

Rebuttal of Rutland legislative delegation letter on slate quarry exemption

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Dear Committee members,

I am writing to refute statements from the 4/5/19 letter made by the Rutland County Delegation of Legislators.

As you know, Act 250 was created in 1970 to, "**insure that these lands and environment are devoted to uses which are not detrimental to the public welfare and interests.**" And, as I said in earlier testimony, a few years later NY passed a similar law that stipulates all the particulars for how any extractive industry must operate.

We have all seen enough pictures of various strip mining to understand that most extractive industries are inherently likely to be "**detrimental to the environment and public welfare.**" The authors of Act 250 understood that simple concept and did not exempt strip mining of any material from its purview.

In the early 1990's some legislators and lobbyists from southwest Rutland County managed to convince the Vermont Legislature to exempt the slate industry from Act 250. This was called Act 30, originally proposed to exempt working quarries, it expanded to include the grandfathering of any quarries that were ever active before 1970. Ultimately, the legislation that got passed allowed anyone to register a pit from which slate had been extracted at any time before 1970 as "a quarry held in reserve". Once registered, a pit 15 feet in diameter could be opened and expanded to the borders of the property owner. About 400 pits were registered on about 10,000 acres of land between W. Pawlet and Fair Haven.

Over the last 20 years the consequences of the exemption for some homeowners and citizens has been devastating and continues to be so. Because suddenly the woods behind their house could be clear cut, excavated, and an old pit not used in 50 years could be opened and worked up to their borders. The homeowner has no real recourse but to hire an attorney and try to sue; but the law supports the industry. People I know that tried to talk sense to operators about working hours, property lines, rubble piles in their back yard, blasting, etc. got no satisfaction from them. In fact they got intimidation. If they go to their town select board they are likely to get sympathy and nothing more. Any politician they call will refer them to the legislature. Any agency they call will likely not have jurisdiction over the matter of their complaint.

Now that Act 250 is being revised for the next 50 years, the industry is working hard to maintain their exempt status. They have many powerful supporters including the Rutland County delegation of legislators. The town of Pawlet has weighed in on the side of the industry. All are in favor of maintaining the status quo. And the status quo leaves out the interests of the residents and homeowners.

None of this is consistent with the vision of Act 250 nor with our State Constitution.

I am one of those few voicing opposition to the exemption and there are many others who don't come forward. The feeling of powerlessness is one good reason for staying quiet. Hesitancy to complain about one's neighbors or relatives another. Other reasons include intimidation.

One person who recently voiced opposition to the exemption is the district coordinator, Bill Burke. He has been dealing with the blowback from this legislative blunder for more than 20 years. He mentioned an attempt to intimidate him during his testimony before The Committee. Mr. Burke's testimony is critical for decision makers because his interest is impersonal and he believes there should be a balance between the industry's rights and the resident's

There are numerous reasons put forward in the industry testimony to retain this exemption. Much of it is probably the same as that given back in the 90's that won enough support to pass this law.

Their narrative begins with a down home story of the pioneers of the slate industry. Yes, some families have been in this business for generations. And, indeed, the products they create are so beautiful I admire them greatly. Their story is wonderful and I hope it continues. But it is almost meaningless in the context of the next 50 years. 50 years or so ago Marble companies were locally owned. Now most belongs to Omya. And 50 years from now a multinational may own the slate industry.

While the "down home" stuff may seem relevant in the present, it is very likely to be irrelevant in 20 or 50 years from now. Yes, these families have been here a long time and developed this industry. And they currently exert a lot of influence in their communities, on select boards, in schools, fire houses and so on. But there is a negative aspect to their involvement because the towns have become inclined to support the industry over the interests of those who oppose their operational indiscretions.

The demographics of Vermont will be dramatically different 50 years from now. Both the Governor and his opponent in our last election spoke in sync about the opportunities and pitfalls that telecommuting will bring about. And they are both right whether we want it or not. And as that happens new people will be wondering why the old people allowed what is being allowed at present.

Recently two families of young telecommuters moved to this area and their stories are both documented in the Rutland Herald. The Silvermans in Poultney had a quarry open behind their property and after a couple of years of fighting left their home and are staying in Whitehall while they try to resolve their issues. And the Gashels in Pawlet, also young telecommuters with children, share a similar experience but are still in their home and hoping the Act 250 revision will change their prospects for co-existing with a strip mines.

The other part of the industry narrative that looks tremendous on paper but is meaningless in practice is the list of regulatory agencies that allegedly already place a heavy burden on the industry.

An industry representative presented an impressive list of governmental agencies and regulations, but they don't begin to address the needs of a resident living near a quarry.

They mention the ATF which licenses people who use explosives. The ATF does not set the charges nor tell them when and how to use their charges.

Consequently, blasting is one of the major problems neighbors complain about and they include everything from windows rattling to changes in well functions.

They list numerous agencies charged with protecting wetlands including the Vermont Agency of Natural Resources and the Army Corp. of Engineers. The ANR gives a kind of "blanket" permit to allow operators to discharge stormwater. I asked the Agency (ANR) if they issued a permit to fill wetlands to any slate companies and they said no. There was only one complaint filed and that was done by me last summer. It remains unresolved. I have not yet heard back from the USACE but I very much doubt that either the ANR or the USACE issued any permits for wetland fillings like this:



They even bring up VOSHA and MSHA, agencies concerned with the safety of workers that have nothing to do with protecting the environment or the impact this industry has on its neighbors.

I read a comment in the Rutland Herald by an industry representative who stated that my claims about the NY law were wrong. Saying that the law didn't affect their working in New York, he claimed he knew of 10 working quarries in New York. I called the New York Dept. of Environmental Conservation and they said no permits to quarry slate are currently registered. So, if they are extracting more than 750 cubic yards per year, they are doing so illegally. Their neighbors would have recourse for action if the quarries operating are in violation of the New York law.

The Rutland delegation of legislators are wrong to support the perpetuation of this exemption. They should have another look at article 7 of our Constitution: "That government is, or ought to be, instituted for the common benefit, protection, and

security of the people, nation, or community, **and not for the particular emolument or advantage of any single person, family, or set of persons...**" The slate quarry exemption is specifically for the "emolument and advantage" of a subset of the people in Slate Valley. Our delegates need to be focusing on how to bring the industry into the Act 250 regulatory process in a way allows these businesses to operate without such irresponsible degradation to the environment or the quality of life for their neighbors.

The narrative that sold this aberrant legislation is unworthy of the complete and total advantage it has given a strip mining industry. The regulatory agencies they cite do nothing to protect their neighbors from abuses some of the 'bad apples' enjoy lording over them. They are not constrained by law and some operators use that knowledge to intimidate, harass and quiet their neighbors. And while they do so, our true property values decline yet our town assessments do not. Act 30 is clearly for the "emolument and advantage" of an industry. One that we would like to see survive were it conducted in a way that made it tolerable. In other words, if it conformed to the norms of Act 250.