

Who is the Customer?

# A Call for a New Vision of Collaboration at ANR

Ten Stories of ANR's Failure to Protect the Public and the Environment

July 15, 2008

**1. Silt in Drinking Water**

Clarendon/WP Mobile Home Park.

**2. Blast impacts Ignored**

Clarendon/Carrara Quarry

**3. Fox-Henhouse?**

Highgate/VEF

**4. Construction in Wetlands**

Charlotte/VELCO

**5. Landfill Risks Ignored**

Florence/Omya

**6. Weak Water Permits**

Stockbridge/Pristine Mtn. Springs

**7. Drinking Water Sickens Vermonters**

Chittenden County/CWD

**8. Tire Burn Toxics**

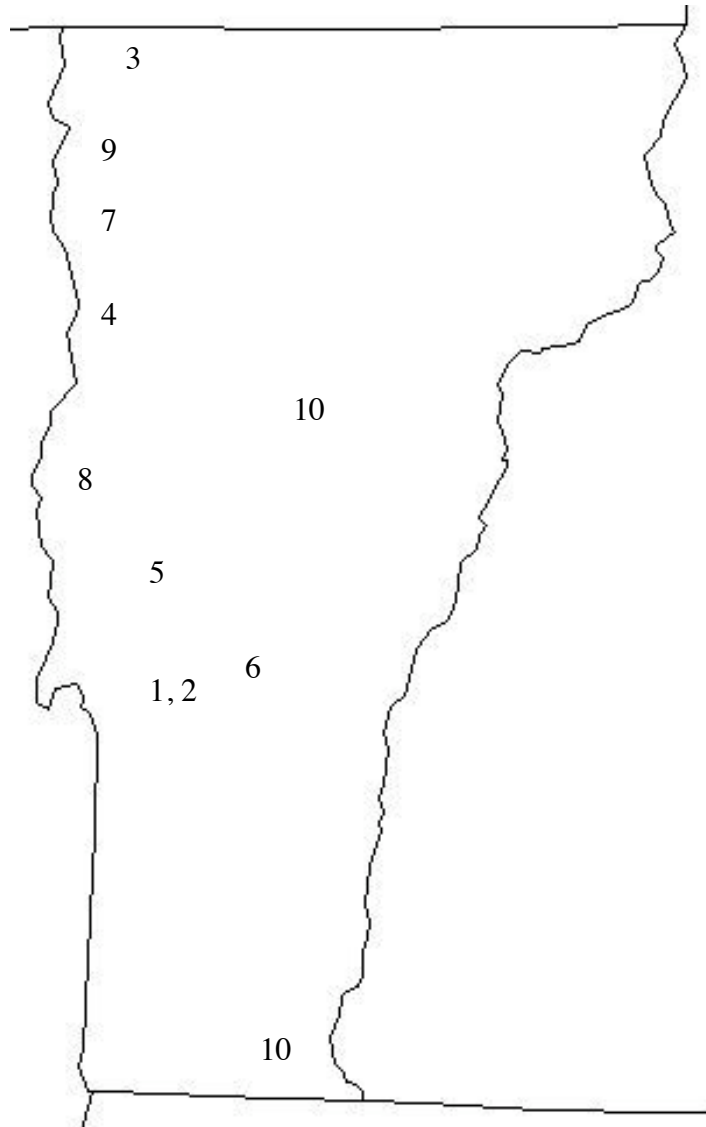
Addison County/Int'l. Paper

**9. Junk Yard Poisons**

Milton/ABC Metals

**10. Watersheds Degraded**

Randolph, Vernon/ DEC



*A report from*

**Vermonters for a Clean Environment**

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**Agency of Natural Resources' Mission Statement:**

“To protect, sustain, and enhance Vermont’s natural resources, for the benefit of this and future generations.”

*This report is dedicated to the  
Staff of Vermont's Agency of Natural Resources*

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## Explanation of Acronyms

ANR – Agency of Natural Resources

*ANR is comprised of three Departments: Environmental Conservation, Fish & Wildlife and Forests, Parks & Recreation. This report focuses on the activities of the Dept. of Environmental Conservation.*

AoA – Agency of Agriculture (previously Department of Agriculture)

CWD – Champlain Water District

DEC – Department of Environmental Conservation

EPA – Environmental Protection Agency

LFO – Large Farm Operation

NOAV – Notice of Alleged Violation

NRRC – Natural Resources Restructuring Committee

PCAC – People Concerned about Chloramine

PMS – Pristine Mountain Springs

PSB – Public Service Board

RCO – Residents Concerned about Omya

RINA – Rare Irreplaceable Natural Area

SWMP – Solid Waste Management Program

VELCO – Vermont Electric Power Co. (a/k/a VT Transco, VETCO)

VCE – Vermonters for a Clean Environment

VEF – Vermont Egg Farm

VLS – Vermont Law School

WSD – Water Supply Division

WPMHP – Whispering Pines Mobile Home Park

# Who is the Customer? – A New Vision for ANR

## Introduction

The ten stories discussed in this report come from throughout the state, and address a wide range of issues – large companies and small, permits not enforced or not even issued, cases where ANR's DEC played the lead role or was a participating character.

In all cases, the outcome has been frustrating for the general public, because DEC has acted in one (or more) general ways:

- failure to enforce permits or allowing unpermitted operations to operate
- failure to listen to citizens' complaints
- use/support of bad science

At least one of these three themes is highlighted in each story. Each story also includes a summary of the key points.

In each of the stories in this report, during the course of reported events VCE and citizen activists offered suggestions for what we felt was the best course of action for DEC staff. We highlighted bad science and tried to point staff in the direction of good, accurate science that could be the basis for decisions that protect human health and the environment while balancing the needs of permit applicants and holders. We encouraged independent review of the information being offered by applicants. We urged enforcement of permits in cases where permit conditions were clearly not being met. And we worked to ensure that the voices of citizens were heard and that their comments were offered to the appropriate agency staff in a timely and productive way.

Unfortunately, especially in recent years, we have met with considerable frustration. We decided it was time to compile these stories and present them to the broader public in the hopes of changing the dynamic from frustration to cooperation. You will see that in many cases our recommended next steps, the "What Should Happen?" portion of each story, involve stakeholder discussions and other recommendations for collaboration.

VCE sees these problems at DEC as systemic, and partly a result of turmoil in the agency. We have had to deal with six ANR secretaries in nine years. We are aware that, often, DEC staff make good decisions that are over-ridden by political interference. But we also have examples of staff allowing environmental degradation rather than pushing for protection. In all cases, we support DEC staff administering the law and working with the regulated community and the public to solve problems.

Reading these stories, one is left wondering what would happen if the Agency really listened to citizen complaints and tried to address them, rather than considering only the companies and permits. DEC's current focus is to view the regulated companies as their "customer" and citizens as an obstacle. DEC seems to reject the idea that permitting should by definition involve and be shaped by meaningful input from stakeholders. As a result, citizens feel victimized by not only the offending companies but also by DEC.

What is needed now is not "reorganization" or "restructuring," which freezes the public out of the process. Rather a new vision of cooperation and collaboration is imperative. ANR needs to formally acknowledge and cooperate with citizens, and seek to utilize stakeholder processes so that the citizens do not feel that they are the only ones defending the environment.

VCE's vision is and always has been one of cooperation rather than confrontation. We hope this report will lead to change within the agency so that they will embrace this vision as well, so that we can work together as partners in the future.

The Staff of VCE

Annette Smith, Executive Director

Matt Levin, Outreach and Development Director

July 2008

# 1. Whispering Pines Mobile Home Park

*DEC says muddy drinking water good enough for mobile home park residents*

## **Divisions: DEC Water Supply and Hazardous Waste**

### **Issue: Vermonters' complaints not heard**

Summary: Despite years of complaints about water quality, DEC staff insist that drinking water contaminated by silt and other particles is potable.

In 1990, gasoline contamination was discovered in a Clarendon neighborhood. Several private wells and the municipal water supply serving the Whispering Pines Mobile Home Park (WPMHP) were found to be contaminated with the highly mobile gasoline additive MTBE, benzene, and other constituents of gasoline. Bottled water has been provided to residents since 1992. The surficial aquifer has been remediated but the bedrock aquifer has not.

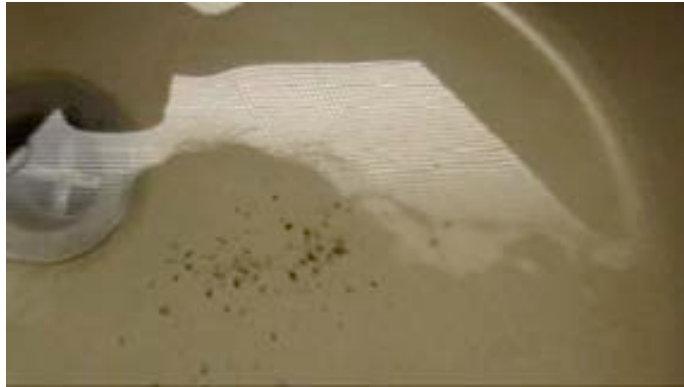
Through the Petroleum Clean-up Fund, carbon filtration systems were installed in private homes but a different type of water treatment system called an air stripper was installed at the WPMHP. The mobile home park's water treatment system, installed in 1995, was intended to be "temporary" and is not currently considered to be "Best Available Technology." Quarterly testing indicates continuing presence of contaminants, with occasional spikes in MTBE levels and breaches of the treatment system. DEC spends about \$3000 a month providing bottled water and maintaining the water treatment system at WPMHP.



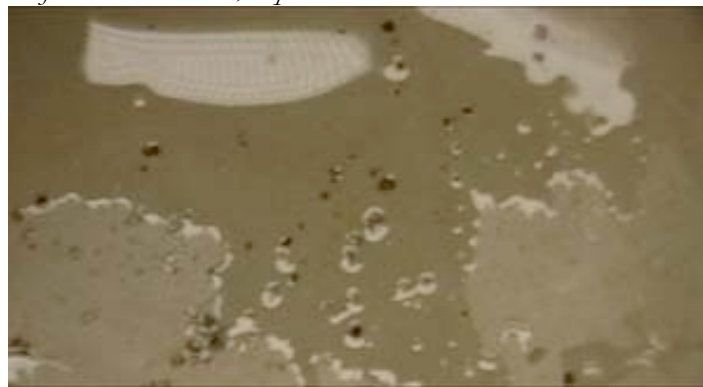
*State-owned "air stripper" removes MTBE and other gasoline contaminants from mobile home park water*

By 1998, DEC Water Supply Division (WSD) files show that mobile home park residents were complaining about sediment in the water. ANR staff have speculated that naturally-occurring minerals such as calcium carbonate, iron and manganese may be precipitating out from the water treatment system.

At a meeting in 2003, WSD staff told WPMHP residents that their water is potable, and the bottled water is provided only as a courtesy. For the past five years, residents have continued to complain about high levels of sediment in the water. Sediment, or turbidity, is one of the criteria for potability. Recent testimony in a related Environmental Court case indicated that turbidity levels in water from the WPMHP system appear to exceed standards for potability.



*Mobile home park residents frequently experience sediment in their tap water. Photos of WPMHP water, Sept. 2006. Conditions like this occur monthly.*



In 2005, after receiving thirty-two Notices of Alleged Violation (NOAV) from the WSD for a variety of failures and being found in contempt of a court settlement agreement in 2004, the WPMHP water supply was determined to be under the influence of surface water contamination. Unfortunately, the water supply was then de-listed as a municipal water supply because some tenants moved out, so ANR no longer requires monitoring or has oversight. However, ANR owns the water treatment system and has responsibility for its operations and maintenance.

WPMHP residents are still living with unacceptable levels of sediment in their water. The sediment contains a variety of substances, including rocks, which are easily visible on a regular basis in any of the residences. The source of the sediment has not been identified, but could be a combination of calcium carbonate, iron and manganese precipitating off the water treatment system, along with impacts from quarry blasting into the bedrock aquifer (the park is located 1900 feet from a crushed rock quarry). Sediment clogs all the water lines in the residences, damages and shortens the life of hot water heaters, and creates a significant burden on low-income residents, all of whom tell stories about taking washing machines and walls apart to get at lines so they can be unclogged.



DEC's Water Supply Division and Hazardous Waste Division have offered to install a softener in the water treatment system. However residents have no interest in a softener because their problem is sediment, and they are aware that softeners can introduce other problems. They are requesting system-wide filtration and/or filters on individual homes.

To date, no action has been taken to address the water quality issues at the mobile home park, despite the state's ownership of the water treatment system. Residents have made repeated requests of the Commissioner, WSD staff, and others to take responsibility for the problem and/or hold the landlord, J.P. Carrara & Sons, accountable for providing potable water to residents.

For a decade, DEC has let down low-income people who cannot afford to live elsewhere, and who asked for help with compliance with state rules and regulations.

## **What Should Happen?**

We have requested and are now repeating the request for a meeting with DEC staff to come up with a plan to resolve the sediment problem at the Whispering Pines Mobile Home Park in Clarendon.

## 2. Carrara Quarry

*DEC staff appear in court to rubber stamp permit applicant's science in the face of contrary data*

**Divisions: DEC Water Supply, Wetlands, and Hazardous Waste**

**Issue: DEC supports bad science**

Summary: During Environmental Court consideration of permit details, DEC staff ignored clear indications that estimates and assumptions used by applicant's experts are inaccurate, despite efforts by citizens to point out inconsistencies.

J.P. Carrara & Sons operates a crushed rock dolomite quarry in Clarendon. The quarry has been the subject of one civil lawsuit and two permit revocation petitions through Act 250. The quarry's first Act 250 permit was denied in 1988 after the site, which was an important deeryard, was clear-cut in preparation for the quarry prior to applying to Act 250. This was the first situation where deeryard mitigation was used to enable a project to move forward. Nobody told the deer, who continue to use the site rather than the acreage that was purchased as mitigation.

The Carrara quarry initially applied to blast to ground level, with the promise of providing the community with a recreation area as the reclamation plan. However, once the quarry operations reached ground level in 1994, the Carraras returned for permission to quarry to a depth of 300 feet. Because of ANR's concerns about the potential impacts on neighboring water supplies and surrounding wetlands, and the possibility of spreading the neighborhood's MTBE contamination, Carraras reduced their request to deepen the quarry to 70 feet deep. That level was reached in 2004. During that period there were claims of substantial impacts on neighboring water systems, which were the subject of a civil lawsuit that settled out of court.

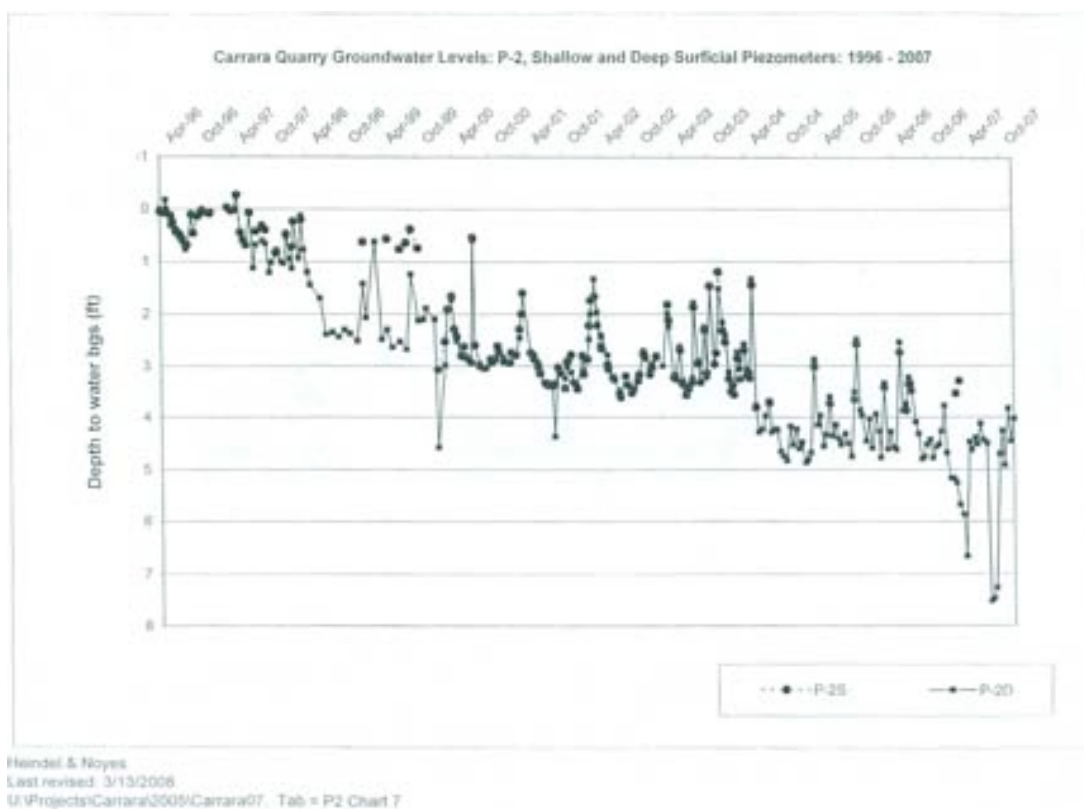


*Carrara Quarry in 2005 at 70 feet below ground*

At the end of 2004, J.P. Carrara & Sons applied to Act 250 to deepen the quarry another 105 feet. The District Commission awarded a permit for a more limited expansion that contained a number of protective conditions for neighboring water supplies.

Carrara appealed this permit to Environmental Court and neighbors filed a cross appeal. DEC actively participated in the six-day Environmental Court trial, offering testimony from staff from the Water Supply Division, Wetlands Division, and Hazardous Waste Division that supported the applicant's effort to overturn a permit that seemed to fairly balance the needs of the company, neighbors, and the environment.

During the trial, a critical issue was the possible connection between the aquifer under the quarry and neighboring wetlands. This connection was critical to determining the impact of the proposed deepening as the aquifer feeds those wetlands, and was considered by examining the water levels in the wetlands adjacent to the quarry. Graphs prepared by Carrara's experts clearly show declining water levels in the wetland as blasting goes deeper into the aquifer, yet DEC's wetlands expert testified the situation had stabilized.



*Carrara Quarry: Wetlands Groundwater Levels 1996-2007*

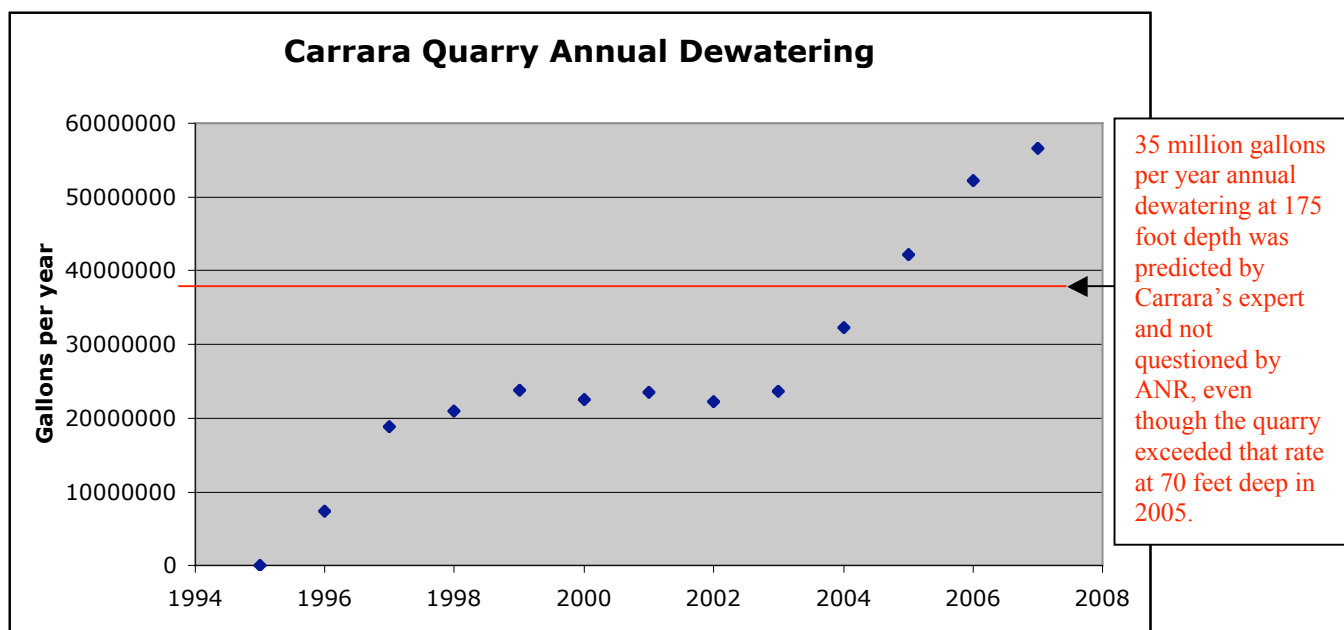
DEC's wetlands expert first testified that the surficial aquifer is not connected to the bedrock aquifer. Under cross-examination, he changed his mind and said the surficial aquifer is connected to the bedrock aquifer. Under re-direct he changed his mind again and said the surficial aquifer is not connected to the bedrock aquifer. Clearly, DEC's wetlands expert did not have a good, independent understanding of the science and hydrology at this site. This did not stop him from offering opinions supporting the applicant's arguments.

In testimony and under cross-examination in Environmental Court, DEC staff also indicated they saw no problem deepening the quarry, and they had no issues with any of the expert reports paid for by the Carraras.

The neighbors' expert, however, had numerous issues with the scientific reports and expertise presented by the Carrara's expert witnesses, including the lack of characterization of the bedrock aquifer's MTBE plume, the use of the wrong model to predict the potential impact on neighboring water supplies, and the underestimation of the amount of water to be dewatered from the quarry at the depth of 175 feet.

Carrara's hydrogeologist estimated in 2006 that after quarry deepening from 70 to 175 feet, the quarry would remove 35 million gallons of water per year. However, during the 2006 Environmental Court trial, the neighbors' expert witness noted that company records showed that dewatering levels the previous years, before additional blasting, had already far exceeded the amount estimated for the proposed deeper quarry.

The neighbor's witness stated in testimony that this major discrepancy "made me very concerned about the predictive capability of these studies if we've already shown that this prediction was underestimated prior to even beginning to deepen the quarry."



Despite the obviously inaccurate estimate by Carrara's experts about how much water would be removed from the quarry at its requested additional depth, DEC staff had no concern about the applicant's data or impact estimates.

The DEC Wetlands Coordinator testified he had reviewed the work of Carrara's experts, Heindel and Noyes, in this and other occasions and found it to be "thorough and satisfactory" from his perspective. All three DEC witnesses testified at the Carrara Quarry trial in Environmental Court that they did not see anything that would cause any problems for water supplies, wetlands, or the neighborhood's contaminated aquifer if the quarry floor were to be lowered another 105 feet into the aquifer.



*Carrara quarry in winter 2005 at 70 feet below ground*

Despite the many concerns raised at the trial, DEC has approved a decrease, rather than an increase, in their scrutiny of environmental issues as Carrara begins a major quarry expansion. DEC is reducing monitoring in the neighborhood in the following ways:

- a. Many of the neighboring residential water supplies contaminated with MTBE and other gasoline constituents are now being monitored annually instead of quarterly.
- b. Wetlands piezometers with the longest record of data collection that show the largest decline in water levels have been discontinued. The number of hydrologic and vegetation monitoring stations have been reduced.
- c. WPMHP water supply is no longer a public water supply and is therefore not required to report problems to DEC.

Neighbors of the Carrara Quarry have lived with the impacts of quarry operations for two decades. The Act 250 District Commission heard the people and recognized that homes and water supplies have been damaged. They approved quarry deepening, but put restrictive conditions on the permit that would have given the quarry neighbors some hope of remedies in the future. DEC staff ignored clear scientific evidence and instead supported the Carrara's appeal to Environmental Court, which removed the protective conditions.

ANR is working against the people and the environment, not for or with them.

## **What Should Happen?**

DEC should require the quarry operator to hire independent scientists, in cooperation with quarry neighbors, to accurately assess the quarry's impacts on water supplies, wetlands, streams, and the neighborhood's contamination plume.

### 3. Vermont Egg Farm

*Investigation of citizens' complaints enters "black hole" of enforcement*

**Divisions: DEC Wastewater Management and ANR Enforcement**

**Issue: Vermonters' complaints not heard**

Summary: Citizens document apparent violations of wastewater permits, but are unable to determine if these complaints are appropriately investigated or acted upon.



*Neighbors have questioned the disposal of wastewater from Vermont Egg Farm in Highgate*

Vermont Egg Farm (VEF) in Highgate is the state's first factory farm, housing 100,000 laying hens. Since its opening in 1996, VEF has been the source of numerous complaints by neighbors, many of whom are dairy farmers. A lawsuit brought by one neighboring dairy farm family resulted in a jury finding that VEF created a nuisance. Poor manure management practices led to fly infestations and caused economic harm to the neighboring dairy farmers. Vermont's Department of Agriculture has three times denied VEF's application for expansion. VEF recently re-applied to build a second hen barn, proposing to house an additional 161,000 laying hens, with a plan to store manure on-site for up to 290 days.

One of the many issues surrounding VEF's operations is the disposal of wastewater. VEF disposes of its wastewater by trucking it to one of two municipal wastewater treatment plants. Neighbors understood that transport to a wastewater treatment plant was the approved method of disposal, but in 2006 they observed VEF land-applying the wastewater in fields that run off to the Rock River.

After calls to DEC to file a complaint resulted in no apparent action, a neighbor contacted VCE for assistance in determining what was happening to VEF's wastewater. After inquiries were made, it was determined that the Agency of Agriculture (AoA) had several months before, with no public notice, amended VEF's permit to allow wastewater to be disposed of by pumping it into a holding tank and transporting it to dairy manure lagoons, eventually spreading it at the egg farm and one other nearby dairy Large Farm Operation (LFO).

ANR was apparently never notified that AoA amended VEF's permit, and did its own investigation into the citizen's complaint. ANR's enforcement division told a reporter in September 2006, "We do have a complaint. We are looking into it." The ANR staffer added that the Agency received the complaint in late August, and they could not release specifics until the case is closed. That was the last anyone heard about the complaint and the approved disposal of VEF's wastewater. In 2008, when neighbors observed a VEF employee disposing of liquids in an abandoned manure pit not approved for wastewater disposal, this issue was raised again.

AoA and ANR now both say that the approved wastewater disposal method is to truck it to a manure pit owned by Brian Rowell, where it is mixed in with manure destined for a methane digester. However, two different neighbors on several different occasions have recently observed a VEF employee emptying liquid into an abandoned manure pit across the road from VEF.



*Photo from cell phone video taken by VEF neighbor showing equipment dumping liquid into abandoned manure pit across from Vermont Egg Farm*

The excerpt from the cell phone video, above, was recorded by a neighbor on May 20, 2008 showing VEF employee Larry Rollo dumping some sort of liquid into the abandoned manure pit at the old Laroche Farm across the road from the chicken farm.

The abandoned manure pit is owned by VEF and is surrounded by debris from an old barn, and, at the time of VCE's site visit in May 2008 was close to overflowing.





*Abandoned manure pit across from Vermont Egg Farm is not approved for wastewater disposal*

In response to queries from VCE about the current disposal methods of VEF's wastewater, ANR says it is not an issue because the agency does not regulate manure pits, and this one does not drain to surface water.

VCE requested copies of the enforcement file from 2006, and an ANR attorney indicated the report would be forthcoming. However, the attorney found that the enforcement division never wrote up their investigation in 2006. The attorney promised VCE will receive the report as soon as the enforcement division writes it up. Several weeks have passed since VCE requested the enforcement division's report into VEF's wastewater disposal in 2006.

We are still waiting.

## **What Should Happen?**

ANR should enforce against the unpermitted disposal of VEF's wastewater, and develop a stakeholder process to be used in enforcement cases so interested parties can learn about what is happening in their neighborhoods, and offer information that would assist investigations.



## 4. VELCO Northwest Reliability Project

*DEC inaction, and worse, allows permittee to abuse fragile wetlands*

### Division: DEC Wetlands

### Issue: Permits not enforced

Summary: DEC fails to enforce permit conditions designed to protect wetlands, approves amendments that weaken protective conditions with no public process.

VELCO is constructing a large power line from New Haven to South Burlington, the second phase of what is called the Northwest Reliability Project. VELCO has a permit that authorizes certain construction activities to take place only in the winter, when the ground is frozen, or in dry summer weather. Their permit clearly stated the restrictions, for example this language from Condition 458 on page 153:

Construction of the proposed Project in wetland areas will occur during winter months or dry summer months, to reduce disturbance to wetlands. VELCO will use construction mats, if necessary.

Other portions of the conditions for the project also outlined clear restrictions:

If frozen ground conditions fail to fully materialize during the winter construction season, construction should be delayed until the driest part of summer (August–October) or, as the option of last resort, timber mats used during the winter season to cover ground that has not fully frozen.

VELCO sought a permit amendment from the Wetlands Division to allow for construction at other times, and received the permit amendment with no public process. When DEC made a site visit following up on public complaints that permit conditions were not being complied with, they found the work (and damage) was already done.

Some of the contested construction activity is taking place in Thorpe Brook, Charlotte's prized Rare and Irreplaceable Natural Area (RINA). Charlotte's Conservation Commission recently wrote to the Public Service Board (PSB) and ANR Secretary George Crombie expressing their concerns about the lack of compliance with permit conditions.

In listing the issues raised by VELCO's work, the Commission stressed how VELCO had systematically violated permit conditions:

To our deep consternation, VELCO is doing just the opposite of these conditions. We find that the actions taken by VELCO in Charlotte wetlands during spring--the time to specifically be avoided for such work -- violate both the spirit and the letter of the Certificate of Public Good granted by the PSB.

Charlotte's Conservation Commission cited specific instances where Public Service Board conditions were violated:

In contradiction to Condition 458, VELCO delayed work on the Charlotte substation, with

no explanation, from October 2007 (an appropriate time for such work) to March 2008 (inappropriate time during melting of snow during day and thawing soils). Work continues there with surface waters visible and saturated soil conditions in May even after weeks of very little rain. Before the recent rains of June, we observed and photographed deep ruts in soil adjacent to access roads and north of substation.



*Rutted soil near Charlotte Substation*

In contradiction to Condition 458, VELCO brought more construction mats in during April and in May. An area approximately equal to an acre is covered by solid wooden construction mats.



*An acre of Construction Mats covers areas of Charlotte wetland  
DEC's Wetlands Division approved this activity with no public process*

The letter goes on to report numerous other permit infractions committed by VELCO, including lack of notice, construction occurring during spring high water, leaving construction materials in place throughout critical growing seasons, etc.

ANR staff and independent ecologists have stated that mats should NOT be kept in the Thorpe Brook area indefinitely during the growing season, so that the area can recover.



*Construction Mats in Thorpe Brook, Charlotte's Rare and Irreplaceable Natural Area*

In response to the Charlotte Conservation Commission's letter of June 20, 2008, the PSB asked VELCO to respond by July 11, and also offered other parties and interested persons the opportunity to comment by that date.

DEC has failed to offer any response to repeated complaints by citizens and the Conservation Commission regarding permit compliance. As a result, it has fallen to the Public Service Board to act.

### **What should happen?**

DEC should order the immediate removal of construction mats and engage in a stakeholder process to address ongoing compliance problems with VELCO's power line construction.

## 5. Omya Landfill

*DEC pushes paper while millions of tons of waste get dumped into groundwater*

**Division: DEC Waste Management, Solid Waste Management Program**

**Issue: DEC allows unpermitted operations**

Summary: While citizens spend years voicing complaints and concerns, DEC allows the dumping of hundreds of thousands of tons of chemically contaminated mining waste into a landfill with inadequate environmental protections, in contact with groundwater.

Omya, Inc. operates a calcium carbonate (marble) grinding plant in Florence, a village in the town of Pittsford. Since 1979, Omya has been disposing of chemically contaminated waste from its mineral processing into old quarries, in direct contact with groundwater. DEC did not regulate Omya's waste disposal practices when the Solid Waste Law (Act 78) was passed in 1988, though a draft interim certification has recently been released.

Omya dumps waste at a rate of 100,000 to 150,000 tons a year. Neighbors began raising questions about the lack of state regulation when, in 2002, Omya sought and received exemption from regulation from the Solid Waste Management Program (SWMP). After neighbors raised questions with the DEC Commissioner about providing an exemption for chemically contaminated waste, the issue was reconsidered. In 2003 and again in 2005, the DEC Commissioner found the waste may pose a threat to human health and the environment and did not qualify for an exemption.



*Omya's mineral processing plant in Florence*

After the 2005 finding, DEC did not take action, but instead decided to wait for the conclusion of a legislatively mandated independent study of Omya's operation. After an extensive review by a team of qualified experts chosen through a successful stakeholder process, scientists identified a toxic chemical had escaped and contaminated area groundwater. AminoEthyl-Ethanolamine (AEEA), a chemical used in Omya's processing, has migrated off-site and contaminated groundwater on-site.

Independent experts also found that Omya's waste disposal practices were creating an environment in groundwater conducive to the release of naturally occurring minerals, including iron, manganese

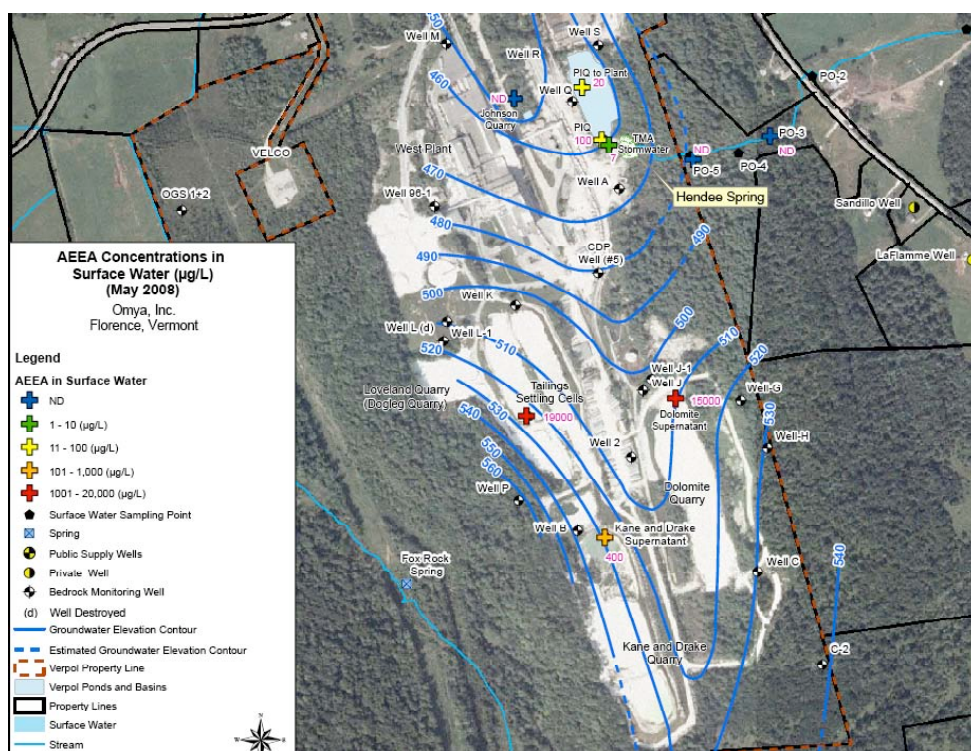


and arsenic. The chemical perchlorate, once used in blasting at Omya's Hogback quarry, was found in several neighboring water supplies and in surface water outfalls from the Hogback quarry.

All of these findings serve to underscore the fact that the Omya operation does create the kinds of hazards that state solid waste regulations are designed to control and regulate, but only if enforced.

The report's authors were careful to note that their assessment reflected only a snapshot in time and they acknowledged that there were gaps in their knowledge. With that in mind, the scientists recommended the installation of additional groundwater monitoring wells and a rigorous monitoring regime so that the public is informed if and when the chemicals leave Omya's site.

The scientists determined that the groundwater under Omya's site is contaminated with chemicals at harmful levels. They concluded there was no threat to human health or the environment, but only by assuming that no one drinks the groundwater from under Omya's facility and that any contamination will be diluted or dissipate as it moves off-site.



*Vermont's Department of Health set a standard for AEEA in drinking water of 20 ppb. AEEA has been detected in surface water at Omya's site as high as 19,000 ppb in May 2008 and has contaminated groundwater*

While Omya's unsafe waste management practices continue, DEC has not only demonstrated a lack of enthusiasm for enforcing state statutes, the department also seems to pick and choose which ones to enforce when they do choose to act. DEC has issued a draft Interim Certification to Omya which appears to ignore statutes that require that an enforcement order be filed against Omya, rather than an interim certification. It is not clear why the state is not choosing to follow normal procedure and issue an enforcement order that contains a schedule for closure of the site.



*Test results of water in Omya settling cells show high levels of AEEA, a chemical suspected of causing birth defects*

Omya's has been allowed to dispose of its chemically contaminated waste into unlined, uncovered pits for over 29 years. The state has allowed Omya to continue dumping solid waste into unpermitted facilities without any regulation over the entire life of our state's solid waste management law. Even after concluding that the site posed a risk to human health and the environment in 2005, and knowing that Omya cannot bring its current waste disposal facilities into compliance, DEC has allowed Omya to continue dumping.

Due to the inaction of the State of Vermont, Residents Concerned about Omya (RCO), a group of residents who live near to Omya's facility filed a lawsuit in federal court in 2004 in order to obtain a federal court order requiring Omya to close its waste disposal pits. These residents demonstrated to the court that groundwater is contaminated under Omya's site and Omya's chemicals have migrated off-site. In response, on July 2, Federal Judge Magistrate Niedermeyer found in favor of RCO and ruled that Omya's waste disposal practices endanger public health and the environment because of the presence of AEEA. He ordered a hearing to determine the best way for Omya to address the risks of contamination caused by their waste disposal practices.

The current draft of the interim certification would allow Omya to continue to dispose of the chemically contaminated waste into unpermitted facilities for several additional years. Since the waste disposal pits used by Omya will reach their full capacity by that time, the net effect of DEC's inaction will be to have granted a permanent authorization for the use of unlined pits as waste disposal facilities even though those pits could never have qualified for a permanent certification.

This result raises questions about the integrity of the solid waste regulatory program in Vermont.

## **What Should Happen?**

ANR should bring a long-overdue enforcement action against Omya and establish a schedule for closing the landfill, and require a plan for remediation.

## 6. Pristine Mountain Springs

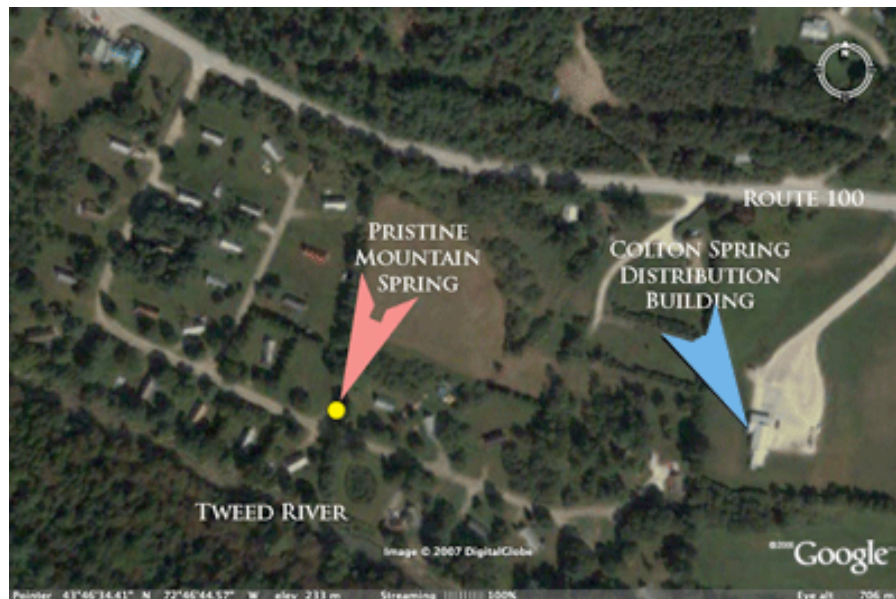
*When enforcement is absent, permit programs are weakened for all permittees*

### Divisions: DEC Water Supply

#### Issue: Permits not enforced

Summary: Investigations by citizens and VCE uncovered a long-standing failure by a bulk water withdrawal company to comply with basic permit conditions – and possible fraud on the part of the company.

In the 1960's, the Chalet Village housing development in Stockbridge was built on the banks of the Tweed River. A cluster of 32 A-Frame cottages, each with its own septic tank and leach field, are served by an artesian well with a flow rate estimated anywhere from 200 to 900 gallons per minute.

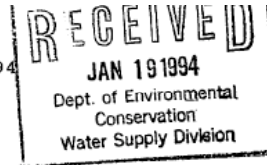


In 1977, Ronald Colton purchased the water supply from Chalet Village's developer. In 1994, he applied for a permit to operate a bulk water supply (selling water to water bottlers) in addition to the primary use of the water source as the water supply for Chalet Village.

One of the requirements for a bulk water permit is to provide assurance that there are no activities within the 200 foot isolation zone that could negatively impact the quality of the water source. Through his attorney, Colton assured the WSD that he "has secured a 200 foot isolation zone," and indicated that one septic system within the zone would be taken out of service.



January 17, 1994



Mr. Howard R. Reeves  
Water Systems Section Chief  
Department of Environmental Conservation  
Water Supply Division  
Old Pantry Building  
103 South Main Street  
Waterbury, VT 05671-0403

Re: Isolation Zone/Colton Spring  
Our file #4140-001

Dear Mr. Reeves:

Please be advised that as of January 14, 1994, Mr. Ronald E. Colton has secured a 200 foot isolation zone.

Mr. Colton plans to place the septic system out of service.

Sincerely yours,

Melvin B. Neisner, Jr., Esq.

MBN:maw  
cc: Mr. Bob Beattie  
Vermont Pure Springs, Inc.

Two weeks later, Colton provided assurance through his engineer that one septic system and leach field had been completely removed.



MICHAEL ENGINEERING COMPANY, P.C.  
ENGINEERS AND LAND SURVEYORS

WSID 5335

(802) 228-3777  
FAX 228-4777  
HAMMOND HALL  
114 MAIN STREET  
LUDLOW, VT 05149

RALPH J. MICHAEL, P.E., L.S.

January 24, 1994

Ron Colton  
Pittsfield, Vermont 05763  
RE: Chalet Village/Cotton Spring WSID #5335  
Stockbridge, Vermont

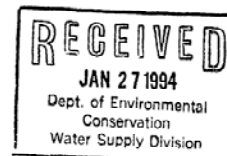
Dear Mr. Colton:

This letter is to serve as certification for all those concerned that on January 21, 1994, I observed the disconnection and removal of the wastewater disposal system serving the A-frame chalet next southerly from the source for water system WSID #5335. The 500 gallon septic tank was pumped out by Silloways Septic Service of 14 School Street, Randolph, Vermont 05060. The wastewater disposal system materials were excavated and removed from the site. The leach field, which consisted of 4 inch perforated PVC distribution pipes in a crushed stone bed, was completely removed and backfilled with imported soil.

Very truly yours,

Ralph J. Michael, P.E.  
RJM/jm

cc: Roger Thompson  
Greg Bostock





After receiving the above assurances, the WSD requested more information about the ownership/control of the 200 foot isolation zone required to meet the requirements of a bulk water supply permit.



Department of Fish and Wildlife  
Department of Forests, Parks and Recreation  
Department of Environmental Conservation  
State Geologist  
Natural Resources Conservation Council

Telephone Relay Service  
for the Hearing Impaired  
1-800-253-0191 TDD > Voice  
1-800-253-0195 Voice > TDD

## State of Vermont

WSID # 5335

AGENCY OF NATURAL RESOURCES  
Department of Environmental Conservation  
WATER SUPPLY DIVISION  
The Old Pantry Building  
103 South Main Street  
Waterbury, VT 05671-0403

TELEPHONE (802) 241-3400  
FACSIMILE (802) 244-5141

January 31, 1994

Mr. Ronald Colton  
Box 662, Route 100  
Pittsfield, Vermont 05762

Re: Certification of ownership/control of 200' isolation zone  
for Colton Spring, Chalet Village Water System, Pittsfield,  
Vermont, WSID 5335

Dear Mr. Colton:

This letter follows our review of the statement from your attorney regarding the ownership/control of the isolation zone for your spring. To adequately demonstrate this control, please have your Vermont Attorney provide legal certification that Chalet Village Water System has ownership or control of 200' isolation zone around Colton Spring in accordance with the provision of the appropriate section of the law. Please attach to the certification, the legal document(s) which provide that control. The legal documents shall contain the list of prohibited land use activities within the isolation zone per the Water Supply Rule (Appendix A, section 3.3.1.2.e.2), attached. Legal control of the land uses within the isolation zone by the water system must be tied to the land deeds for all parcels within the isolation zone and run with the land regardless of future land ownership so long as the source is used for a public water supply.

There is no documentation in the file, however, that Colton provided the requested assurance.

WSD's files also reveal confusion about the location and distances of septic tanks from the water source. In 1978, the files indicate there were two septic systems each 100 feet away from the water source. In 1987, a report was filed indicating that there was one septic system 125 feet from the water source. A 1990 survey notes as a deficiency that a septic system is located 175 feet from the pump house.

By September, 1994, the WSD acknowledged that one septic tank 175 feet away from the water source had been removed.



State of Vermont

Department of Fish and Wildlife  
Department of Forests, Parks and Recreation  
Department of Environmental Conservation  
State Geologist  
Natural Resources Conservation Council  
RELAY SERVICE FOR THE HEARING IMPAIRED  
1-800-253-0191 TDD>Voice  
1-800-253-0195 Voice>TDD

AGENCY OF NATURAL RESOURCES  
Department of Environmental Conservation  
WATER SUPPLY DIVISION  
The Old Pantry Building  
103 South Main Street  
Waterbury, VT 05671-0403  
TELEPHONE (802) 241-3400  
FACSIMILE (802) 244-5141

September 1, 1994

Ronald Colton  
Box 662  
Pittsfield, VT 05762

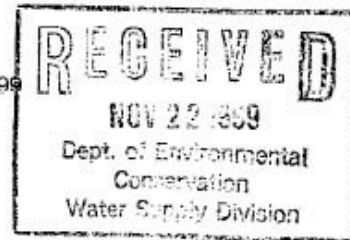
Dear Mr. Colton:

At this time, we acknowledge that the septic tank (which was 175 away from the spring and noted as a deficiency on the 1990 sanitary survey of Chalet Village water system) has been removed. The tank removal was certified by Ralph J. Michael, P.E.

The issue of the 200 foot isolation zone arises again in 1999, and once again Ronald Colton says that within the 200 foot isolation radius "only one lot had a septic in use" which was removed.

PRISTINE MOUNTAIN SPRINGS OF VERMONT, INC.  
P.O. BOX 662  
PITTSFIELD, VERMONT 05762

11-18-99



David K Allerton  
Water Supply Division  
103 So. Main Street  
Waterbury, Vermont 05671-0403

Re: Source Protection Plan, Pristine Mountain Springs of Vermont, WSID#20427

Dear Mr. Allerton:

In response to your letter of 10-21-99 item (a) of the lots within the 200 foot high risk radius only one lot had a septic in use. This lot was purchased by Pristine Mountain Springs and the septic was removed, see letter from Michael Engineering. I am also going to include a copy of the

Sincerely,

After Pristine Mountain Springs was identified in October 2007 as the source of water for a new water bottling plant being constructed in Claremont, New Hampshire by a Canadian company, VCE did a site visit to Chalet Village in Stockbridge in November.

Accompanied by a Chalet Village property owner, VCE staff observed at least three septic tanks and leach fields within the 200 foot isolation zone, and measured the distances from the water source to the septic tanks. Two septic tanks are 143 feet from the water source. One septic tank is 189 feet away. A fourth septic tank may also be within the required 200 foot isolation zone.



VCE contacted DEC's Commissioner about our concerns that the water supply owner had provided false and misleading information to the WSD regarding legal control of the 200 foot isolation zone and septic systems within the zone. DEC's response, below, indicates that Colton now admits there may be septic systems within the 200 foot isolation zone.

Rather than taking any action to bring the operation into compliance with permit requirements, DEC indicates only that the location of the septic systems will be verified during the next sanitary survey. Sanitary surveys occur once every three years.



State of Vermont  
Department of Environmental Conservation

AGENCY OF NATURAL RESOURCES

**Water Supply Division**

The Old Pantry Building  
103 South Main Street  
Waterbury, VT 05671-0403  
[www.vermontdrinkingwater.org](http://www.vermontdrinkingwater.org)

[PHONE] (802) 241-3400  
[FAX] (802) 241-3284

December 20, 2007

Annette Smith, Executive Director  
Vermonters for a Clean Environment  
789 Baker Brook Road  
Danby, VT 05739

Re: Your inquiry regarding Chalet Village Water System WSID # 5335 and Pristine Mountain Springs  
of Vermont WSID #20427

In a telephone conversation on 12/20/07 with Mr. Colton, he said he's never measured to see if septic systems are located within 200 feet. When pressed he said there may be 1 or 2 septic systems within 200'. The division will verify the location of the septic systems during the next sanitary survey.  
(emphasis added)

Providing incorrect information regarding permits is a serious offense. Vermont's Water Supply Statute and Water Supply Rule both contain provisions to suspend or revoke a permit if the water supplier has submitted false or misleading information to the Secretary.

**Title 10: Conservation and Development**

***Chapter 56: Public Water Supply***

**1675. Permits; conditions; duration; suspension or revocation**

(f) Suspension or revocation of permits.

(1) The secretary may, after notice and opportunity for hearing, revoke or suspend any permit issued pursuant to the authority under this title if the secretary finds that:

(A) the permit holder submitted materially false or inaccurate information;

**Vermont Water Supply Rule**

**3.2 Suspension or revocation of permit**

3.2.1 Any permit issued under these regulations may be suspended or revoked if the Secretary finds that the Public water system or drinking water facility is maintained or operated in violation of this rule or of any law, rule, order, ordinance or regulation applicable thereto, or is in violation of the conditions stated in the permit, or that the water supplier has submitted false or misleading information to the Secretary.

Mr. Colton sells literally hundreds of thousands of gallons of groundwater every month to bulk water customers and is the primary water source for Vermont Pure's water coolers, under the company name Pristine Mountain Springs. One wonders what people would think if they knew that the wellhead for the source of their "pure" water was less than 200 feet from several active septic systems, and what impacts a failed system might have on the aquifer that supports the water source.

Permits are designed to protect both human and environmental health. Without compliance with permit conditions and enforcement, public confidence is undermined.

## **What Should Happen?**

DEC should bring Pristine Mountain Springs into compliance with the regulations, and bring an enforcement action for providing false and misleading information to the state.



## 7. Chloramine and the Champlain Water District

*DEC staff unaware of environmental impacts of commonly-used chemical, deny dangers*

**Division: DEC Water Supply**

**Issue: DEC staff use bad science**

Summary: Despite repeated complaints by citizens about potential impacts of chloraminated water on fish and amphibians, and references to news reports and studies, DEC staff deny any impacts occur.

In April 2006, the Champlain Water District (CWD), which serves nine communities in Chittenden County surrounding but not including Burlington, began using chloramine, an EPA-approved chemical, as a secondary water disinfectant. Chloramine is a mixture of chlorine and ammonia. In the weeks before they began use chloramine, the CWD made efforts to inform dialysis patients and fish owners that they would need to take steps to remove the chloramine because chloramine is toxic to fish and people receiving kidney dialysis.

Almost immediately after the introduction of chloramine, some CWD customers began complaining about burning eyes, skin rashes, respiratory irritation, stomach aches and other symptoms they had not experienced prior to the use of chloramine. Some aquarium owners who were not prepared for or aware of the change reported fish dying in their fish tanks.



*Rash on Shelburne resident's leg cleared up after bathing in unchloraminated water*

The CWD responded to public complaints (now numbering about 280 as recorded by the citizens group People Concerned about Chloramine (PCAC)), by noting that they are meeting regulatory standards and there is no evidence of a problem. Despite this stance, complaints about health and environmental impacts have continued for more than two years.

DEC has been involved in the issue from the beginning, as they issued the permit to the CWD to allow the change to chloramine, after consulting with the Department of Health. As concerns about the use of chloramine continued, DEC staff communicated with VDH and CWD staff about how to respond. Communications found in DEC staff files show how Gary Schultz, Acting Chief of the Water Supply Division responded to DEC Commissioner Pelosi's request for information about concerns about the effects of chloramine on the environment:

From: Schultz, Gary  
Sent: Monday, January 28, 2008 9:39 AM  
To: Pelosi, Laura Cc: Blatt, Eric

Concerned about the effects of chloramine on the environment. I don't know of any adverse environmental effects. We're talking about a chlorine/ammonia molecule that is present in the part per million range. It degrades fairly rapidly. Not a problem. This is not dioxin that lasts forever. It will break down into chlorine and ammonia gas at super low concentrations in the environment.

Several aspects of this e-mail are contrary to known facts. One of chloramine's well-known and well-advertised benefits to water system operators is that it does not degrade very rapidly. Rather, it is a very stable, persistent chemical compound that does not break down rapidly. Leave chlorinated water out on the counter for 24 hours and most the chlorine will be gone. Do the same thing with chloraminated water and chloramine will still be present, as long as 30 days later.

Citizens concerned about the impacts of chloramine had also tried to alert CWD and DEC staff about its adverse environmental effects, specifically fish kills. In July, 2006, a California stream's fish population was killed due to a water main break in which the water contained chloramine (see excerpt, sidebar).

A Canadian assessment report conducted in the late 1990's on the impact of chloraminated water released due to water main breaks and other spills on fish and wildlife found substantial cause for concern.

The report contains information about the effects chloramine may be having on the environment:

Based on the available data, it is concluded that inorganic chloramines are entering the environment in a quantity or concentration or under conditions that have or may have an immediate or long-term harmful effect on the environment or its biological diversity. ...Therefore, inorganic chloramines are considered to be "toxic" as defined in Section 64 of the *Canadian Environmental Protection Act, 1999* (CEPA 1999).

Risk management efforts should involve limiting the exposure in surface waters from the largest sources (i.e., municipal wastewater facilities, followed by potable

### **Water-main breaks proving deadly to fish**

Patrick Hoge, SF Chronicle – 7/15/06

Bay Area water-quality regulators are increasingly concerned that drinking water spilling down storm drains and into creeks has caused fish kills in places like Berkeley and Marin County.

Regional Water Quality Control Board officials are particularly concerned about a disinfectant called chloramine that water agencies nationwide have started to use instead of chlorine. Chloramine, which regulators say is not toxic to humans, is more lethal to aquatic life.

Water officials locally and nationwide have been switching to chloramine – a mix of chlorine and ammonia that water officials say produces fewer potentially dangerous by-products for people than chlorine. But chloramine is worse for fish because it lasts longer in the environment.

"We need a more effective program put into place that will prevent these fish, frogs and other aquatic life from being killed," said Ann Riley, river and watershed restoration adviser for the San Francisco Regional Water Quality Control Board and co-founder of the Urban Creeks Council.

and industrial sources).

--Health Canada Substances List Assessment Report for Inorganic Chloramines<sup>1</sup>

Shortly after the above-referenced email was sent, there was a report of another fish kill in Northern Virginia caused by the spill of chloraminated water. (see sidebar)

CWD customers tried repeatedly to share this information with staff from the VDH and the DEC during 2006 and 2007, to no avail. The issue was mentioned in testimony before legislative committees, and in discussions between advocates and DEC and VDH staff. It is hard to understand how a senior DEC staff could say they “don’t know of any adverse environmental effects” of chloramine – unless they are not aware of the scientific research that has been done on the issue.

Vermonters have a reasonable expectation that environmental and public health issues will be addressed using good science. In the case of chloramine, DEC is not making decisions and answering questions based on science.



Thousands of fish turned up dead in McLean's Pimmit Run stream last Thursday.

## Water spill kills McLean fish

Fairfax County Times 4/2/08

A broken Falls Church City water main is believed to have killed virtually the entire fish population in several miles of the Pimmit Run stream where it runs through McLean.

"It killed practically everything. At least 90 percent of the fish are dead," said Ed Pickens, of Fairfax Trails and Streams.

According to Falls Church City spokesperson Nicole Gobbo, work crews discovered a broken 20-inch water main near the intersection of Great Falls Street and Hutchinson Street at around 3 a.m. March 25. By 6:00 a.m. the pipe had been shut off but in the meantime it discharged hundreds of gallons of Falls Church City drinking water into Pimmit Run.

**The water contained chloramine, a standard disinfectant for municipal drinking water. Chloramine is added to water to kill bacteria, but it is also toxic to fish.**

## What Should Happen?

DEC staff should learn about chloramine’s environmental effects and implement policies to assure that public health and the environment are protected from toxic chemicals.

<sup>1</sup> [http://www.hc-sc.gc.ca/ewh-semt/pubs/contaminants/psl2-lsp2/inorg\\_chloramines/inorg\\_chloramines\\_synopsis-eng.php](http://www.hc-sc.gc.ca/ewh-semt/pubs/contaminants/psl2-lsp2/inorg_chloramines/inorg_chloramines_synopsis-eng.php)



## 8. IP Tire Burn

*DEC fails to collect and share accurate data in an accurate, timely way*

**Division: DEC Air Pollution Control**

**Issue: DEC supports bad science**

Summary: In spite of ample evidence that burning tires for fuel could be harmful to public health, DEC failed to assure that tests during the “test burn” followed protocols. And despite repeated requests from concerned citizens for test results, DEC took more than a year to issue a report detailing the science gathered.

In 2006, the International Paper Company (IP) conducted a test to determine the air pollution impacts of burning tires for fuel at the Ticonderoga, NY plant. This test was opposed by many residents and the State of Vermont, but was conducted after the test was approved by New York State authorities.



*International Paper's plant in Ticonderoga, NY*

As soon as the tire burn began, residents of Addison County noticed problems. First, the visual evidence was that the burn was creating significant particulate pollution. Second, residents began to report immediate health impacts. These impacts included severe respiratory symptoms, especially in children and adults. State officials at the Department of Health and the Agency of Natural Resources were alerted. Eventually, though not as quickly as residents would have liked, the test burn was stopped several days before scheduled, as the problems made it clear that safety was being compromised.

Meanwhile, doctors were attempting to treat health problems related to test burn exposure. Doctors and residents were promised access to the data collected by the state, data which would help everyone better understand what happened and how best to treat the health impacts. There is no question that doctors would have benefited from timely release of information that DEC gathered during the test burn.



*International Paper Tire Burn on day when test burn was stopped  
due to higher than expected particulate matter emission rates*

While the test burn was occurring, DEC was responsible for ensuring that tests were done correctly and that data was collected. Despite ample testimony given by citizens and medical professionals before the test that there was a direct public health and environmental threat posed by the so-called "Test Burn", DEC observers did not have the expertise necessary to properly monitor the test, nor did they hire any experts as observers.

DEC observers should have noted the many and clear violations of protocol during the test, including a complete failure to do a particle test (stack test) for a full two days. Given that the test protocol required more frequent testing, this was a clear violation of protocol. Additionally, IP burned tires as fuel continuously for a 24 hour period before taking their first stack test. This was another violation of protocol given that a visual observation of the effluent issuing from the stack is a requirement. This could not be done at night. EPA suggested 12 hr test cycles, daylight only.

On conclusion of the test, which failed by any standard to show comfortable margins of safety, DEC was silent about any errors.

Compounding the issue, the data from the tests took months to process. DEC's final report was not released for more than a year, even though the health care of individuals downwind required these test results for accurate diagnosis and treatment.

The data and testimony is overwhelming in showing the direct threat the test-burn posed to Vermont. DEC spent over \$100,000 of Vermonters' money and released a report over a year later showing "inconclusive" results. Water quality tests done from water effluent showed effluent at levels "lethal" to fish. Toxic materials included heavy metals such as zinc.

DEC neither protected the interests of Vermont nor produced sound scientific data specific to the adverse environmental conditions associated with the tire test burn.

## **What Should Happen?**

DEC should engage in a stakeholder process with the public downwind of the IP plant and others to address past failures and come up with a plan to protect public health and the environment in the future.

## 9. ABC Metals Junkyard

*A chronic polluter goes unchecked and residents and the environment suffer*

**Division: DEC Waste Management**

**Issues: Vermonters' complaints not heard**

Summary: ABC Metals, a junkyard in Milton, is operating illegally and has not had a license to operate for at least seven years. Recent testing has shown groundwater contamination. Court rulings have demanded changes. Yet DEC has not enforced their own rules and the laws of Vermont, and operations continue unchanged.

An August 16, 2007 editorial in the Burlington Free Press, “Editorial: State, town responsible for junkyard neglect,” accurately describes this decades-long failure to stop pollution:

ABC Metals & Recycling on Shirley Avenue has been operated continuously since 1970, and there was a junkyard on the 5-acre site for two decades before that.

The business collects cars and trucks, disassembling them for parts, crushing them for scrap and stacking old tires -- perhaps as many as 1.5 million -- all the while.



Tire pile

For equally long, the yard has been unregulated. Even as ABC stopped paying property taxes in 1999 and racked up \$14,000 in past-due taxes, Milton turned a blind eye and declined to foreclose. After all, who would want to forcibly become the owner of a property that could take millions of dollars to clean up?

The environmental watchdog function was not addressed, either. The Town of Milton was

under the impression that the Department of Motor Vehicles would oversee the yard, that the town was powerless to enforce state laws. The DMV's position: We license salvage yards, we don't monitor them for environmental compliance, and besides, we don't have anything to do with salvage yards such as ABC that are on town highways. The Agency of Natural Resources was aware of the existence of ABC and formally listed it as an active hazardous waste site, but did no regulatory legwork.

As the three arms of government differed on who was responsible, ABC went unlicensed and unmonitored for years.

The editorial goes on to applaud the issuance of an injunction against the junkyard by a superior court judge. The owners, Gilbert and Blanche Rhoades, were given four months to develop a hazardous-waste management plan and 60 days to figure out how to remove the vast tire pile. They were required to apply for a state-issued salvage yard license and gain approval from the local Development Review Board to operate the business.



Beaver Pond

“Finally,” the editorial concludes, “the residents of Milton can look forward to the day when someone has a clue how much gasoline and motor oil and coolant and battery acid have leaked from those car hulks into the soil, and not have to fret that the mountain of tires doesn't catch fire.”

Unfortunately for Milton residents who live around the ABC Metals junkyard, they are still waiting for action on the mountain of tires. There has been no change since the 2007 ruling. The court ordered Rhoades to remove two tractor trailer loads of tires in June 2008, which represents a miniscule percentage of the tires. Rhoades has removed no tires. He applied for a town permit and was denied. Rhoades is appealing the denial in Superior Court and the case is pending. Neighbors recently became aware of a 1995 court order requiring all tires at Rhoades junkyard to be shredded. It was never enforced.

Court ordered environmental testing conducted in 2008 has found elevated levels of arsenic, lead, cadmium and chromium in the groundwater at the junkyard as well as in the sediment in the pond that abuts the junkyard. In addition, residential well testing showed elevated arsenic.



## Laboratory Report

CLIENT: Environmental Prod. of VT  
PROJECT: EPS - Rhoades  
REPORT DATE:

WORK ORDER: 0805-06242  
DATE RECEIVED: 05/09/2008

002 Site: MW-1		Date Sampled: 5/9/08		Time: 11:50			
Parameter	Result	Units	Method	Analysis Date	Lab/Tech	NELAC	Qual.
Arsenic, Total	0.031	mg/L	SM18 3113B	5/27/08	W MGT	A	
Barium, Total	0.26	mg/L	EPA 200.7	5/23/08	W ATH	A	
Cadmium, Total	0.006	mg/L	EPA 200.7	5/27/08	W ATH	A	
Chromium, Total	0.076	mg/L	EPA 200.7	5/23/08	W ATH	A	
Lead, Total	0.114	mg/L	SM18 3113B	5/23/08	W MGT	A	
Mercury, Total	< 0.001	mg/L	EPA 245.1	5/22/08	W CM	A	
Selenium, Total	< 0.002	mg/L	SM18 3113B	5/28/08	W MGT	A	
Silver, Total	< 0.020	mg/L	EPA 200.7	5/23/08	W ATH	A	
TPH DRO Package							

003 Site: MW-2		Date Sampled: 5/9/08		Time: 13:15			
Parameter	Result	Units	Method	Analysis Date	Lab/Tech	NELAC	Qual.
Arsenic, Total	0.071	mg/L	SM18 3113B	5/27/08	W MGT	A	
Barium, Total	0.39	mg/L	EPA 200.7	5/23/08	W ATH	A	
Cadmium, Total	0.014	mg/L	EPA 200.7	5/27/08	W ATH	A	
Chromium, Total	0.28	mg/L	EPA 200.7	5/23/08	W ATH	A	
Lead, Total		mg/L	SM18 3113B		W	A	
Mercury, Total	< 0.001	mg/L	EPA 245.1	5/22/08	W CM	A	
Selenium, Total	< 0.002	mg/L	SM18 3113B	5/28/08	W MGT	A	
Silver, Total	< 0.020	mg/L	EPA 200.7	5/23/08	W ATH	A	
TPH DRO Package							

004 Site: MW-3		Date Sampled: 5/9/08		Time: 12:30			
Parameter	Result	Units	Method	Analysis Date	Lab/Tech	NELAC	Qual.
Arsenic, Total	0.005	mg/L	SM18 3113B	5/27/08	W MGT	A	
Barium, Total	0.066	mg/L	EPA 200.7	5/23/08	W ATH	A	
Cadmium, Total	< 0.002	mg/L	EPA 200.7	5/23/08	W ATH	A	
Chromium, Total	< 0.020	mg/L	EPA 200.7	5/23/08	W ATH	A	
Lead, Total	0.005	mg/L	SM18 3113B	5/23/08	W MGT	A	
Mercury, Total	< 0.001	mg/L	EPA 245.1	5/22/08	W CM	A	
Selenium, Total	< 0.002	mg/L	SM18 3113B	5/28/08	W MGT	A	
Silver, Total	< 0.020	mg/L	EPA 200.7	5/23/08	W ATH	A	
TPH DRO Package							



Page 2 of 9

*Test results from ABC Metals show arsenic in groundwater at seven times the drinking water standard*

As the editorial points out, it is “Too bad it took a judge to offer that safeguard. We have local and state governments charged with monitoring essential, but potentially hazardous, businesses. They need to get their acts together and decide who does what, when and where. The miscommunication that caused so many years of neglect in Milton cannot be repeated.”

Citizens continue to call for action on the case from DEC (and others), but little has happened besides finger-pointing. DEC has jurisdiction over junkyards under Chapter 159, Title 10, but has not assigned the staff needed to bring junkyards into regulatory compliance.



*Tires stored in tanks that serve as fencing of ABC Metals. Tire floats in nearby beaver pond.*

## What Should Happen?

DEC should take action to close the facility and require the responsible party to clean it up.

## 10. Anti-degradation implementation policy

*DEC has failed to establish an anti-degradation implementation policy, as required by federal and state law*

**Division: DEC Water Quality**

**Issue: DEC supports bad science**

Summary: Anti-degradation policy is a water quality standard that pre-dates the Clean Water Act. The basic policy was established in 1968. It includes an anti-degradation policy and implementation method. The water quality standards regulation requires states and tribes to establish a three-tiered anti-degradation program. Despite repeated directives to the agency, Vermont does not have an anti-degradation implementation policy.

Anti-degradation implementation procedures identify the steps and questions that must be addressed when regulated activities are proposed that may affect water quality. The specific steps to be followed depend upon which tier or tiers of anti-degradation apply. The underlying goal is to prohibit the degradation of the quality of waters of the state.

EPA took DEC to task about the state's lack of anti-degradation implementation procedures in May 2004, in the Performance Partnership Agreement between DEC and EPA. The EPA wrote:

Either in this section or another appropriate section, please include DEC commitments to completing agreed upon revisions to Vermont water quality standards. Two issues were held over from the last round of revisions completed by VT in 1999. Those issues are the "Limited Duration Activities" provisions and the absence of Anti-degradation Implementation procedures.

In response, DEC promised to prepare an anti-degradation implementation procedure that year:

The commissioner's office anticipates that preparing a revised anti-degradation implementation procedure and resolution of the differences in opinion regarding the LDA provision will occur after the conclusion of administrative litigation on these issues and after the upcoming legislative session (May or June 2004).

Despite this promise, the policy was not completed in 2004.

Vermont's lack of an anti-degradation implementation policy was cited in Act 52, the legislation that created the Natural Resources Restructuring Committee (NRRC) in 2005:

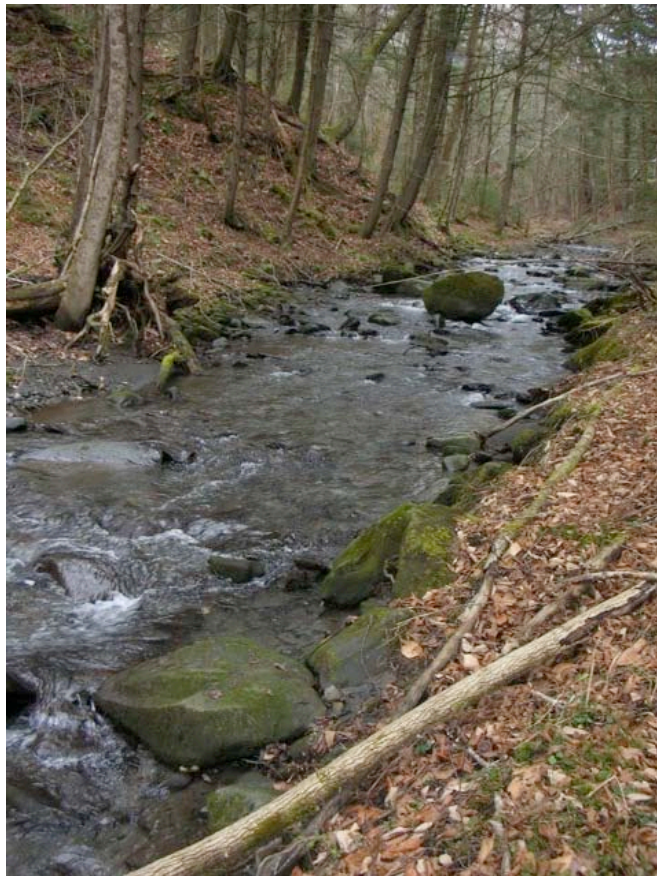
The agency has not completed implementation of key components of the federal Clean Water Act, such as developing total maximum daily loads (TMDL) and developing an anti-degradation implementation policy.

Still, little if any progress was made in 2005 or 2006.



In 2007, the legislature took note that DEC had still failed to develop a policy, and passed legislation requiring DEC to file draft rules by January 15, 2008 and a final proposal of the rules for implementation of the anti-degradation policy by July 1, 2008. DEC has met neither of those deadlines.

Good science works best when good policy is in place to guide it. Without the anti-degradation implementation policy in place, DEC is unable to use good science to ensure that Vermont's water bodies are not degraded by existing or proposed activities – the whole point of having water quality standards in the first place. In the absence of good science, too often bad science wins the day, and resources are not protected.



*Blaisdell Brook in Randolph*

Blaisdell Brook in Randolph is one example of a water body where DEC's science supports the degradation of a stream, which would likely not be allowed if the state had an anti-degradation procedure in place and evaluation of potential impacts were done according to the policy.

In 2005, while developing the White River Basin Plan, DEC proposed to classify this high-quality trout stream at one of the lowest protection levels. As VNRC's staff scientist noted in comments filed on the draft basin plan:

ANR types Blaisdell Brook as B3 because a commercial water bottling operation currently removes water from a spring that contributes water to the brook. This flow reduction has the potential to impair aquatic biota in the Brook. However, ANR's own biomonitoring data

indicates that less than one mile downstream of the water bottling withdrawal Blaisdell Brook meets B1 aquatic biota standards. In this case ANR is proposing to lower the classification of the water before the actual water quality in the brook has been adversely affected by the existing commercial activity. This is inconsistent with Vermont's anti-degradation policy and ANR's obligation to manage waters consistent with existing and obtainable water quality.

In opposing to classify waters as water management type, B1, DEC ignored fisheries and water quality data that indicated that waters should be a B1 classification. Instead, they proposed to classify the waters as B3 because of recommendations from municipal officials – clearly acting contrary to what the science indicates. With Blaisdell Brook, DEC chose to authorize a violation to accommodate a water withdrawal that was impacting a stream rather than requiring a permittee to remove detrimental impacts.

Vermont Yankee's nuclear power plant discharge presents another example where DEC failed to perform an analysis that would be required under an anti-degradation implementation procedure, to the detriment of the natural resources.



*Vermont Yankee Nuclear Power Plant  
in Vernon*

The Connecticut River Watershed Council cites in their "Preserving the Connecticut River" Fact Sheet that the absence of such a policy means that important steps were not followed before critical decisions were made about the amount of discharge that would be acceptable into the river:

Under Vermont's anti-degradation policy, [ANR] is required to perform a socioeconomic balancing analysis before allowing any degradation of Vermont's high quality waters. VWQS 1-03(C)(2). Because the agency failed to conduct any investigation into the costs and benefits of granting the variance, its decision should be reversed and remanded for further consideration.

Vermont's natural resources are not being protected because DEC has repeatedly failed to develop an anti-degradation implementation procedure and implement the policy.

## **What Should Happen?**

DEC should immediately produce whatever it has in draft form for an anti-degradation implementation procedure and work with interested parties to finalize the policy.