

## Questions about On-the Record

*Vermonters for a Clean Environment, January 31, 2020*

1. Will on-the-record occur by mutual consent? Will developers be able to force on-the-record onto citizen intervenors who object?
2. Some years ago there was a pilot on-the-record program that was never used by anyone. Why did the pilot on-the-record program fail?
3. How will party status be determined? (Right now preliminary party status by the district commission is given at the beginning and then reviewed at the end. Will that need to be changed given the more strict rules?)
4. What rules will apply? Act 250 rules? And the Vermont Civil Rules of Procedure (VCRP)? And the special rules for the Environmental Division?
5. Who will train district coordinators and commissioners to learn all the rules?
6. Will the formality of on-the-record deter citizen-volunteers from willingness to be district commissioners?
7. Will citizen intervenors be provided with legal counsel or expertise to assist them in complying with the rules and establishing a record to preserve issues for appeal? Will it be possible for citizens to participate effectively without a lawyer?
8. How much time will citizen intervenors be given to prepare their case? Developers usually spend months or even years putting their application together. Will citizens have sufficient time to learn about the process and the particular application and develop their case and find and prepare expert witnesses?
9. Will on-the-record cases require prefiled testimony (i.e. written testimony provided by the witnesses prior to the hearings)? Do citizen intervenors know what "prefiled testimony" is? (In my experience at the PUC that is one common question citizens ask. What is it?)
10. Will on-the-record cases involve discovery and depositions? How will citizen intervenors know what "discovery" is and that it often requires them to attend depositions and be interrogated? Are there any rules that protect citizens from abusive lawyers?
11. Will there be any accommodation for environmental justice cases, such as a quarry that wants to open next to a mobile home park? Will any special resources be made available to them?
12. If the record is made by video or audio, what happens if people talk over each other or the record cannot be heard by the reviewing appellate body? Will there be a written transcript required for appellate review? If so, who will pay for it?
13. Will it be possible to amend the record when it goes on appeal to the Environmental Court if new evidence is discovered or developed?
14. Will on-the-record review have the same effect that Environmental Court has had on citizen participation; that is, chilling citizen participation due to the formality of the proceedings?
15. Will on-the-record save money or cost more money?