

Bulletin & Legislative Update

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THIS YEAR'S TOP ISSUES AT A GLANCE:

VNRC was once again the lead presence in the State House on environmental issues. In the face of a growing business lobby, we managed to minimize the damage while playing key roles in passage of good legislation. But that hardly tells the whole story. Vermonters may be very surprised by how poorly Vermont's environmental ethic was reflected in the State House. Here are the summaries of what happened:

PERCEPTION REFORM

"Future generations will not point to H.175 as a landmark piece of legislation. In fact, I expect that this bill will set the stage for a technical correction bill as early as next January, a substantial empowerment of the judiciary, and the exclusion of non-lawyers from the process unless they have lawyers."

— Remarks of Senator Vince Illuzzi on the H.175 Committee of Conference Report on "Permit Reform" Vermont Senate, April 22, 2004

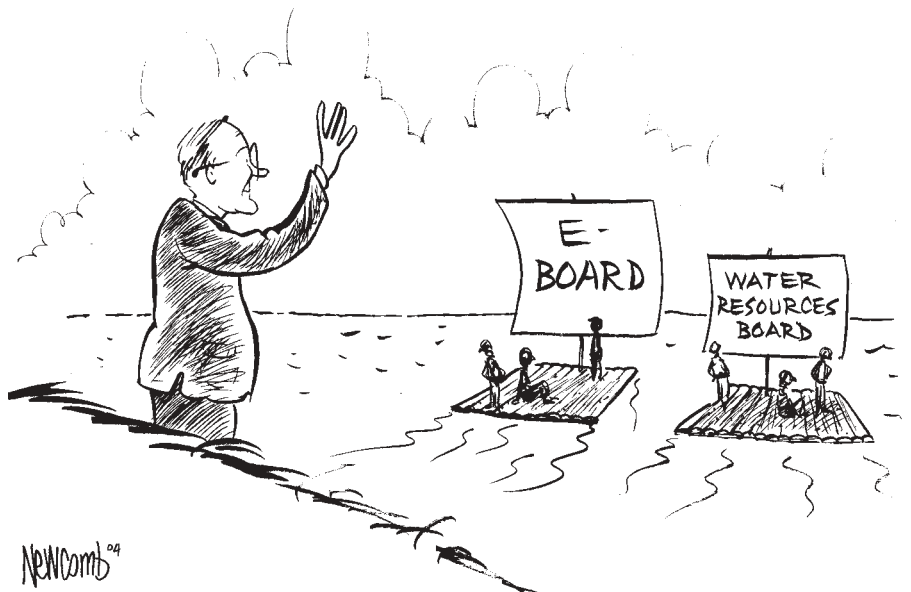
MONTPELIER, Earth Day, April 22, 2004, --The Vermont Senate marked the 34th anniversary of Earth Day with the passage of H. 175, the so-called "Permit Reform Bill" that eliminates the Environmental Board and the Water Resources Board and sends all appeals of Act 250, Agency of Natural Resources, and local permits to an expanded Environmental Court.

"This bill has taken on a political life of its own. Not many people have read it, most don't understand it, yet, they want us to vote for it."

— Sen. Vince Illuzzi, April 22, 2004 on H.175

Senator Illuzzi was no doubt referring to the way this bill was drafted by a six-person conference committee and a very small group of state officials and bureaucrats

continued on page 2





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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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Blake Gardner

dubbed “techies”, short for technical assistants. The public never got a chance to review the final product before passage.

Compare what happened this year to Governor Deane Davis’ reflections in 1989 on the passage of Act 250:

“We knew we couldn’t put this thing across unless we...took the time to get a lot of people to participate, and that’s what we did.”

— Deane Davis on Act 250, Fall 1989

On an April day in 1970, 21 days before the first Earth Day, Governor Davis had signed Act 250 into law—Vermont’s premier environmental law – noted for its citizen-based land development review process. Act 250 has worked remarkably well for 34 years, and it’s been run by citizens for citizens. Commenting on

this hallmark of Act 250 for VNRC’s *Vermont Environmental Report* in 1989, Governor Davis noted:

“So that’s what got me started – to realize that the rights of the public had to be heard where major developments were to be.”

— Deane Davis on Act 250

H. 175 makes some dramatic changes that will shift the character of the development review process away from one that seeks to open the doors for citizen voices to one that may operate behind the doors of a courtroom. To achieve the ideal expressed by Governor Davis, citizens and groups such as VNRC will now have to pay close attention if we want to prevent Act 250 from becoming the exclusive domain of a few well-heeled developers and their lawyers. Even then, it may harder to

gain full party status.

“It’s not the kind of bill that you pick up, read and say to yourself — this is a great bill.”

— Sen. Vince Illuzzi on H. 175

So what’s in this H. 175? Here’s the good news first:

Citizen Appeals to Supreme Court

Citizens will now be able to take appeals of Act 250 permits to the Supreme Court. Beginning on February 1, 2005, parties at the District Commission appeal to the Environmental Court. If they are not satisfied with the E Court’s decision, they may appeal to the Supreme Court.

Planning Law Changes

The state’s planning law (Chapter 117 of Title 24) has been overhauled to make it a

bit more user-friendly and better organized. One beneficial change: there is now a stronger requirement that bylaws be in conformance with the Town Plan.

District Commissions Continue

Act 250's District Environmental Commissions will stay in place. The big difference is that now they will be hearing cases that can go directly to Environmental Court. We're still not sure they are particularly well-equipped at this time, and there was no provision in H.175 to add technical and legal support.

The bad news:

Environmental Board and Water Resources Board Eliminated

Well sort of! They will no longer hear permit appeals, and their administrative and rulemaking functions will be redeployed under a new Natural Resources Board. Within the nine-member Board there will be a five-member Land Use Panel to handle Act 250 rules and a five-member Water Resources Panel to deal with various water-related rulemaking. One member of the Board will serve as the chair of both panels.

Environmental Court Expanded

We're not sure anybody except lawyers wins under this model: not applicants; not developers; not landowners; not citizens. It's going to be more expensive and take more time to go through the appeals process.

What's really troubling is that it's not properly staffed. Only one new judge and three support staff will be added, bringing the total staff to two judges and six support staff. The Court

Administrator actually requested three judges and ten support staff to make it work. The existing judge is already severely overburdened, and now the four new people will have to handle the work that is currently done by two boards and 17 full-time staff at the Environmental and Water Resources Boards.

"If I was selling this bill, I would say: buyer beware. It's sold as is, where is, with no express or implied warranty."

— Sen. Vince Illuzzi,
April 22, 2004

STORMWATER REVISITED

The State House was the place just waiting for the Stormwater accident to happen. With about 1,000 expired stormwater discharge permits, 26 stormwater polluted streams that do not meet water quality standards, and gridlock for issuing permits and transferring property, how could the legislature avoid a head-on collision? Remarkably, they did.

An exhausting two-month sprint of collaboration and negotiation among interest groups and legislators produced a stormwater bill that, while not perfect, affords the Vermont Agency of Natural Resources (ANR) a window of opportunity to get the stormwater permitting program back on track.

In September, the Vermont Water Resources Board (Board) convened a group of stakeholders to craft solutions for the long-term clean up plans needed to bring stormwater polluted streams back into compliance with water quality standards. VNRC was an active participant in that process.

In February, the Board presented its final report to the legislature. The report

represented the work of various individuals and interest groups, who agreed on a template for the long-term clean-up plans that ANR had avoided drafting for a decade. The plans for all of the impaired streams will take anywhere from six months to three years to complete.

But what to do in meantime? This "interim" time-frame was the key issue at the State House.

After a rocky start with ANR's first crack at a legislative solution, many of the same stakeholders who had participated in the Board process began to work together in earnest. VNRC acted as the lead negotiator for the environmental community. At the same time, the House Fish, Wildlife, and Water Resources Committee took over the reigns in the State House. The final bill represented a combination of ideas produced by the collaborative group and tough decisions made the committee. The Senate put their mark on the bill by making some important technical changes.

The bill does the following:

- Requires that a standard of zero discharge of the pollutant of concern (usually sediment) must be attained for any permit issued prior to the implementation of the long term clean-up plans.
- Allows dischargers to "offset" any pollution that cannot be cleaned up on site by reducing pollution somewhere else in the same watershed.
- Allows dischargers to pay an impact fee that is applied to clean-up efforts for previously unpermitted sites in the watershed.
- Creates a bank of

\$1.2 million to start the clean-up process.

- Affords title amnesty for property owners during the interim.

Title amnesty was a key issue that was not supported by VNRC. In order to transfer property with a clear title, all permits attached to the site must be updated. Updating expired permits in polluted watersheds, while requiring a zero discharge standard, could have led to significant water quality improvement in the interim. Since titles will now be considered clear—and expired permits will not have to be renewed—it is likely that negligible improvements in water quality will be seen until the long-term plans are in place.

VNRC is also concerned that the concepts that were generally amenable to all parties are not adequately reflected in the bill's language. The key to success for this year's edition of stormwater legislation will be the degree to which ANR implements the new stormwater program.

Nevertheless, water quality standards remain intact, and any discharges permitted in the interim will have to meet the highest possible standard.

The dedication, hard work, and bipartisan effort of the House Fish, Wildlife, and Water Resources Committee exceeded expectations. Under the leadership of the Chair, Rep. Steve Adams (R-Hartland), and Vice-Chair, Rep. Mark Larson (D-Burlington), the committee put together a balanced bill. All of the committee members are deserving of mention: Rep. Dave Brown (R-Walden), Rep. Sonny Audette (D-South Burlington), Rep. Shap Smith (D-Morrison), Rep. Connie Houston (R-Ferrisburgh), Rep. Alice Miller (D-Shaftsbury), Rep.

Nancy Sheltra (R-Derby), and especially Rep. Margaret Hummel (D-Underhill), who worked on the stormwater problem for almost a year before it found its way to the committee.

Also deserving of mention are Senator Ginny Lyons (D-Chittenden) and Senator Susan Bartlett (D-Lamoille). Both Senators took a leadership role dating back to last summer by convening the first of many collaborative group meetings.

And while VNRC is not always on the same page with GBIC/Lake Champlain Regional Chamber of Commerce, we appreciate their dedication to working together, providing resources, and solving problems.

LEAD SINKERS

Vermont finally caught up to other Northeastern states by passing a bill to mitigate the lead poisoning of waterfowl that is caused by ingestion of lead fishing sinkers. By January 1, 2007, the sale and use of certain sizes of lead sinkers will be banned in Vermont. Lead poisoning is a key factor in the mortality of many birds, especially loons. Many types of alternatives to lead currently exist, including tin, bismuth, and tungsten.

The bill, H.516, was sponsored by Rep. Steve Adams (R-Hartland) and Rep. Shap Smith (D-Morristown), and had strong support from VNRC, the National Wildlife Federation, Audubon Vermont, and the Vermont Federation of Sportsmen's Club. A small, peripheral faction of Vermont's hunting and fishing community opposed the bill for reasons that are still not clear. Nevertheless, H.516 passed both the House and Senate by an overwhelming majority.

LARGE FARMS

In February 2003, the U.S. Environmental Protection Agency published a new rule regulating farming in an attempt to reduce the negative impacts of certain types of operations on water quality. Under the federal Clean Water Act, these regulations continue to require permits of the largest animal feeding operations, such as those with over 700 dairy cows. The regulations also extend the permitting requirement to medium (200-699 cows) and small farms if they meet certain criteria. Farming operations that trigger permit jurisdiction have until February 2006 to obtain the permits needed to comply with the regulations.

In preparation for the upcoming 2006 deadline, the Vermont Legislature passed a new law that creates a state program to regulate small, medium, and large farming activities that negatively impact water quality. Until this legislation passed, the Vermont Agency of Agriculture and the Vermont Agency of Natural Resources (ANR) had never asserted jurisdiction over small and medium farms. The activities on these farms were not subject to permitting requirements for water quality purposes, despite good and clear reasons for such requirements.

As a result of this new legislation, activities on small and medium farms will be wrapped into the regulatory program. Importantly, the legislation clearly recognizes that ANR is the only agency in Vermont with the authority to administer the National Pollutant Discharge Elimination System (NPDES) program approved by EPA under the federal Clean Water Act. Vermont's water quality

can only benefit from further reductions in nutrient loading and bacteriological contamination.

ACT 250 EXEMPTIONS

A bill that exempts extension of utility lines made it through the legislature in the final days of the session. The legislation will exempt an electric distribution line or communication line extension from review of the Act 250 criteria that are designed to consider the impacts of growth on the community, its educational services and municipal facilities and services. The exemption will allow Act 250 review of only the line extension itself "standing alone", not the future growth and development, or cumulative impacts, that might occur as the result of the line extension. A working group was established to report back to the legislature by January 15, 2006 on the impacts of this provision.

On the last day of the session, another Act 250 exemption was agreed to in the Capital Bill Committee of Conference. This time, horse shows get the free ride, a move that impacts traffic, soils, water quality, and other environmental issues.

SEPTIC

The debate over the use of alternative septic systems in Vermont continues.

Back in 2002, the legislature ended the decade long battle that allowed the use of certain types of alternative systems in exchange for closing the ten acre loophole. The ten acre loophole allowed septic systems to be built without a state permit as long as they

were constructed on parcel of at least 10 acres or larger. This loophole spurred the creation of oddly partitioned "spaghetti" lots that ate up land and confounded planning efforts. In addition, untold numbers of exempt systems failed, causing both ground and surface water pollution.

This year the septic issue resurfaced (pun intended). Senator Gerry Gossens (D-Addison) in the Senate and Rep. Willem Jewett (D-Ripton) in the House both spearheaded a legislative effort to allow systems to be built on soils where, from VNRC's perspective, failure would be a likely outcome. Similar bills were introduced in both the House and Senate. The Senate passed a watered down version of the bill, which the house then amended to put the 10 acre loophole back in place. With time running out in the session, no bill was passed.

However, the septic issue will likely remain a perennial one in the State House. Addison County soils in particular are not well suited for treating sewage that is pumped into the ground by septic systems. The Vermont Agency of Natural Resources (ANR) and the Technical Advisory Committee appointed by former Governor Dean continue to look at different technologies that may be suitable for difficult soils.

VNRC and ANR both hold the position that legislation is unneeded and inappropriate at this time. The rule making process for allowing alternative systems is moving forward and will help mitigate many of the current problems.

VNRC photo



The Peterson Dam

PETERSON DAM

The 2003 settlement agreement to remove the Peterson Dam in West Milton and restore the lower Lamoille River and the Lake Champlain fishery represents the best that Vermonters have to offer. People worked together to solve a difficult problem and avoid litigation. Efforts by the House this year to shatter that deal by trying to require that the dam stay in place, would have undermined over 15 years of hard work and collaboration.

Years ago, VNRC spearheaded the Lamoille River restoration effort with the help of Trout Unlimited, and worked with CVPS (owner of the dam), the Vermont Agency of Natural Resources, the Vermont Department of Public Service, and the town of Milton.

All parties signed a private, contractual agreement to allow the dam to stay in place for another twenty years, pay a significant share of future lost taxes to Milton, and ultimately restore the

Lamoille by taking down the dam.

Language that was slipped into the House Capital Bill in an attempt to dissolve the settlement agreement was one of the last issues to be resolved. In the end, members from the Senate Committee of Conference stood up to Rep. Bob Wood (R-Brandon) and refused to accept the language. A deal was finally reached to hold yet another hearing in Milton so that the local citizens who are concerned about the deal can once again express their concerns.

Credit for the fact that the settlement agreement was upheld goes to Senator Vince Illuzzi (R-Essex/Orleans), Senator Dick Mazza (D-Grand Isle), Senator John Campbell (D-Windsor) and President Pro-Tempe Senator Peter Welch (D-Windsor).

And it certainly helped that the Vermont Attorney General's Office issued the opinion that the House language would violate the Vermont Constitution by impairing a private contract.

ENERGY

Energy and electricity issues took center stage early in the session, and they remained a key part of State House debate until the very end.

Energy Plan

The Senate Finance Committee held oversight hearings on the Draft 2004 Vermont Comprehensive Energy and Electric Plan that was put out during the Christmas holidays by the Vermont Department of Public Service (DPS). VNRC was extremely disappointed in the work of the DPS, and suggested that the DPS withdraw what it refers to as a "plan" and start over. In short, VNRC finds that the document is not a plan at all.

A plan analyzes options and makes recommendations, both of which are missing from the document. The single ideological perspective that electric rates are too high drives the DPS's current guide to Vermont's energy future. Thus the document is

myopically focussed on cheap rates for industrial/commercial customers, and does not comply with the statutory obligation for designing a comprehensive energy plan.

Glaringly absent are strategies for lowering costs, diversifying Vermont's energy portfolio with renewable sources, strengthening energy efficiency programs (which actually provide the most inexpensive power), and adequately meeting Vermont's energy needs as contracts expire. Energy efficiency programs are not even mentioned as a resource option. Siting and planning guidelines for the future of wind energy in Vermont, a pressing topic in many communities, has been grossly omitted.

Negligible input was provided by stakeholders and the public at large, and rationale for many of DPS's assertions are missing.

Renewable Energy and Efficiency

Last year, the legislature finally managed to pass a modest renewable energy bill in an effort to promote increased investment and development of renewable energy in Vermont. The issue that generated the most discussion was whether or not to include a renewable portfolio standard (RPS) whereby a percentage of Vermont's electricity would have to be generated from new renewable resources. By session's end the legislature decided to pass the buck to the Vermont Public Service Board, asking the Board to convene a group of stakeholders to study an RPS, and then make recommendations to the legislature upon their return in January 2004.

As a result, the Board offered legislative suggestions that would have accomplished two goals:

- Protect and maintain Vermont's existing small-scale renewable energy resources;
- Require that Vermont's utilities generate 10% new renewable energy resources by 2013.

The RPS, as suggested by the Board, was included in a more comprehensive renewable energy and energy efficiency bill, S.261, that was passed by the Senate. Unfortunately, the House decided not to act on the measure, once again leaving Vermont behind many other states in promoting renewable energy and energy efficiency. Governor Douglas has also made it clear that he does not support an RPS.

Other Energy Issues

Energy issues that also occupied the time of legislators were Vermont Yankee, siting of commercial wind projects, the VELCO power line plan, and hydro dams. The potential state purchase of the Connecticut and Deerfield River hydro facilities is moving forward, but the fate still remains uncertain. While there was little resolution to many of these issues, the intensity of the debate provided insight to many of the tough issues that Vermont will face in the future.

MERCURY

Once again, the Senate passed a mercury labeling bill, S.111. The vote was 24-2. And once again, the mercury bill was buried in a House Committee to die.

Mercury is a persistent and toxic pollutant that bioaccumulates in the environment and can pose significant threats to human health. S.111 would have:

- Authorized the Agency of Natural Resources to participate in regional efforts to reduce exposure to mercury.
- Banned the distribution or sale of mercury-added novelties, mercury fever thermometers or dairy manometers after a certain date.
- Addressed manufacturer labeling of mercury containing products.
- Banned disposal of mercury products in landfills and incinerators and required source separation of discarded mercury-added products.

Similar mercury legislation has been introduced and passed by the Senate year after year only to languish in the House. VNRC is hopeful that the legislature will continue its effort to pass meaningful mercury legislation next year.

BUDGET

Governor Douglas' budget recommendations for helping clean up agricultural runoff on Lake Champlain set the stage for significant water quality money set aside by the legislature. The Governor allocated significant resources to move forward on the Lake Champlain phosphorous clean-up plan. The comprehensive plan aims to tap into almost \$14 million of state and federal money, most of which will be used to abate agricultural runoff in the Lake Champlain watershed.

The Senate earmarked \$2.2 million to get the stormwater pollution problem under control (see Stormwater Revisited). A little less than half of the money will fund 3 new staff positions in the stormwater section at ANR, and pay for analysis of streams

impaired by stormwater pollution. Over \$1 million will create a bank for cleaning up previously unpermitted sites in polluted watersheds.

The Vermont Department of Fish and Wildlife (DFW) will receive a financial shot in the arm from the general and transportation funds this year. Most significantly, \$1,250,000 will be appropriated from the general fund, a source of revenue for the DFW that VNRC strongly supported during the legislative session.

Last December, VNRC sent a request to the Secretary of the Agency of Natural Resources advocating for an appropriation of general fund dollars to the DFW.

Specifically, VNRC recommended that new money be allocated to the Nongame and Natural Heritage Program (NNHP) to help with budget deficiencies regarding threatened and endangered species work. The final appropriations budget does not specifically line item an amount of money for the NNHP. Instead, the appropriation bill states that \$200,000 should be spent on marketing to increase hunting and fishing license sales, while the rest is to be used to fund administrative support, overhead, nongame program activities, and programs that benefit both game and nongame species.

VNRC is hopeful that a portion of the general fund allocation will be used to leverage additional federal dollars for threatened and endangered species work. In general, VNRC is encouraged that the entire DFW will have increased funds this year and VNRC will track the expenditures to ensure that all programs within the DFW benefit from general fund dollars.

MIXED BAG IN THE CAPITAL CONSTRUCTION BILL

In recent years, the Capital Construction Bill has become a vehicle for many natural resources issues that have statewide applicability. Once again, the influential Committee of Conference from the House and Senate Institutions Committees carried negotiations into the final hours of the legislative session. When the dust settled, the House and Senate negotiators agreed on the following:

On the clean water front, close to eight million dollars was appropriated to the Agency of Natural Resources for water pollution grants, water quality remediation plans for stormwater impaired waters, and the implementation of the Clean and Clear Program, including acquisition and restoration of wetlands in the Champlain Valley.

Shifting to public land management, more controversial issues were present in the Capital Construction Bill. In a curious move, \$100,000 was allocated to the Department of Forests, Parks, and Recreation (DFPR) to hire consultants to review assessments related to the forest plan revision for the Green Mountain National Forest. Jonathan Wood, Commissioner of DFPR, testified that the Governor only requested \$25,000 to focus on social and economic interests. However, timber interests lobbied for more money to scrutinize assessments related to biodiversity and wilderness evaluations.

VNRC questioned the motive and scope of this study and lobbied for language that



would require the study to be performed in an objective manner representing the myriad interests in the state including conservation and ecological concerns. This language was adopted, but the scope of the study was increased to reflect the desires of those opposing wilderness designation in Vermont. VNRC does not support the final appropriation as passed, and we will track the progress of this study to ensure that the State performs an objective study that represents all interests.

In another move related to forest management, the House pushed for several appropriations to expedite timber harvesting on state lands. VNRC, unhappy with the House's singular focus on timber management for state lands, advocated for funding related to the performance of ecological assessments and recovery planning for threatened and endangered species on state lands. The Senate pushed for these ecological initiatives, and other programs related to creating wildlife-viewing opportunities on state lands and funding for easements

along the Long Trail and Catamount Trails. The Conference Committee settled on a final bill that is a mixed bag of initiatives related to timber harvesting, habitat management, ecological assessments, wildlife viewing, and the acquisition of easements for quiet backcountry recreation.

TRYING TO SLAM THE DOOR ON WILDERNESS

Most controversial issues in the State House receive attention through committee discussion before action is taken on the floor. Not wilderness. The House bypassed committee discussion in order to push through a resolution that opposes additional wilderness on the Green Mountain National Forest (GMNF).

In what was designed to be a joint resolution against wilderness, only the House took action this session. The House passed a non-binding resolution against wilderness without the support of the Senate.

The resolution that passed

is filled with inaccurate statements regarding wilderness in Vermont. Furthermore, the Resolution is in conflict with itself. It states that the Vermont Congressional Delegation should wait to designate additional wilderness on the GMNF until the forest plan revision process is over. On the other hand, it states that the Delegation should not designate another acre of wilderness.

It is unfortunate the House did not decide to send the issue to committee where inaccuracies could have been investigated. Only a couple of votes separated the outcome on whether to send the issue to committee. In a separate move, Representatives Gail Fallar (D-Tinmouth) and Anne Donahue (R-Northfield) tried to amend the

resolution to reflect more reasonable language, but in the end, the House voted to take a position on wilderness that runs contrary to the sentiment of a majority of Vermonters.

According to a recent survey performed for the Vermont Department of Forests, Parks, and Recreation on comprehensive recreation planning process, two-thirds of Vermonters stated that they agree or strongly agree with the designation of more wilderness-like recreation in Vermont. Vermonters responded as they have before—in favor of additional wilderness experiences. This is likely why the Governor and the Senate did not support the uncompromising wilderness position taken by the House.


In our Spring 2004 issue of the *Vermont Environmental Report*, we published an article titled "Not A Pretty Picture: Rolling Back Three Decades of Environmental Progress." The article was credited to writer Will Lindner. However, some of the article originated with writer Hamilton Davis, whose contributions were particularly valuable in the introductory passages.

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VNRC NAMES JON GROVEMAN TO KEY POST

Jon Groveman, the Executive Officer of the Vermont Water Resources Board has accepted the position of Water Program Director and Staff Attorney at VNRC. Groveman will fill the position currently held by Kelly D.H. Lowry, who is leaving Vermont this summer to return to South Carolina.



Jon Groveman

Prior to serving the Water Resources Board, Groveman worked as the Director of the League of Cities and Towns Law Center and the Land

Use Attorney for the Vermont Agency of Natural Resources. As the Water Program Director for the VNRC, Groveman will continue the organization's critical work on stormwater permitting, wetlands protection, and water quality restoration.

VNRC is pleased and honored to have Jon on the VNRC team. Jon is an expert in water law, Act 250, and local zoning and planning law.