



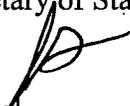
State of Vermont
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Agency of Natural Resources

MEMO

To: Legislative Committee on Administrative Rules and
Vermont Secretary of State's Office

From: Jon Groveman 
General Counsel
Vermont Agency of Natural Resources

Subject: Rule #11P004, Agency of Natural Resources, Repeal of Rule Governing
the Establishment of All-Terrain Vehicle Use Trails on State Land

Date: November 23, 2011

Attached is the Agency of Natural Resources (ANR) filing of the final proposed repeal of the ATV rule. In addition to the required paperwork accompanying the filing, ANR has enclosed a request to extend the eight-month deadline for the adoption of the above referenced rule, which expired on November 15, 2011 to February 1, 2012.

ANR moved into our new temporary offices this week. Accordingly, we are still setting up the office with copiers, scanner etc. This has delayed our ability to provide electronic copies of all the comments ANR received on the proposed rule (as noted in the response to comments ANR received thousands of comments) with this filing. We will be providing electronic copies of the comments to your offices on Monday, November 28, 2011. Please contact Jon Groveman at 241-3612 or jon.groveman@state.vt.us if you have any questions.

Thank you for your consideration.



1. TITLE OF RULE FILING:

Repeal of the Rule Governing the Establishment of All-Terrain Vehicle Use Trails on State Land

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

11P-004

3. ADOPTING AGENCY:

Vermont Agency of Natural Resources

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Jon Groveman

Agency: Vermont Agency of Natural Resources

Mailing Address: 103 S. Main Street, Waterbury, Vermont

Telephone: 802 241 - 3612 ext.

Fax: -

E-Mail: jon.groveman@state.vt.us

Web URL *(WHERE THE RULE WILL BE POSTED)*:

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Emma Schuman

Agency: Vermont Agency of Natural Resources

Mailing Address: 103 S. Main Street, Waterbury, Vermont

Telephone: 802 241 - 3600 ext.

Fax: -

E-Mail: emma.schuman@state.vt.us

6. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

23 V.S.A. Section 3506

7. THE FILING HAS NOT CHANGED SINCE THE FILING OF THE PROPOSED RULE.

8. THE AGENCY HAS NOT INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

9. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

10. THE AGENCY HAS NOT INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.
11. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.
12. **CONCISE SUMMARY (150 WORDS OR LESS):**
This rule repeals the rule that establishes a process by which a trail traveling over state land may be designated for use by All-Terrain Vehicles (ATVs).
13. **EXPLANATION OF WHY THE RULE IS NECESSARY:**
This rule will prevent potential degradation of state lands as a result of the establishment of ATV trails on such lands.
14. **LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:**
Agency staff, law enforcement, ATV users, users of state lands.
15. **BRIEF SUMMARY OF ECONOMIC IMPACT(150 WORDS OR LESS):**
There was a potential positive economic impact as a result of the activity realized from the creation of connector trails. There will be no economic impact as a result of this repeal as no trails were ever established pursuant to the rule to be repealed.
16. A HEARING WAS HELD.
17. **HEARING INFORMATION**
(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 4/26/2011

Time: 07:00 PM

Location: Waterbury, VT

Date:

Time: PM

Location:

Date:

Time: PM

Location:

Date:

Time: PM

Location:

18. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

4/26/2011

19. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

ATV

Repeal

State

Land

Run Spell Check

Administrative Procedures – Adopting Page

Instructions:

This form must be completed for each filing made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Repeal of the Rule Governing the Establishment of All-Terrain Vehicle Use Trails on State Land

2. ADOPTING AGENCY:

Vermont Agency of Natural Resources

3. AGENCY REFERENCE NUMBER, IF ANY:

4. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **A REPEAL OF AN EXISTING RULE**

5. LAST ADOPTED (*PLEASE PROVIDE THE TITLE AND LAST DATE OF ADOPTION FOR THE EXISTING RULE*):

Repeal of the Rule Governing the Establishment of All-Terrain Vehicle Use Trails on State Land, 1/19/2010.

Run Spell Check

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES

To: Louise Corliss, SOS
Brian Leven, SOS
Katie Pickens, LCAR
ICAR Members

FEB 16 2011

Date: February 16, 2011

Proposed Rule: Repeal of the Rule Governing the Establishment of All-Terrain Vehicle Use Trails on State Land
(Agency of Natural Resources)

The following official action was taken at the February 14, 2011 meeting of ICAR.

Present: Chair Michael Clasen, Mark Oettinger, Steve Knudson, Diane Zamos, David Englander, John LaBarge, Susan Harritt and Bob McLeod
Absent: John Kessler
Abstain: David Englander
Staff: Harriet Johnson

The Committee has no objection to the proposed rule being filed with the Secretary of State.

The Committee approves the rule with the following recommendations.

1. Delete Scientific Information Statement.

The Committee opposes filing of the proposed rule.

cc: Jon Groveman

Vermont Agency of Natural Resources (ANR) Response to Comments on Proposed Rule to Repeal the ANR Rule that Authorizes the Use of All Terrain Vehicles (ATV) on State Lands

Following a public hearing and soliciting public comment, ANR is adopting its proposed rule to repeal the existing ANR rule that authorizes the use of ATV's on state land. ANR received thousands of comments from members of the public on the proposed rule. ANR received approximately 2,000 comments from people opposed to the repeal, in addition to a petition opposed to the repeal that contained thousands of signatures. Comments from members of the public opposed to the repeal may be summarized as follows:

1. Concerns about the economic impact of discouraging ATV riders from coming to Vermont;
2. Disappointment about reversing a rule that provides a fair opportunity for ATV riders to use a limited number of trails on state land;
3. A belief that ATV riders will be more responsible if the sport is recognized by the state and ATV's are allowed to use trails on state lands, in the same way other users are allowed to ride on state lands;
4. A belief that ATV use has become a more organized sport because of the work of the Vermont All Terrain Vehicle Sportsman Association (VASA) and local clubs and that this has curbed problems associated with illegal ATV riding that have occurred in the past; and
5. A belief that it would be unfair to deprive ATV riders of the opportunity to use state land in the same manner as other user groups.

ANR received approximately 1,000 comments from members of the public that support ANR's proposal to repeal the rule. Comments from those supporting repeal of the ATV rule may be summarized as follows:

1. ATV's have significant adverse effects on the environment and they should not be allowed to ride on state land;
2. There is a history of ATV riders violating the law and until ATV riders prove that they can recreate while obeying the law, state lands should not be opened up to ATV's;
3. The state of Vermont does not have adequate resources to police ATV riders on state land and prosecute violations. State land should not be opened up to ATV's until the state has sufficient enforcement resources; and
4. The rule ANR adopted, which allows ATV's on state lands is illegal because ANR did not have the authority to adopt the rule. The Legislative Committee on Administrative Rules (LCAR), voted unanimously (7-0) in December 2009 to object to the rule, citing ANR's lack of authority to adopt the regulation. Consistent with LCAR's vote, ANR should repeal the rule.

Following a review of the public comments, ANR has decided to proceed with the repeal of the ATV rule by filing the final proposal to repeal the ATV rule with LCAR and the Vermont Secretary of State. The primary reason for ANR's decision is that, consistent with LCAR's objection to the ATV rule in 2009, ANR's authority to adopt the rule is questionable.

Pursuant to Vermont law, when LCAR objects to a rule, and a state agency fails to address the reasons for the objection, the burden shifts to the agency to prove that it has the authority to adopt a regulation, if the regulation is challenged in a court of law. 3 V.S.A. § 842. ANR did not address LCAR's objection to the ATV rule in 2009.

LCAR objected most strenuously to the ANR's claim that its rulemaking authority derived from a brief clause in a state motor vehicle law that generally prohibits ATVs on state land. LCAR wrote in its findings: "...it is inconceivable that the legislature ever intended to create operative rulemaking authority for a significant change in permissible uses of state lands by using a single clause in a motor vehicle law, with no further policy guidance whatsoever."

ANR adopted the ATV rule despite LCAR's clear and vehement objection. The rule has subsequently been challenged in the Washington County Superior Court by the Conservation Law Foundation (CLF). ANR believes it is imprudent to defend a rule in court, where the state has the burden to prove the rule is valid, and LCAR has strongly indicated that no authority to adopt the rule exists. It would be an unwise and wasteful use of limited state resources to defend the rule under the circumstances.

With regard to the policy arguments in favor of and against allowing ATV's to ride on state land, ANR sees merit in both sides of the debate. There is no question that ATV riders, under the leadership of VASA, have made a compelling case that there are benefits to allowing ATV's on state lands, and that ATV riders are more organized and aware of the rules governing ATV riding that they have been in the past.

On the other hand, those concerned about allowing ATV's on state land correctly point out that ATV riding can cause environmental damage, especially when ATV riders do not follow the law. Members of the public concerned about the impacts of ATV riding are also correct that illegal ATV riding has been an issue in the past, and that the state's ability to enforce against illegal ATV use depends upon having adequate resources.

Given the significant questions regarding ANR's authority to adopt the ATV rule, ANR believes that the right course of action at this time is to repeal the existing ATV rule while working to address the unresolved policy issues related to the use of ATV's on state land.