

Bulletin & Legislative Update

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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.

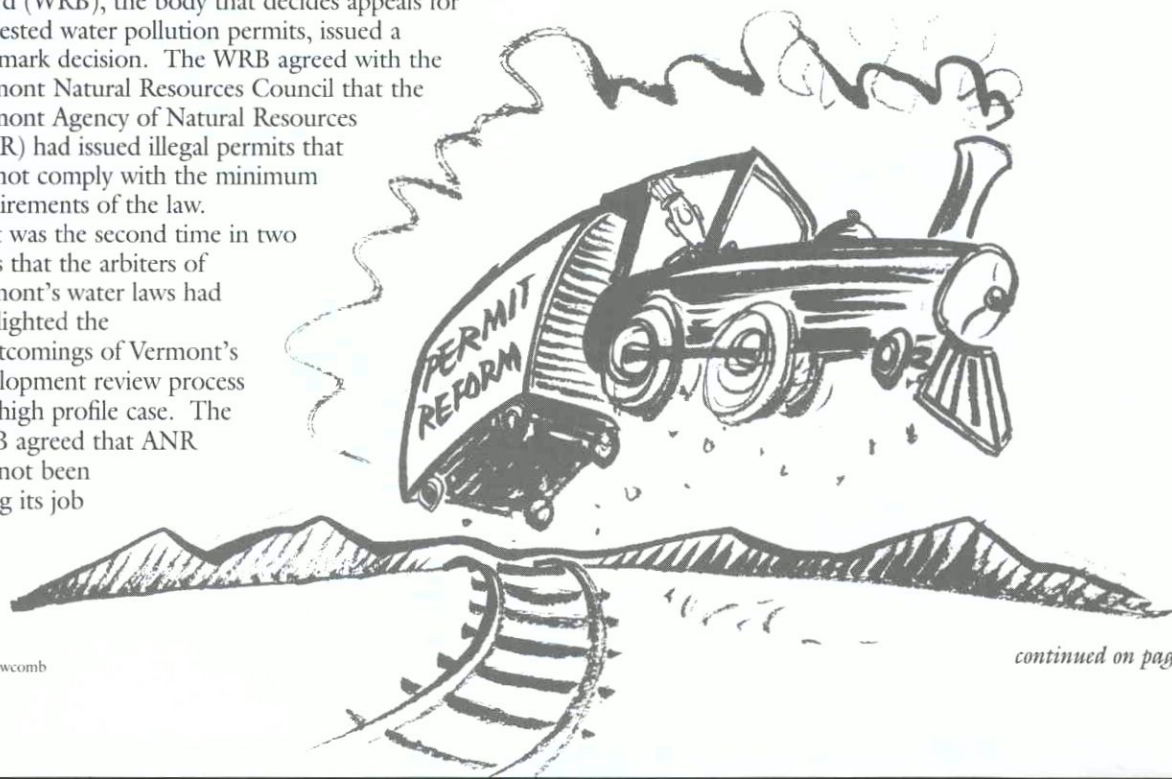
On the following Monday, the Water Resources Board (WRB), the body that decides appeals for contested water pollution permits, issued a landmark decision. The WRB agreed with the Vermont Natural Resources Council that the Vermont Agency of Natural Resources (ANR) had issued illegal permits that did not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

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.