

From: Recchia, Chris
Sent: Tuesday, January 31, 2012 5:12 PM
To: Shems, Ron; MacLean, Alex
CC: Markowitz, Deb; Mears, David
Subject: RE: Record std

Ron - thanks, I'll call you on this. CR

Connected by DROID on Verizon Wireless

-----Original message-----

From: "Shems, Ron" <Ron.Shems@state.vt.us>
To: "MacLean, Alex" <Alex.MacLean@state.vt.us>
Cc: "Recchia, Chris" <Chris.Recchia@state.vt.us>, "Markowitz, Deb" <Deb.Markowitz@state.vt.us>, "Mears, David" <David.Mears@state.vt.us>
Sent: Tue, Jan 31, 2012 20:56:27 GMT+00:00
Subject: RE: Record std

Thanks. I checked on the NRB's revocation authority, 10 VSA 6027(g) and we have never used it, relying instead on enforcement authority. Enforcement authority is limited to the ANR, NRB and Attorney General's Office. Let me know if I can provide more info and what the call is.

I did respond to Dawn, telling her that we're looking at this.

She and Tom Torti seem comfortable with the larger on-the-record approach that we're taking.

Ronald A. Shems
Chair
Vermont Natural Resources Board
802 828 5440
www.nrb.state.vt.us

-----Original Message-----

From: MacLean, Alex
Sent: Tuesday, January 31, 2012 3:38 PM
To: Shems, Ron
Cc: Recchia, Chris; Markowitz, Deb; Mears, David
Subject: RE: Record std

Ron,

I talked to Chris about this today and we connected briefly with Dawn. Chris is going to look into a little more background info on what the original provision was before we make a call on this.

A

Alexandra MacLean
Secretary of Civil and Military Affairs
1-802-272-0443

From: Shems, Ron
Sent: Tuesday, January 31, 2012 8:18 AM
To: Shems, Ron
Cc: MacLean, Alex; Recchia, Chris; Markowitz, Deb; Mears, David
Subject: Re: Record std

Any guidance on the revocation provision? We can live with it, and the environs likely support. I wonder if we should hold this a bargains chip?

On Jan 30, 2012, at 15:39, "Shems, Ron" <Ron.Shems@state.vt.us> wrote:

> Hi Alex,
>
> I have not yet responded to Dawn. I will, of course, make it clear that we agree about the e-ct. I will also point out the other areas of agreement.

>
> We have not yet discussed a stance on the revocation provision. I am not at all surprised that Dawn is concerned about it. It is similar to citizen suit proposals that have consistently failed to be enacted in Vermont, except that revocation is perhaps more draconian than penalties and injunctions available under most citizen suit statutes. Currently, the NRB may petition the e.ct. for revocation, but aggrieved persons cannot. The NRB rarely tries to do so (I will look for stats).

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> --Ron
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> Ronald A. Shems
> Chair
> Vermont Natural Resources Board
> 802 828 5440
> www.nrb.state.vt.us

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> -----Original Message-----
> From: MacLean, Alex
> Sent: Monday, January 30, 2012 12:29 PM
> To: Shems, Ron; Recchia, Chris; Markowitz, Deb; Mears, David
> Cc: Hasen, John; Borie, Lou
> Subject: RE: Record std

>
> Hi Ron,
>
> Have you replied yet to Dawn? I want to make it clear that we agree re. replacing the board with the e-court asap so they aren't needlessly nervous.

>
> Also, what is our stance on the following:
>
>
> The bill does appear to reinstate a provision regarding the revocation of a Title 10 permit that was eliminated in 2005. An aggrieved person can petition the Board to revoke a permit on the basis of non-compliance, misrepresentation and a failure to preform certain obligations. This would provide parties another chance to delay and wreak havoc with a project and should instead, be part of routine enforcement.

>
> Alex
>

> Alexandra MacLean
> Secretary of Civil and Military Affairs
> 1-802-272-0443

> _____
> From: Shems, Ron
> Sent: Monday, January 30, 2012 12:02 PM
> To: Recchia, Chris; Markowitz, Deb; Mears, David; MacLean, Alex
> Cc: Hasen, John; Borie, Lou
> Subject: FW: Record std

>
> Dear Colleagues,

>
> FYI, see below.

>
> Seems like we are close. I would like deference to District Commissions, but want to first discuss with VNRC, David Deen, and our informal lawyer group (we're meeting at 12:30 today).

>
> I agree with getting people involved in the early stage (frontloading) and record review (in whatever form) encourages this.

>
> One issue that we may have to grapple with is party status. If we can clarify that the standard is the same as the federal standard, we may be able to bring VNRC and CLF into the fold. Indeed, it should not be more difficult to participate in a Vermont process than it is to go to federal court. Some recent Environmental Court decisions are seen as more strict than the federal standard.

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> Please share any thoughts.

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> Thanks.

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> --Ron

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> Ronald A. Shems
> Chair
> Vermont Natural Resources Board
> 802 828 5440
> www.nrb.state.vt.us

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> -----Original Message-----

> From: Dawn Francis [<mailto:dawn@vermont.org>]
> Sent: Monday, January 30, 2012 11:43 AM
> To: Shems, Ron
> Cc: Warren Coleman; Zahner, Michael; Will Dodge; Tom Torti; MacLean, Alex
> Subject: Re: Record std

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> Ron:
> With respect to H.513, some initial feedback:

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> We are hoping per our discussion with Alex Maclean that the Environmental Court will be retained as is, and therefore, all of the language with respect to an Environmental Review Board is removed. We are hoping 2 additional hearing officers could get provided to the Court.

>
> We appreciate the provisions relating to encouragement of people getting involved in the early stages by requiring participation before the District Commissions and municipal levels as a condition of appeal.

>

- > We are supportive of the rule-making for the water resources panel moving to ANR.
- >
- > The review de novo standard is new and we appreciate that the Court does not have to hear evidence again. It would be nice if deference to the District Commission could be done. We really like the shift of the burden to the appellant.
- >
- > The bill does appear to reinstate a provision regarding the revocation of a Title 10 permit that was eliminated in 2005. An aggrieved person can petition the Board to revoke a permit on the basis of non-compliance, misrepresentation and a failure to preform certain obligations. This would provide parties another chance to delay and wreak