result, the language in S. 182 never made it out of the House and to the Governor's desk.

VNRC ACROSS VERMONT

1 SolarFest: Join VNRC at what the Vermont Chamber of Commerce (and VNRC staff) call "one of Vermont's 10 best events." SolarFest is a fun family event that incorporates music, performance and art into an educational opportunity about renewable energy and sustainable living. July 12 & 13, Green Mountain College, Poultney, VT. Find out more at www.solarfest.org. ☺

2 JH Lumber and Mill: John Hurley is a horse logger and biodiesel manufacturer. Learn more about bio-diesel and how John uses this vegetable oil to power his mill. We'll also take a walk through John's woodlot and learn about sustainable forestry. Berlin. July 15, 5:00- 8:00pm. Pre-register.

3 Searsburg Wind Turbines: There currently is only one wind farm in Vermont, the Searsburg Wind Farm, but several more are proposed. See for yourself what these wind farms look like, what they sound like and what kind of impacts they have on the ridges. Searsburg, VT. July 23, 11:30am- 1:00. Pre-register.

4 Chittenden County Uplands Naturalist Field Trip and Barbeque: Join Sue Morse of Keeping Track, Inc. as she takes us through some proposed conservation lands of the Chittenden County Uplands and learn how conservation improves wildlife habitat and community. The evening will end with a barbeque and discussion hosted by Sue Morse. Jericho, VT. July 25. 3:30- 7:30 with a Keeping Track BBQ provided afterwards. \$30 members, \$40 non-members (includes dinner) Pre-register.

5 Big Branch Wilderness Naturalist Field Trip: The Green Mountains provide some of Vermont's cleanest and coldest water for drinking, recreation and wildlife habitat. Explore remote ponds, streams and wetlands in the Big Branch Wilderness with naturalist Elizabeth Cooper. Mt. Tabor. July 26,

10:00am to 5pm. Suggested donation of \$10 for members, \$15 for non-members. Pre-register.

6, 7, 8 Renewable Energy Workshops: To learn more about home renewable energy systems, join VNRC and Global Resource Options for a presentation on how you can bring renewable power into your home, how much it will cost, how you can tap into incentives and more. Brattleboro, St. Michael's Episcopal Church, July 23. Bennington, St. Peters Episcopal Church, July 30. Burlington College. Aug 6

9 Cobb Hill Tour: Cobb Hill in Hartland is a development focused on sustainable living. Tour this development with VNRC and learn about how green building design, the highest level of energy efficiency and a strong belief in sustainability has made this environmentally friendly community a reality. Hartland. July 28. 5:30-7:30pm. Pre-register.

10 Lake Champlain Boat Ride: Join Lake Champlain's Lakekeeper Rob Moore as we take a sunset boat trip on Vermont's largest lake. Along the way we'll learn about the ecological properties that make Lake Champlain a world class destination as well as the current threats facing the Lake. South Hero. August 13th, 3:30- 7:30pm. Pre-register.

11 Clyde River Canoe Trip: The headwaters of the Clyde River is one of the most hauntingly beautiful places in Vermont. As we snake our way through the river's marshes we'll get a firsthand look at the outstanding wildlife habitat and water quality that these important wetlands provide. East Charleston, VT. August 16, 11:00- 5:00. Suggested donation of \$10 members, \$15 non-members. Pre-register.



☺ – Kid-friendly event

To pre-register for the events call us at 223-2328 or see www.vnrc.org

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HELP US CELEBRATE VNRC'S 40TH BIRTHDAY!

Founded in 1963 by farmers and foresters, VNRC has been working for the past four decades to protect Vermont's natural resources. Throughout the years, VNRC staff, board, and thousands of members and volunteers have donated their time, money and efforts to restore and preserve Vermont's environment for present and future generations.

Our first anniversary celebration on April 19th with Amory Lovins was a great success. Over 250 people joined us at Landmark College in Putney, Vermont. Amory Lovins, co-author of *Natural Capitalism, Creating the Next Industrial Revolution* was on hand to give a presentation and take questions from the audience. VNRC also presented Governor Douglas with energy resolutions from 79 Vermont towns that are working to reduce consumption and looking at alternative energy sources.

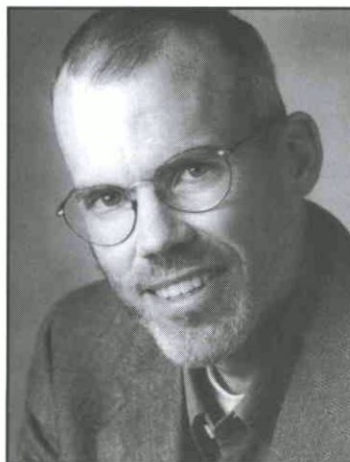
Join us again on August 14th in Manchester, Vermont with Bill McKibben and Frances

Moore Lappé. McKibben, author of *Enough, Staying Human in an Engineered Age*, will be discussing the slippery slope of the ability to re-engineer ourselves and therefore the very meaning of human identity. Lappé's book,

Hope's Edge: The Next Diet for a Small Planet, demonstrates solutions to environmental crises and social inequalities. Jay Parini, poet, will also be there.

On October 11th we will host our final celebration at Shelburne Farms' Coach Barn with the author of *The Restoration Economy*, Storm Cunningham. Cunningham will speak about his theory, which is that the Restoration Economy is the environmentally responsible economic engine of the future. Poets Grace Paley, Galway Kinnell and Ellen Bryant Voigt will also give readings.

Join us for food, fun, music and more! Go to our website at www.vnrc.org for more details!



Bill McKibben