

**From:** Renée <[renee6@myfairpoint.net](mailto:renee6@myfairpoint.net)>

**Sent:** Friday, December 28, 2018 2:35 PM

**To:** Amy Sheldon <[ASheldon@leg.state.vt.us](mailto:ASheldon@leg.state.vt.us)>

**Subject:** Future of Act 250- Impartial Ombudsman might have prevented this enforcement disaster Re: Time-Sensitive Enforcement Request Addendum-Coburn Pond Wetlands

Hi Amy:

First, I want to express gratitude for the time you've already given to hear the issues and concerns that came about from my experience as a citizen with "Party Status" to the Act 250 process that was supposed to have protected Coburn Pond—its water quality and public access—for the Existing Use of Swimming (and fishing and other recreation).

I realize that you and the Commission must be close to the end of your process of developing guidelines and I have one more **recommendation** that might assure that natural resources that are supposed to be protected through the Act 250 process actually ARE protected.

The recommendation: **The establishment of a non-partisan, non-governmental, position-neutral Ombudsman** or committee with authority and expertise in **oversight** of large projects, **especially** those constructed by state agencies.

Parties who worked to protect the water quality and shorelines of Coburn Pond filed an Enforcement Request **in July 2018** for **flagrant violations** of the permit (attached below). I've also attached the most recent **Enforcement request addendum—which is very time-sensitive**.

"In a recent email, I wrote:

"Ultimately, as you know, the Army Corps of Engineers has jurisdiction over wetlands, superseding Vermont law. (They refused to allow—or so said VTrans—the filling in of the "test plot" adjacent to the shoreline of Coburn Pond.)

"In an earlier conversation we had with Aaron Brondyke (before his decision letter made erroneously using VTrans' design documents rather than official exhibits), he had suggested the possibility that VTrans could "remediate" the shoreline (excavated in violation of the permit) as "an adjustment" that wouldn't require additional permitting.

"This is the full intention of our "Requests for Enforcement: To compel VTrans to reconstruct the shoreline **at least** to the **function** of that which they destroyed—including considerations for the excessive and unlawful excavation adjacent to the pond (which was intended to be "buffer" rather than the "wet meadow" they created. **The function** of the shoreline was to **contain the clear waters** of Coburn Pond.

**"The flagrant violations have (in addition to draining the "pre-existing wetlands" on the site) created seasonal water flow between constructed wetlands and the pond that will—over time—cause the sand- and gravel-bottomed pond to silt up, damaging both the protected water quality (remembering that the predominant Existing Use is swimming) and the**

**ecosystem. This silting, creating an expansion of “open water wetlands” in the south end of the pond is observable as it has already begun over these past several years.”**

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It seems like the NRB is letting time run out so that their “problem” (one state body overseeing a state agency) will be “solved”: If this end of the project process is not stopped, “enforcement” by compelling VTrans to remediate the damaged shoreline with a berm that will accomplish the shoreline functions of containment will not be allowed by the Army Corps of Engineers.

Had there been an **Ombudsman** in the first place—a person or persons with professional skills and oversight authority to assure that the project was built in compliance with the permit—perhaps the wetland compensation project would have been constructed **in accordance with the Act 250 permit**.

As it currently stands, unless the permit is enforced and remediated, snowmobilers will no longer have marked an easy access from Coburn Road through to Rt. 2 (will likely continue driving through the constructed wetlands), and Coburn Pond will eventually lose the clear water quality—turning into part of the constructed wetlands—that was supposed to have been protected.

Thank you for your considerations,

Renée

Renée Carpenter  
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802-454-7303

Begin forwarded message:

**From:** Renée <[reenehc6@myfairpoint.net](mailto:reenehc6@myfairpoint.net)>  
**Subject:** **Time-Sensitive Enforcement Request Addendum-Coburn Pond Wetlands**  
**Date:** December 28, 2018 at 1:17:38 PM EST  
**To:** "Brondyke, Aaron" <[aaron.brondyke@vermont.gov](mailto:aaron.brondyke@vermont.gov)>  
**Cc:** [diane.snelling@vermont.gov](mailto:diane.snelling@vermont.gov), Thomas Weiss <[tweiss@together.net](mailto:tweiss@together.net)>, Ross Hazel <[rhazel@ezcloud.com](mailto:rhazel@ezcloud.com)>, [pgillies@tgrvt.com](mailto:pgillies@tgrvt.com)

Hi Aaron,

After receiving and reviewing the Final Assessment Report from McFarland Johnson, we realized two specific sets of concerns. This email and the attached memo address our first, and most time-sensitive concern:

1. Despite having an Enforcement Action under review, VTrans' final assessment report, once accepted by the Army Corps of Engineers (COE), will trigger the thirty day period during which time VTrans will be required to file deed restrictions to finalize their permit obligations to the Army Corps of Engineers' (COE).

The Corps of Engineers' (COE) permit—**which is not in compliance with the Act 250 Permit**—requires VTrans to file a deed restriction on the "Thetford Gravel Pit Mitigation Site" **within thirty days** of the COE accepting the site. (pp. 24-25 of the *2018 Post Construction Assessment*)

The submission of the post-construction assessment is likely the last document needed for the COE to accept the site. The deed restriction will prohibit anyone from replacing the shoreline. We are concerned that the COE will approve the assessment report in the next week or two. Their letter to VTrans will compel VTrans to file the deed restriction on the property.

**We are requesting that the NRB initiates communication:**

**To VTrans to:**

-- Postpone submission of Final Post-construction Assessment report to ACE, and

-- Delay filing any deed restrictions until after the enforcement action is resolved, and including all court appeals.

**To Army Corps of Engineers:**

--Request that ACE postpone acceptance of project until after the enforcement action is resolved, and including all court appeals.

I've attached a full memo to this affect as a Word Document.

Many thanks,

Renée

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