

1/24/2020

Lou Magnani Testimony on Slate Exemption for House NRF&W Committee

Thank you to all legislators who take the time to review this testimony. I am writing to try and summarize my opposition to the slate quarry exemption to Act 250 and refute testimony that I have read or watched being presented to the NRF&W Committee.

All the presentations the committee has seen that present the slate industry as being so unique should be taken with a grain of salt. Marble and granite come in different colors and from different pits. They were owned by Vermont run operations, like Proctor Marble, Gawet and others that I no longer remember. Most of these companies may now be owned by Omya. And the mom and pop slaters are also corporations and could just as easily become part of Omya or other conglomerate. The narrative of uniqueness, down home, folksy, good neighbor nature of this industry is a fabrication meant to perpetuate their exemption which they have steadfastly assumed as their right. It is also a contradiction to the very purpose of Act 250.

On 1/14/20 I listened to an industry representative, Mr. Markcrow, say that they were not exempted from Act 250. I have no idea what he is really referring to because the regulatory language specifically states that all registered quarries are exempt from Act 250 for all but activities "not ancillary" to extracting slate. Very few people know what that even means but, in practice, about the only reason they would need an Act 250 permit is if they build a mill to process the slate into finished product. Or perhaps to bring a crusher on the premises. Those activities may require going through Act 250. Mr. Markcrow's statement, without qualification, was totally misleading.

I would also like to say that the precious reserves so often referred to were just considered abandoned quarries from the Great Depression until demand improved in the late 1980's and early 1990's. The graph depicting the fall in demand for roofing slate presented by the industry showed a bottoming out of

demand around 1980. What is now being called essential reserves were, at the time of the passage of Act 250, just abandoned quarries. I bought my land from Northeast Developers, a company that owned a large tract and was selling off parcels that were adjacent to, or contained, abandoned quarries. Before and after Act 250, quarry owners sold many parcels and I bought my property from one of them. It was 1969, just before Act 250, and I had no reason to think that quarries behind me would reopen. I felt secure in the expectation that they would not reopen until the late 1990's when **I tried to oppose the registration of quarries by the son of the man who had sold me my property.** I was betrayed by the passage of that exemption.

Since the exemption was passed in the late 1990's many industry operators have acted irresponsibly and with impunity. In my view it grew to the point of arrogance until the 2015 hearing held by former chair David Deen. After Rep. Deen proposed legislation to delete the exemption, the quarry operators changed some behavior. If you renew this exemption, they will go back to normal.

Over the years of this exemption some residents have called the police, others the VNRC, the ANR, their legislators or whoever they thought could help. A few have retained lawyers and filed suit, only one who I could name, and she has already testified in 2015. But none have been satisfied with the results of their efforts. Those of us who have made inquiries, doggedly, have learned over these years who holds the power in Slate Valley. The industry is trying to convince this Committee that they are, by and large, responsible operators who get along with all but the crankiest of neighbors and are deserving of a continuation of this exemption. This is truly not the case at all.

To give you an idea of how some operators have taken advantage of their position of exemption I'll offer an example. Around 2013 I wrote to the board of selectmen in Wells to ask them why two secondary town roads had been marked "Road Closed" or "Dead End". I never heard back. I asked a selectman about it and he was reluctant to discuss it, saying something about the road that I was most concerned with as being a disputed boundary between two slate companies.

Eventually, whatever dispute may have existed was settled and the slaters and the town re-established the road. But it had been made impassable for about 10 years at the whim of a slate company. I am referring to Hilltop Road, a secondary town road listed on any Vermont road atlas. The other road, "Upper Road" retains its "Dead End" sign though a view from Google Earth shows it appears to be open.

This example is not nit picking; it exemplifies how many operators have come to see their exemption as a blanket waiver to do as they please. A better example for this Committee would be the wetland filling of a large section of Bullfrog Hollow in Wells. This is not isolated and I have demonstrated other large wetland fillings for the 2015 hearing. In this case, however, I filed a complaint with ANR Enforcement and never heard anything back. The complaint was still on file the last time I inquired but nothing has been done about it. What follows is a link to 2 minute video flyover of a wetland filling that I am reasonably certain the ANR did not and will not sanction:

<https://www.youtube.com/watch?v=tZN3DgUz8Ho&feature=youtu.be>

I have asked the ANR to provide any permits for wetland filling issued to slate quarriers and they had none. Yet many wetlands have been filled with rubble. This is routine procedure as far as I can tell and not the act of an isolated operator. Likewise, the rubble piles and almost total disregard for reclamation efforts are standard operating procedures.

On 1/14/20 I also heard an industry representative say that Annette Smith had brought up an ATF law from <https://www.law.cornell.edu/cfr/text/30/715.19> concerning the use of explosives. His response was that; "according to our counsel", it did not apply to the slate industry - but some type of coal industry. I have called the Vermont field office of the ATF and not heard back. Another person I know also called and did not get an answer to this question. This is a critical issue that requires resolution because the industry, until this committee began hearing testimony in 2015, blasted at will without any prior notification or schedule that neighbors would be aware of. And, I have never heard of anyone who has had a pre-blast assessment until this Committee began hearing

testimony. In my area, and others I know of, blasting has been used as a tool used to intimidate anyone trying to interfere or complain about their operations. So it is important that this industry be made to comply with whatever ATF statutes actually do pertain to them; whatever they may be.

Industry representatives have re-iterated time and again the list of federal, state and local agencies that regulate them. They talk about it as though they were burdened with regulations already and imply that they are in compliance with the regulations of all these agencies. But, when asked about Federal ATF regulations, Mr Markcrow says they are not applicable to slate quarrying. The ANR has regulations concerning wetland filling but quarry operators don't apply for permits. It's their land and they think it their right to just tear down a beaver dam and fill acres of former marshland with rubble. The public might complain about this if they thought our agencies would do anything to control the industry; but the last 30 years have shown us that we have no redress.

I cannot properly address what Ryan Knox presented as a map of the quarry parcels that are registered. The map submitted to the Committee I tried to work with and could not find anything relevant. It did not have secondary roads or even the area lakes on it. Perhaps that was my inability to navigate it. I have, however, been to the ANR site and used their map to identify parcels. I could see an individual parcel and those adjoining it. I can see a parcel ID of adjoining properties, its valuation, and, potentially, the identification about whether it has registered quarries on it. **However, even if the ANR atlas had all the relevant data, and all the area realtors were somehow made knowledgeable in using it, and were required to do so, what would that do?** Besides preventing people from unknowingly purchasing property adjacent to a registered quarry, it would make those properties already held unsellable or less valuable. It would benefit the quarry owners by devaluing the land around them. It would not help those of us who currently own properties adjacent to registered quarries. In the eyes of the operators it would be good for a number of reasons. But for those of us who own homes it would do nothing.

You have also heard from industry reps that the NY law has no bearing on the fact that most of the extraction is taking place in VT - even though it has been stated that at least 10 quarries in NY are still operating. Yet the most recent presentation submitted to the Committee did not even list any slate companies in NY. Though we have all heard that New York's Mined Land Reclamation Law is no big deal, and doesn't exert influence on the industry behavior, I sincerely doubt that. And, if it is truly no big deal, then what is the problem with creating the same requirements in Vermont for good practices and land reclamation.

All the discussion of the Green Mtn. Slate Quarry Assoc. being created to influence behavior of operators should be meaningless to this committee. There really is no solution to the environmental and social problems associated with open pit mining other than regulation and reclamation. All these "workarounds" to attempt to regulate the way these quarries operate is what Act 250 was created to do; please, let it do that. Rep. McCullough was correct in saying that Act 250 is the right tool to provide a consistent working methodology and a solid expectation for both the industry and the residents. The opening of any registered quarry that is not currently in operation should require a full Act 250 permit and those currently operating should be made to conform to **"Act 250 9(E) Guidance for Completing an Earth Extraction Plan, Blasting Plan, and Reclamation Plan for Act 250 Projects"** as proposed by Vermonters for a Clean Environment on 1/14/20.

Lastly, I heard Mr. Markcrow testify that only 3 people are complaining about the industry behavior and, presumably, I am one of them. Long time district coordinator, Bill Burke, also provided very important testimony in opposition to the exemption but that was not mentioned. According to Mr. Markcrow, at least 1000 people are not complaining. Maybe they just know the hopelessness of it and I don't. He talked about the River Street project in Fair Haven and how wonderful it went and without complaint. He did not mention what took place around the corner, on the Blissville road, where 16 families filed a class action suit. VCE will post the "Plaintiff's Trial Memorandum". If there are any of you on the Committee who are undecided about how these companies can operate and what should be done about regulating them, please read through this legal document to get the

flavor of what it's like to be living on the Vermont side of the Slate Valley. They do not deserve special treatment; they require regulation; the same regulation that applies to all extractive industries.

Thank you all for hearing me out.