Vermont House
Natural Resources, Fish & Wildlife Committee
RE: Act 250 Draft Legislation and Rules
Attn: Laura Bozarth

February 7, 2019

DUMP, LLC, is a citizen's group with 150 members formed to raise public awareness of the environment, public health, and economic issues related to solid waste disposal in Vermont's Northeast Kingdom. I am a spokesperson for Dump.

I understand that there are many considerations to take into account when providing a process that is both fair to citizens and developers, as my husband is an architect who has had frustrations with Act 250. The process can only provide parameters while the people involved in implementing the process must be able to discern the appropriate application of the rules.

To illustrate my understanding of this, I will first share a bit about DUMP's recent experience with the Act 250 process in hopes that it will provide context for my input on the draft legislation. In addition, I have included a copy of DUMP's pre-filed testimony as it is referenced in the recommendations I make.

Our experience is with the District 7 Commission and its review process concerning a land use permit for the Coventry landfill. The Commission held hearings in 2017, many months before the Agency of Natural Resources permit certification on Oct. 12, 2018.

On June 21, 2018, ANR held a public hearing on the landfill permit. There was not a large turnout. My understanding is that there were some adjacent landowners who had received individual notice and one man who had heard about it through the grapevine. The ANR staff person conducting the hearing went up to this one man and asked, "Did I send you a notice?" The man replied, "No." The ANR staff member said, "I didn't think so."

One might surmise from this exchange that the ANR did not expect someone other than some of those receiving individual notices to attend. I, for one, was not in attendance. I was not aware of the hearing or the permit application.

I learned of the permit application in September of 2018 when DUMP held a public meeting in Newport. Presentations were made by panelists consisting of a DUMP spokesperson, the Agency of Natural Resources staff members Cathy Jamieson and Chuck Schwer, two Canadian representatives of the non-profit MCI, and a representative of the Conservation Law Foundation. About 150 citizens attended this meeting and contributed to a dynamic discussion that lasted hours.

I signed up that night to contribute to the efforts of DUMP, which was still in its forming stages. In early October, DUMP requested Party Status in the Act 250 process.

On Oct. 19, 2018, the District 7 Commission notified parties of their right to request a reconvened hearing and said those who requested untimely party status would be allowed limited rights as Friends *"after all admitted parties have had an opportunity to present evidence and cross-examine, to the extent that time is reasonably available, so as to not cause unfair delay."*

Our interpretation of this was that we might not be provided any opportunity to participate in the hearing. Therefore in a six-page letter dated Oct. 28, 2018, DUMP again requested party status stating that it was unclear exactly what level of participation it was granted. Our letter responded to the statutory questions required when applying for "untimely" party status, and requested that if we were still designated as a "Friend" that our participation be more clearly stated.

We did not understand how to create a laser point of our particularized interest. Living in the community, breathing the odorous air, and, through recreation, interacting with the lake that is being polluted, is not considered a particularized interest. However, my husband and I own several income properties on the lake and depend on the lake not being contaminated. Other members have particularized interest, but we approached this as a group.

Simultaneously, DUMP was deciding whether to appeal the ANR certification and began interviewing attorneys and learning about the great expense of such legal action. On Nov. 13, we filed the appeal, which would later impair our participation in the Act 250 process by blocking access to documents.

Of course the permit applicant opposed all who sought party status, and the Commission, in its decision dated Nov. 20, once again denied party status to us and all others who were untimely. As friends, everyone was then assigned into two groups, one with Canadian Friends and one with U.S. friends. Both groups were open ended to include "other individuals" who might come late to the process, as was the case with the Conservation Law Foundation. We were to pick one spokesperson per group to speak at the hearing, again with that participation being explained with ambiguous words such as "may be limited" and "may be expanded." No definitive participation was outlined as 10 V.S.A. 6085 (c) (5) was merely copied in the Commission's response.

However, we were allowed to provide pre-filed testimony by Dec. 20 for a hearing that would be held on Jan. 22. All testimony was being limited to Criteria 1 and 1 B. We took that opportunity and filed a 31-page testimony accompanied by 69 documents and 35 exhibits.

We worked diligently to learn as much as we could in the month we had been given. We requested documents from the ANR and received slow responses.

We asked the ANR for all violations filed against the landfill; the response was elusive. ANR eventually released the details of one Notice of Alleged Violation (NOAV) and told us that there had been no formal action taken against the landfill. They also stated that they did not have to release this information. Our pre-filed testimony cites many violations found among ANR documents. Later, in the ANR testimony filed in January, they mention several other NOAVs.

Some information requests of the ANR were denied with the reason that an appeal had been filed. We made a similar request to the Act 250 office, stating that public documents should not require an attorney and a discovery process to be released. We were given some documents, and refused others, saying we could file an appeal for the additional documents.

These records were requested for the purpose of preparing testimony for the Act 250 Commission. This back and forth took time and energy that could have been used to research facts and provide pertinent information to the landfill permit review.

This process was challenging for us in terms of just knowing about the permit application and the related hearings, making a "timely" application for party status, understanding all the parameters of a 1,700 page permit application, reading the ANR Certification, Responsiveness Summary, as well as related statutes, rules, permits and related documents created in the last decade plus.

Our testimony relied on the hydrology reports detailing well monitoring and water quality, PFAS tests, air complaint forms and some communications about the well testing. There are numerous other reports that we did not have or could not understand, such as air quality testing and the reports on the gas management system generators. We were unable to learn about all the information that is collected and would shed light on the operations of the landfill.

Starting in mid-October and still ongoing, Casella and ANR have teamed up in making appearances at Select Board, Council and Waste Management District meetings in order to discredit DUMP and persuade the public to support the landfill expansion with statements that are misleading.

For example, at one of the first meetings, held in Coventry, the ANR had identified public comments included in its Responsiveness Summary that were made by DUMP members and provided them to Casella. The names had not been made public in the Responsiveness Summary. The ANR also released one-on-one email exchanges between DUMP members and ANR staff members so that Casella could counter statements out of context. Four members of the ANR staff, including the Secretary, were present at this meeting to support Casella.

We feel strongly that ANR staff should serve the public's interest and not be involved in public lobbying for permit applicants during the Act 250 review process. The ANR's time would be better spent by creating a more environmentally safe solid waste management plan for Vermont, one that involves modern waste to energy technologies.

The pre-filed testimony from the applicant and ANR were due just days before the January hearing. Due at end of day on Friday, Jan. 18, it was filed two and half hours late due to "technical difficulties." This gave parties and friends the weekend, a holiday, and the day of the hearing to review testimonies and exhibits provided by the applicant and the ANR.

Prior to the hearing, we made several calls to request details of the scope of our participation as a Friend. These calls resulted in what seemed to be contradictory statements. For this reason, we did not trust the verbal communication. Had it been repeated in writing, we would have felt differently.

We were told by Act 250 staff that the applicant had floated the idea of an extension for filing their testimony. Our members responded by saying they didn't think that would be fair because we were held to a deadline. In the end, as far as we know, an extension was not formally requested.

At the same time attorneys for the Canadian group, MRC, and CLF were discussing whether to ask for a two-day delay in the hearing in order to have enough time to read testimony by ANR and the applicant. We were consulted about the idea. In the end, no delay was requested.

Dump asked that the hearing be held in a different location, stating that the Coventry Community Center didn't seem large enough. Parking was also an issue. We were told the center was large enough. Parking availability we were told included the snow piled streets, down the hills to the highway, the park and ride at the bottom of the hill, and across the highway at the elementary school.

About 150 people attended the hearing. The room was tight with chairs coming right up to the tables where the commissioners and witnesses sat. People could not hear a lot of the time.

People sitting in the front blocked my access to the screen displaying exhibits, which was small and was not clearly visible from the other side of the room. I had brought a large map to reference different wells and parts of the landfill. There was no place to put it.

The landfill postal address is Coventry, but it is physically closer to downtown Newport. Newport offers multiple options for adequate meeting spaces with accessible parking lots. We believe there were better choices for this hearing.

At 10:30 a.m. the day of the hearing, scheduled for 5:30 p.m., an email was sent stating the sequence in which parties and friends would be allowed to speak. I was to be the spokesperson and was on the road that day. We learned that all parties and friends were to give a five minute summary. This being our first Act 250 hearing, we had planned on presenting new evidence.

With so many documents to wade through, we continued to learn as much as we could. The more we read, the more we believed that the Solid Waste Division of the ANR was not representing the citizen's best interest.

We also learned that the Conservation Law Foundation would be added to our group, resulting in DUMP, CLF, and three individual "Friends" being grouped together with only one spokesperson and maybe five minutes to represent everyone's testimony.

To be honest, it felt like this was a game and the rules were stacked against us. We gave consideration to not participating at all.

We stated an objection at the hearing of our perceived unfairness, our inability to adequately prepare without adequate clarification of our participation and the late instructions that the Commission was not expecting new evidence.

In the end, it may have appeared that all worked out. Per our request, CLF was given a position in the sequence and an opportunity to speak. The other "Friends" in our group also had time to speak later in the hearing. However, DUMP was not prepared for cross examination, which was granted after we spoke from memory about our 31-page pre-filed testimony. We could have offered more conclusive evidence had we been prepared with the appropriate documents for cross examination.

The accumulative result of:

- Inadequate notice resulting in lack of participation and untimely requests for party status;
- Narrowing of the focus for the final hearing in which participation was the greatest;
- Lack of clarity about participation; and,
- Limited time to review the pre-filed testimony of the applicant and ANR;

was that the Commission went into deliberations without the presentation of all the problematic aspects of the landfill, the permit application, and the ANR certification. Therefore, in this case the process in its entirety was flawed.

That being said, once the hearing commenced the District 7 Commission was attentive and seemed interested in hearing from everyone who wished to offer comments. The actual hearing seemed to be managed in a fair manner for all participating.

I hope that the details of our experience can translate into ideas on how to change the process to allow for public participation and solid decisions by the Commissions. Following is input on the draft legislation and existing rules according to our one experience with the Act 250 process involving the Coventry Landfill.

1. Notice: First and foremost, notice of hearings needs to be addressed because its inadequacy perpetuates requests for untimely party status. In the case of the landfill, the Act 250 Commission held hearings prior to ANR's public hearing. Notice requirements are decades outdated. Newspaper circulation and readership have declined so much that a page one article would not provide adequate notice.

   The use of one medium for communication is no longer sufficient to provide notice to a public that has access to a multitude of channels for information. Evidence of this is the comparison of turnout at the ANR public hearing on June 21, 2018, versus the turnout at the DUMP public meeting held on Sept. 10, 2018.

   A cascading communication plan was used to notify the public of hearings about the 50 years of Act 250. The notice of Act 250 hearings should be given similar attention.

   With the importance of public notice to a fair process, such requirements should be reviewed more frequently for their effectiveness.

   This would also be applicable to 8404 Appeals.

2. Rule 10 Permit Applications D (ii), Rule 12 Documents and Service C

   The time has come to require electronic filing of applications, documents and testimony. Use of paper and delivery services should be eliminated unless required for some unforeseen circumstance.

3. Rule 14 Parties and Appearances

   (3) Re-examine Party Status: I recommend this section include a re-examination of Friends as qualifying for Party Status.

   Understanding of process and rules grows with experience and further study while participating in procedures. This understanding may allow for making a better and more accurate case for Party Status.

   In addition, any participation by a Friend in hearings may provide evidence of their qualification for party status.

4. Rule 17 Evidence

   (D) Pre-Filed Testimony: Recommend including the opportunity for Friends to provide pre-filed testimony. The District 7 Commission would be facing a decision with a lot less information if it had not allowed Dump as a Friend to provide pre-filed testimony. Without the assurance of participation at hearings, pre-filed testimony allows for a thoughtful and prepared way to have input.

5. Rule 19 Presumptions | Page 42 of Draft Legislation

   (3) (A) Recommend adding the word "even" for emphasis and clarity:

   There shall be no presumption for a permit or approval of authorizing the discharge of a pollutant into a water "even" if uses of that water are already impaired by the pollutant.

   (3) (B) We oppose giving the Agency determinations "substantial deference." If you read DUMP's testimony, you will see that such determinations can be misleading, a disservice to the public, and skew Commission decisions in a manner that is counter to its purpose.

   In the past, the landfill development has been afforded wetlands variances, use of prime agricultural land, and a total disregard for the view corridor. From his 30 some years of experience as an architect in Vermont, my husband says the Agency would not afford the same allowances to build a school on this same location or one with similar attributes.

   If you read the various rules governing the different permits that can be required for development, you will see that in many instances the rules conclude by giving sole discretion and authority to the Secretary of the ANR. This gives a lot of power to one person and goes against a system of checks and balances intended by our government in general, and Act 250 specifically. Moreover, by putting so much power in the office of the Secretary, it has the unintended consequence of making the Secretary's permit decisions subject to political influence.

   In a perfect world, citizens could trust and rely upon members of state agencies paid with tax dollars. However, we have learned we cannot. Our experience and sentiments are not isolated ones. We provide an article titled "Clean Water Act's Anti-Pollution Goals Prove Elusive," in which agency practices outlined in other states mirror those we observed as they pertain to enforcement of rules and regulations concerning the landfill operations.
   https://www.opb.org/news/article/anti-pollution-goals-elude-clean-water-act-enforce/

6. Rule 32 (B) (2) Permit Expiration Date

   Recommend adding responsibility for remediating harmful impacts in the post-closure period, as opposed to just monitoring.

7. Rule 34 (A) Material Change:

   Under this Rule, the Coventry landfill has been allowed to grow the tons of waste it can accept from 240,000 tons to 600,000 tons a year without public input. Size or percentage of change in an operation so potentially harmful should trigger closer review and public input.

8. 6021 Board; Vacancy, Removal

   My inclination is to advocate for the Environmental Court over the Environmental Review Board. Though I have read solid arguments for the Board, our experience with the permitting of the landfill made it clear how money and politics can have significantly more influence over decisions than the statutes and rules.

   I believe there is a greater likelihood that politics and money will influence the Board than the Environmental Court. A much studied and historic decision supports this belief about such influences. A group of intelligent people with all the technical data needed to make the right decision instead succumbed to the pressures of politics and money. The result, the Shuttle Challenger exploded.

   In stating this, I am aware the Environmental Court is more formal, and public participation may require an attorney and added expense.

   (a)(1) If the Board is established, we advocate for the necessity of the Senate's approval for the naming of the Chair, members and alternates. Again, our reasoning being that the Board should not be a political tool.

9. 6025 Rules (b)

   We recommend establishing thresholds to trigger a more stringent approach to applications for developments that are large in scale, complex in scope, and of greater potential risk to the public and environment. As Act 250 Commissions are not composed of experts, such an approach should include access to resources that would allow for a more comprehensive understanding of technical aspects and impacts.

   Relying on citizens to provide the necessary review and expertise of such applications is akin to gambling with highly unfavorable odds.

10. 6027 Powers

    (g) After researching the operations of the Coventry landfill, we are in total support of the Board's (if so established) ability to initiate enforcement. As covered in our testimony to the Commission, oversight and enforcement have been seriously lacking.

11. 6086 Issuance of Permit: Conditions and Criteria

    (B) We recommend standards, or guidelines, be developed for the total allowable emissions for a development, just as there are for specific gases. Otherwise, legislation is biased toward development, even if unintentionally so.

This is only one of the sections of the Act 250 rules where development is given precedence over the protection of the environment by cascading levels of allowances.

While I understand that the intent is to strike a balance between allowing development and protecting the environment without causing undue harm, the wording creates opportunity for broad interpretation to allow for, as opposed to restrict, pollution. There should be some concept as to how much is too much when it comes to emissions allowed by individual developments.

12. 8404 Appeals

(1)(A) Inadequate notice would be a procedural defect. As previously stated, the requirements for Notices need to be updated.

(2)(A) Limiting appeals to only those comments made previously further cripples the public participants who are forced to play catchup on all documents, statutes, rules, permits and issues.

We continued to learn not only after the ANR hearing, but also now, after the Act 250 hearing.

If the intent is to make informed decisions, than applicable and new information should be allowed during all stages of the procedures. Time is money when it comes to development, just as wrong decisions come with a price. (2) (B) (iii) is not sufficient to address this concern.

Thank you for the opportunity to have input and share our experience. We hope you find it constructive and helpful in fine tuning the Act 250 process.

Respectfully submitted,

Anita Ancel