

# WEEKLY REPORTS

Checklist  
3/11/2011

Bill Lofy

- ☒ Agency of Commerce and Community Development – Lawrence Miller
- ☒ Agency of Agriculture – Chuck Ross
- ☒ Agency of Transportation – Brian Searles
- ☒ Department of Labor – Annie Noonan

Alex MacLean

- ☒ Agency of Natural Resources – Deb Markowitz
- ☒ Department of Public Safety – Keith Flynn
- ☒ Public Service Department – Liz Miller\* (shared with Beth)

Susan Bartlett

- ☒ Agency of Human Services – Doug Racine

Beth Robinson

- ☐ BISHCA – Steve Kimbell\* (shared with Anya)

Jeb Spaulding

- ☒ Agency of Administration – Jeb Spaulding

Special Reports

- ☒ Additional Report: Education
- ☒ Additional Report: BIRO
- ☐ Additional Report: \_\_\_\_\_



## Richards, Alyson

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**From:** Gaidys, Maureen  
**Sent:** Friday, March 11, 2011 1:11 PM  
**To:** Richards, Alyson  
**Cc:** 'sbe@list.education.state.vt.us'  
**Subject:** Commissioner's Weekly Report

**To:** Governor Peter Shumlin  
**Cc:** State Board of Education  
**From:** Armando Vilaseca, Commissioner  
**Re:** Commissioner's Weekly Report  
**Date:** March 11, 2011

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**State Board of Education:** The State Board of Education will hold its regular monthly meeting on Tuesday, March 15, at the Capitol Plaza, Montpelier; the agenda and accompanying materials can be accessed at <http://education.vermont.gov/new/html/board/schedule.html>.

**Education Governance Legislation:** Attached is the draft Education Governance bill which was discussed this morning in House Education which changes the Department of Education to an Agency of Education, and makes the Commissioner a Secretary reporting to the Governor. Commissioner Vilaseca testified on this today. It is the first draft and has not been introduced or assigned a number. House Education will also be hearing from David Wolk this afternoon and Governor Douglas on Tuesday. Their goal is to get this out of committee by the end of the week.

**Commissioner Vilaseca:** Armando continues to recover very well. This week he has been working some from home, participating in several meetings via conference call and today, was able to call in and give testimony. By the end of next week he hopes to hear more definitive plans about his return to work.

**Other:** Deputy Commissioner Rae Ann Knopf is attending the Council of State Government's national advisory council on postsecondary education access meeting this week in Florida. The advisory council has been convened to explore and propose policy options that will have an impact on improving college readiness and increasing access to postsecondary education.

**Weekly Field Memo:** In case you did not see it, here is the link and list of subjects covered in this week's Weekly Field Memo. [http://education.vermont.gov/new/html/dept/field\\_memo.html#first](http://education.vermont.gov/new/html/dept/field_memo.html#first).





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*Jeb Spaulding, Secretary*

**PRIVILEGED AND CONFIDENTIAL  
MEMORANDUM TO THE GOVERNOR**

**TO:** Governor Peter Shumlin  
**FROM:** Secretary Jeb Spaulding  
**DATE:** March 11, 2011  
**SUBJECT:** Confidential Report to the Governor

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**CONNECT VT**

**Status of Governor's Priorities:**

We will have a strategic plan to present early next week regarding the role of the VTA. Various private sector build initiatives are in progress: Fairpoint build is taking place; VTA/ Sovernet in engineering and design phase; VTel in route finalization on one project; engineering and design on WOW. Karen Marshall has developed relationships with both the National Telecommunications and Information Administration (NTIA) and the Rural Utilities Service (RUS) that will give us an accountability channel for federally funded projects. She spoke/met with the key contacts who have direct project oversight for VTA/ Sovernet and all VTel activities. This is an important reporting loop that we sought to establish.

**Legislative Issues/Contacts:**

Karen presented testimony in Senate Natural Resources and Senate Finance regarding S 78, Telco bill. Senate Natural Resources was focused on the impact issues of permitting process revisions to Act248A. Karen has some concerns that they will rewrite, redraft the categories of application that have been developed. Also, they favor inclusion of statute for mapping by providers that would then be made publicly available, inclusive of current infrastructure and planned. We cannot support this with language that mandates publicly shared. We could support gaining access and aggregating the view of coverage/ availability with information confidentially available to our initiative.

Senate Finance was initial testimony, Karen expects to be called back to speak to the bill.



House Corrections and Institutions, re: the role of ConnectVT and the VTA, how they are related. We have developed clarity of roles this week with our refocus/ recast work on the VTA. This is being well received to continue the financial duties of VTA investing strategically in infrastructure and ConnectVT having the planning, benchmarking, aggregation of demand roles.

In all committees, we have voiced our concern regarding the VTA section as written and stated that we see it as an opportunity to refocus and recast the agency for better results. We have made committees aware that the Administration is working actively to resolve the issues with the VTA under a new structure. This is favorably received.

There are a host of policy questions that range far and wide, and defy succinct answers to some extent:

- Should we regulate the telecommunications industry?
- Should we mandate pricing of services, through regulation and potentially in permitting process for installations?
- How do we assure competition? While at the same time not allow redundancy of infrastructure?
- Why can't we simply remove all old copper from telephone lines and string fiber instead? – short answer, \$800M ( which we don't have) is the estimate for a fiber to premises build out across the state; our first objective is get Vermonters connected at minimum and inspirational speeds as described in the telecommunications plan. Work to assure a viable, competitive market and build out continuing into the future.
- What can we do to mandate how "our" federal funding gets spent and what they builds? - Short answer, we can't.

All of these point to the need for continued development of our strategic and policy plans for telecommunications. Karen will continue to work with Commissioner Miller on these issues. Over the coming month my task is to develop the integrated project plan for Connect VT.

**Press/Media Notes:**

Karen had interviews with Vermont Standard (Woodstock) re: ConnectVT plan and Valley News RE; preview of the EC Fiber board meeting which she attended as guest. Story also appeared on WPTX, NECN re: broadband and pole attachment.

The VTA press bonfire appears to have run its course. We are better positioned than a week ago to respond with our VTA plan.

**Significant Events/Meetings:**

NTIA/ VTel and VTA/ Sovernet: - Karen has stepped in to facilitate final submission of information to NTIA to assure that awards are secure, overlap is worked out, NTIA is getting all information it needs. She is communicating directly with NTIA Program Administrator (Sandeep Taxali). We wrote a letter of support for the final VTel configuration, as requested. Worked closely with VTel on this and believe, gained ground in our relationship. See attached.

International Brotherhood of Electrical Workers (IBEW): Karen met with Mike Spillane, president regarding: pole attachment concerns follow up to relay steps we have taken that answered their concerns, and to probe on IBEW/ CWA threat of picketing Sovernet for non



union labor practices. This is an evolving issue, Karen has heard their desires regarding this issue: more VT jobs, hire Fairpoint as contractor, no outside state contractors, use IBEW training school to develop new linemen. These will all be taken to the Pole Attachment Project Planning group for consideration. Karen will continue to keep tabs on this one.

EC Fiber Board: town meeting style (firing line) with me as the guest. This was a few hours after they had received initial news that the VTA technical group was recommending to not fund EC Fiber through Backroads Broadband. 1.5 hours of listening to concerns, viewpoints, opinions, criticism from the crowd. Karen encouraged them to forge on with their 24 mile build (April start) and prove that their start up can be financially and operationally viable; to then become a scalable model.

Verizon Wireless: initial meeting with their regional and engineering representatives, govt relations and legal counsel. This meeting also had Commissioner Miller and Jim Porter on board. Very fruitful discussion; they have agreed to participate in a third party reporting of their coverage, planned coverage and potentially work with VTA on sites that are desirable but have bad economics to complete coverage.

Cloud Alliance: Michael Birnbaum, one of a few almost viable WISPS. The conversation is virtually the same as EC Fiber: What is our role? How can you protect us? Our response is that these entities have a role in the delivery of services that can be supported where they demonstrate financial and operational viability.

VTA Board Meeting: entire meeting was taped by WCAX, including Exec Director explanation of the awarding of Sovernet Backroads Broadband. This was a strong step in the right direction towards transparency. Board will vote midweek (March 15) on further Backroads grants.

USDA/ RUS: Karen met with Molly Lambert, Staff and Kenrick Gordon (General Field Representative). Good meeting- Rick has direct oversight and communication lines with RUS funded projects- WCVT and VTel fiber. He will be our source to check progress on grants and compliance.

Vermont Council on Rural Development: NTIA awardee for adoption strategies. This was an informational meeting to understand their role.

Pole Attachment Technical Workgroup: charged room of engineers highly resistant to alternative pole attachment strategies. There was a presentation of 9 potentially viable strategies presented by EC Fiber and Sovernet contractor. While met with resistance, the positive outcome was an agreement that a 6" (versus 12" above) temporary strategy may be considered by the pole owners, with conversion to a final position at a later date. This would speed deployment and will be incorporated into the project plan group work.

VTel: reached out this week to assist them in negotiations with NTIA. They have submitted final NTIA route and are asking for reinstatement of \$4M to bring their total to \$14M on this award. We challenged them to include additional community anchors in their reconfiguration; and support this effort.

**Evolving Issues:**



VTa refocus and recasting their future.

We have developed a plan that trims their functions and creates more accountability to the administration. Jeb S, Beth R, Jim Porter, Chris Campbell and Karen with finalized plan and language for bill to be completed by early week next week.

## **DEPARTMENT OF BUILDINGS AND GENERAL SERVICES**

### **Status of Governor's Priorities:**

Governor's priorities intact with risks as previously noted.

House Committee Institutions (HCI) contemplating starting capital bill markup 3/11.

BGS attended the Montpelier city council meeting Wednesday evening; stressed Governor's commitment to the district heating project evidenced by \$4 million hard commitment for match, an additional \$3 million commitment for a total of \$7 million and Governor's willingness to help find needed funding. Mayor Hooper also relayed Governor's support of project. Council, on a strained 4-3 vote, decided conceptually to continue with the project. City and BGS scheduled to appear before House Corrections and Institutions on Friday.

### **Legislative Issues/Contacts:**

Called chairs of House Corrections and Institutions and Senate Institutions to bring them up to date on BGS legislative issues.

Appeared with Rob Ide on 120 State Street DMV report before Senate Institutions and House Corrections & Institutions. Suggested reallocating \$750,000 in Governor's proposal for 120 State as next design step.

### **Press/Media Notes:**

Did a short interview with Times Argus reporter regarding district heating after the Montpelier City council meeting; stressed Governor's support of project.

### **Significant Events/Meetings:**

Met with Public Safety leadership (Comm. Flynn, Col. L'esperance and Maj. Sheets) to inform re: Westminster barracks delay to accommodate district heating project.

### **Evolving Issues:**

Continue to work on energy efficiency initiative, including meetings with IBM and GMP.

## **DEPARTMENT OF FINANCE AND MANAGEMENT**

### **Evolving Issues:**

H.370: - An act relating to state contracts for engineering and architectural design services was read for the first time and assigned to the House Government Operations Committee (GovOps). This bill was clearly requested by the ACEC (American Council of Engineering Companies of VT) and the aiaVT (American Institute of Architects VT). The bill asks for permanent relief from the liability and indemnification section of the State's standard contract terms and conditions ("Attachment C"). Background: In 2006, the Attorney General's Office strengthened the Independence, Liability section of the State's standard contractual terms & conditions (Attachment C). The language ACEC objects to follows: "The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party." Since the change, ACEC in particular has asked for the State to return this



section to the former version where there was no obligation to defend the State. In the construction trades, a general contractor (builder) has insurance that covers any up-front defense costs even before the builder's responsibility in a lawsuit is determined. The design professionals are not able to purchase similar insurance that covers upfront defense costs. If their design work is subcontracted through a general contractor agreement (GC), this risk is assumed by the GC. For separate design service contracts, the design professional would bear the upfront defense costs until negligence or omission has been established, then their professional liability policy coverage would provide reimbursement and continue to pay.

The AG's office has consistently declined to change the Terms & Conditions. Last year, in a bid to accommodate this situation on a business basis, and with the agreement of the AG, Finance & Management and BGS Risk Management, the State issued a limited use Addendum to the Terms & Conditions that allowed alternate language for design service contracts written by AOT, BGS, Military, Forests & Parks, and Fish & Wildlife (only). The Secretary of Administration has the authority to do this sort of "class" waiver. The alternate language for design services places the defense liability back on the State for engineering and architectural contracts. ACEC and aiaVT sent Secretary Spaulding a letter on February 3, 2011 claiming that the Addendum did not resolve the issue to their satisfaction, particularly the lack of insurance. It should be noted that BISHCA previously investigated the insurance side and found that there is no standard insurance product for this; carriers do not write such insurance and when they do it is very expensive. We have in the past suggested that ACEC go to the Legislature with their insurance problem. However, it appears that they have gone to the legislature on the liability terms, rather than the insurance aspect. Bill Griffin, Chief Attorney General and we feel that both the AG's office and F&M should request to testify before House GovOps on this bill if it looks like it is moving.

Our concern with H.370 is:

- The defense liability is excepted specifically for engineers and architects and moved back on the State;
- The codification of this specific exception for one class of contractors (engineers and architects) will likely lead all other "contractors" to demand the same terms;
- By directing specific changes to internal Administration Policies (Administrative Bulletin 3.5) we believe that this interferes with the authority of the Executive Branch to make and modify its own rules, which we try to apply as universally as possible.

H. 359: An act relating to promoting work study opportunities was read for the first time and is now in the House Economic Development Committee. Following are the key elements and corresponding issues with this bill:

| H.359 Key Elements   | Issue   |
|--|---|
| a. Establishing a postsecondary work study fund in the Treasurer's Office. | a. The authority to establish and manage new funds rests with the Commissioner of Finance & Management; a fund such as this does not belong under the auspices of the Treasurer's office. |
| b. Authorizes the Treasurer to transfer \$800,000 from the Next            | b. The authority to transfer funds rests with the Commissioner of Finance & Management or   |



|  |  |
|--|--|
| Generation Fund to new fund.   | the Secretary of Administration.   |
| c. Bill is effective upon passage.   | c. This would make the bill applicable to FY 2011.   |
| d. Assuming effective passage in FY 2011, transfer comes from existing Next Generation Fund balance. | d. It is our understanding that although there is a current balance in the Next Gen fund, all funds are committed and therefore not available for transfer to another fund.<br><br>If this was supposed to come from the \$800k set aside in FY 2012, then effective date s/b July 1, 2011 |

## DEPARTMENT OF INFORMATION AND INNOVATION

### **Status of Governor's Priorities:**

The project Kick-Off for the Agency of Human Services initiative to implement a Service Oriented Architecture in order to replace the legacy ACCESS and Medicaid Management Information System (MMIS) is being held today in Waterbury. DII's CTO, Mike Morey and the Director of the Project Management Office are in attendance. These efforts focus on process improvements in the areas of Eligibility Determination, Claims Processing, Contact Management and Payments as well as significantly reducing the IT risk associated with continuing to run these processes on legacy equipment. The modernization will allow for future program, policy and Federal compliance changes around Medicaid and benefits to be more easily and cost effectively implemented.

### **Significant Events/Meetings:**

The CIO was contacted by The U.S. Government Accountability Office (GAO) who is currently reviewing efforts to consolidate federal data centers. GAO is conducting this work in response to a request made by the United States Senate Committee on Homeland Security and Governmental Affairs. One of their review objectives is to evaluate whether lessons learned during state government consolidation efforts could be leveraged to mitigate challenges at the federal level. The iTop team is preparing a response to the following questions with the clarification that Vermont is at the review of assessment stage and not finished with our data center consolidation:

- 1) When did your state perform its data center consolidation(s)?
- 2) Did your state's IT organization perform the data center consolidation itself or did you outsource the consolidation effort?
- 3) Could you provide information on the challenges faced by the state during its consolidation effort(s)?
- 4) What strategies did you employ to overcome the challenges?

The CIO office received the annual KPMG Report on Information Technology General Controls for the period ending June 30, 2010. The lead auditors will be conducting site meetings next week with the IT Management from the Agency of Human Services, Department of Labor, Department of Human Resources, the Agency of Commerce and Community Development, Liquor Control, Department of Transportation, Department of Information and Innovation, State Treasurer's Office and the Department of Finance and Management to review the findings. The auditor reports that although some recommendations have not been addressed to satisfaction, the State in general is moving in a positive direction in reducing the Information Technology risk across the agencies and departments reviewed.



Angela LeClerc, Desktop Solutions Director and Christine Hetzel, Enterprise Project Manager have both passed exams and are now certified in Information Technology Infrastructure Library (ITIL) V3 Foundation. ITIL is a best practice process-model based view of controlling and managing IT operations including but limited to Service Delivery, Change Management, Service Measurement, and Risk Management. DII's limited adoption of components of the ITIL methodologies to date support our strategic goals and the management team is excited about accomplishment of both Angela and Christine as we continue to shape Information Technology methods and process across State government.

#### **Evolving Issues:**

The Web Portal Director reports the eProcurement SOW has been released by BGS after legal review and should be nearing completion within the next week or two. We hope work can begin yet in March. Additionally, the first Web Portal Board Meeting with representation from the new administration has been scheduled for March 25, 2011.

### **DEPARTMENT OF HUMAN RESOURCES**

#### **Status of Governor's Priorities:**

##### **Efforts to Save Labor Cost in FY12**

Commissioner Duffy and DHR staff met with the VSEA and VTA to discuss how to generate cost savings from the State employee health plan. DHR was able to get VSEA and VTA to agree discussions must begin immediately to ensure savings are generated in FY12. The parties also agreed they would be attempting a total redesign of the pharmacy and medical plans, and that ratification of an agreement would be required in sufficient time to implement redesign efforts in July 2011. VSEA representatives, including Jes Krauss, stated several times that the VSEA will not agree to increase premium payments or reduce coverage and will only consider proposals that are a "win/win" for all parties, even if that means the State saves less than \$2 million in General Fund costs. Commissioner Duffy reminded everyone that VSEA representatives met with the Governor in January and agreed to find \$2 million in General Fund savings through plan redesigns. She stated the Governor expected that this commitment would be kept. She also reminded the parties that the overall goal is to avoid RIFs and stated that if \$2 million in General Fund savings are not found in the health plans, the State would have to take other steps to find the savings, which might require RIFs. Despite these tough exchanges, the meeting was positive, with several members indicating they are happy VSEA is working collaboratively with DHR.

#### **Legislative Issues/Contacts:**

##### **Request for Information on Telecommuting**

Senator Illuzzi has requested information from DHR on telecommuting, including a draft policy rejected by Governor Douglas. Apparently, the Senator intends to include a provision on telecommuting in a Committee bill, although the scope or substance of the provision is unknown to DHR. DHR has not drafted an overall policy on telecommuting, but does have materials regarding a proposed pilot program for certain types of telecommuting. DHR will send this material to legislative council with a letter indicating that the issues is a complex one and identifying some of the concerns that would need to be addressed to permit telecommuting.

#### **Significant Events/Meetings:**

##### **Bargaining Scheduled with VTA**

DHR has retained Susan Gilfillan, Esq. as its Chief Negotiator in bargaining with the VTA. Bargaining sessions are scheduled for March 21<sup>st</sup> and 22<sup>nd</sup>. DHR has contacted DPS bargaining team members and



asked for input on the State's bargaining position. Secretary Spaulding and Commissioner Duffy will meet with the Governor to address the State's ultimate goals, the bargaining position to take to achieve those goals, and the potential impact the VTA contract will have on bargaining with the VSEA.

### **Evolving Issues:**

#### **Strategic Planning Initiative**

DHR is working on a proposal for statewide strategic planning. Commissioner Duffy will discuss preliminary proposals with Secretary Spaulding this week. DHR hopes to begin rolling out a strategic planning process in April or May 2011.

## **DEPARTMENT OF LIBRARIES**

### **Significant Events/Meetings:**

"Saving Vermont's Treasures": Campaign Launch (Vermont Historical Society).

VT History Center, Barre (3/4):

Kick-off to the campaign to raise \$900,000 for further renovations and creation of new exhibit space at the History Center. The campaign has already raised well over \$800,000. Speaker: Marselis Parsons. (State Librarian is a member of the Board of Trustees)

"Citizens in a Connected Age" Internet Technology workshops (3/5). Lyndon State College:

Marty Reid attended the day of workshops sponsored by the e-Vermont Community Broadband Project. The day was planned by the Snelling Center, one of the project partners. (Libraries is also a partner in this federally-funded BTOP project.) The day was a success with good attendance. Reid doesn't have attendance figures but we added chairs to each session. She attended sessions on Google products (Google Sites, Docs, etc.) and Social Media that were aimed at small business and non-profits. All were well-taught with lots of interest from small business owners. Many public librarians also attended.

Osher Lifelong Learning Institute at UVM (Central Vermont Lecture Series):

"PUBLIC LIBRARIES IN THE DIGITAL AGE"

Aldrich Library, Barre (3/9). Presentation by: Martha Reid, State Librarian

### **Other:**

Institute of Museum and Library Services (IMLS)

Annual conference for State Library agencies on federal LSTA (Library Services and Technology Act) funding. Baltimore, MD (3/14-3/16):

Marty Reid will attend this conference with Assistant State Librarian Christine Friese. The conference will cover LSTA 5-year plans and evaluation. Their current LSTA plan will expire in 2012 and our department will begin the planning and evaluation process this FY. This will give Libraries the "nuts and bolts" for that process. They are participating with several other states on a joint RFP to hire a consultant to conduct the evaluation. This is the same process that DOL used for the last evaluation. The RFP will be issued this spring.

Institute of Museum and Library Services (IMLS) Grant Review Panel

Washington DC (3/17-3/18):

Marty Reid was invited to serve on a panel to review grant applications for a federal library grant program. She will lead discussions on a selected number of applications and will participate in all panel discussions. The review process will be exceedingly helpful as they are interested in submitting a future application to this funding program.



## DEPARTMENT OF TAXES

### **Status of Governor's Priorities:**

**Blue Ribbon Tax Commission:** The Commissioner and staff continue to work closely on this issue, particularly in analyzing models being considered by the legislature, developing alternatives, and communicating with legislative leaders. One task for the upcoming week is to sound out where outside groups are landing on this issue now that Ways and Means has actually had committee time devoted to proposals. Indications are that a proposal may be appended to the Misc. Tax Bill set to be voted out late next week, although there is still a separate bill as a possible vehicle.

**Misc Tax:** The Chair of W&M also has indicated that provider assessments may be appended to the Misc. Tax bill. The Chair is also considering whether to pull in a provision from the current use bill which would eliminate the lower rate on the property transfer tax and devote the money to digitizing Dept. current use records. The Dept. supports the concept, although we need to take a weather report on whether this will in fact pass smoothly. Rep. Clarkson would like to push the non-profit Entertainment Ticket threshold higher than \$50,000, we will look to JFO for revenue loss estimates if this gains traction. The Commissioner has indicated to the Chair of W&M that the Admin. will be looking in the Senate to amend the Ent. Tax provision to lift the threshold from 501© orgs other than 501©3 and to remove any requirement that the Dept. study becoming a Dept. of Revenue.

**Education Finance:** The Commissioner and Staff have been working with Steve Klein and staff on language for a 10 year study of the results/impacts of Act 60/68 as the precursor to any further discussion of reform. We are also considering what expertise might be brought to bear (some combination of education and economic academics). Staff also has been meeting with a W&M subcommittee broadly considering some of the proposals that have been circulated this year. The Chair has indicated that these will be taken up, if at all, after the Misc. Tax bill, and that she is linking any change to the Household Income definition (to AGI) to state administration of the Tax. The Commissioner would suggest that the issues should be decoupled. This is another area in any event where it may well be too late to make thoughtful changes when they have potential to cause large dislocations for some property taxpayers.

**Economic Development:** While the Tax Dept. and ACCD are convening an internal working group to look at whether the VEGI program can be simplified with more of its function moved to ACCD, there is some movement afoot to resurrect a technical group that crafted VEGI. External input will be important, but there is concern to use the same process to change the program might not best address the administration burdens and costs.

**Amazon Bill:** As the bill passed the House, the Dept. continues to monitor the national developments. The Illinois governor just signed a bill, simultaneously announcing economic development measures to assist affiliates. An article in Forbes magazine argued that pressure is growing on Congress to pass a bill. An NPR commentary suggested that a "new" tax was being added to internet sales. No doubt the public is confused – while one message is that Amazon is a huge tax scofflaw, in fact, it is the buyer at home who owes what isn't being collected.

### **Significant Events/Meetings:**

**Revenue Collection:** The update from the Director of this division indicates that although processing is somewhat behind last year relatively speaking (the snowstorm did not help), there are no major issues in



the operation. More temps come on board next week. On a human interest note, the Commissioner met with the students and paraeducators from U-32 who have been performing some tasks this tax season. The program seems to be a large success all around.

Technology Projects including Data Warehouse: The ongoing project which modernized the Dept's corporate records, and "integrated" other functions, including collections, hit a new snag with an Oracle upgrade. Oracle only has sold this product to four states, and we apparently are the first to receive this upgrade. Some collection billing has been temporarily suspended to avoid erroneous notices. The Dept. also has encountered difficulty in consummating a service contract with Oracle, to provide 3 months of onsite development and training. The Commissioner has become personally involved, and engaged assistance from the AG's office, which apparently has some experience in these types of negotiations. Negotiations also continue, with the assistance of the Commissioner of Finance, to finalize a deal with RSI on the data warehouse project. RSI has suggested that further service by Oracle be built into the contract, reflecting concern that this immature system be optimized. Finally, the Commissioner is speaking with legislative leaders about the possibility of continuing to capture at least part of the revenue stream from the technology enhancements to our compliance programs to fund the completion of our computer "integration" – which would involve upgrading/migrating our income tax system which is nearing the end of its lifecycle. Currently, a special fund set up within the Dept. is set to sunset. The Dept. is preparing a report on the use of the funds thus far.





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*Karen Marshall, Chief  
Connect Vermont*

March 9, 2011

Mr. Sandeep Taxali  
National Telecommunications and Information Administration  
U.S. Department of Commerce/ NTIA  
1401 Constitution Avenue, N.W.  
Washington, D.C 20230

Dear Mr. Taxali:

We are writing with support for the reconfigured and final application for NTIA BTOP funding that has been submitted by VTel. We ask that this application receive due consideration and be approved. VTel has demonstrated a strong willingness throughout this process to address overlap issues, be sensitive to and eliminate areas where a lack of need was determined, and incorporate more unserved and underserved areas and institutions in this final configuration. They do so in the context of achieving more of the strategic objectives that the State of Vermont has defined.

Our support is based on three criteria. First, the reconfiguration meets the original program intent for the competitive broadband grant program as established by BTOP. It has added 40 CAI's which were not included in any application thus far and builds a middle mile network for carriers to provision last mile services. The additional CAI's are a mix of elementary and secondary schools, health care institutions, an airport, state government and transportation facilities. All of these connections are important to our mission of delivering education, health care and government services more efficiently and effectively with better outcomes.

Second, this reconfiguration is crucial infrastructure that serves an interrelated set of needs. Vermont is intent to marry our telecommunications and smart grid infrastructures. It accomplishes the following: supports that collocation needs of both wireless carriers and the Vet WOW project at 23 tower sites, completes and builds critical fiber paths in Northeast Vermont that will be used for Smart Grid communications in addition to original purpose of serving CAI's, better provisions wireless broadband to support both consumers and Smart Grid communications, and allows for more cooperative route sharing between telcos and our distribution utilities.

Third, it moves from a total of 107 miles in the \$10M request to 155 miles in this \$14M request, driving down the cost per mile of deployment of resources.




Mr. Sandeep Taxali  
National Telecommunications and Information Administration  
March 9, 2011  
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We challenged VTel in this final configuration to meet as many goals as possible with any incremental sections that they identified. They have met this challenge. Further, we have asked for explanation for the junction of routes at Hardwick, VT between the VTel and VTA/ Sovernet applications and find that each project approaches from a different direction and serves a distinct and separate purpose.

We are also confident that VTel is demonstrating readiness to begin construction during the 4<sup>th</sup> quarter of this year following EA and permitting. We are genuinely excited that our citizens will begin to see the benefits of high speed broadband in their communities and at home within the next year. We encourage you to speed deployment with the acceptance of this reconfiguration.

We understand your need to finalize this project and thank you for your consideration.

Sincerely,



Karen L. Marshall  
Chief, Connect VT  
Agency Of Administration  
State of Vermont



**CONFIDENTIAL and PRIVILEGED—No Sharing**

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**To:** Governor Peter Shumlin  
**From:** Lawrence Miller, Secretary, Agency of Commerce and Community Development  
**Date:** March 11, 2011  
**Re:** ACCD Weekly Report

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**Status of Governor's Priorities:** We are progressing on the possibility of a recent graduates web site. Several web sites exist already, nothing specific to Vermont. Many Vermont colleges use some of these existing sites. The Dept. of Labor has Vermont Job Link that may be able to provide this service. We will be working with Labor to determine the best way to proceed.

Had a great meeting with the Congressional delegations Vermont leadership this week. We will make these a regular event.

**Collaboration:** a productive meeting was held earlier this week with Commissioner Mears and two of his brownfields team members. As follow-up, we are going to examine some creative ways to use our EPA award for insurance (or reinsurance); investigate the feasibility of creating a development authority and create opportunities for more outreach and training. Further, Noelle met with David Mears on additional measures.

Continue ongoing discussions with Ag on areas of mutual interest and work.

**Legislation:** The Jobs Bill look like it may be voted out of Hs. Ways and Means today. Certain members asked us about amendments re: additional reporting and gender equity for the STEM incentive, but other than that we are not aware of any significant changes. Chair Ancel has done a good job keeping the committee focused on those area relevant to the Ways and Means committee.

**Evolving Issues:** Beaverwood has pulled plans for their biomass plans in Pownal, that is a good thing given the resistance. Meanwhile, Winstanley Associates proceed quietly and steadily on their combined energy and heat biomass project for N. Springfield. They met with Commissioner Miller this week, a good discussion. We expect they will be filing with the PSB soon.

We have a food waste biomass project looking seriously at the "prison land" in Springfield. The State owns 34 acres we are to deed to the Town of Springfield as part of the deal to host the Southern Vt. Correctional Facility. This project could be a first step toward getting that park moving. Too early to know for sure but BGS has been working with us to facilitate that project.

Budget issues at the Federal level continue to be a concern for several agency programs, particularly the Vermont Community Development Program. Significant reductions are also proposed for the HOME Program. These proposed cuts are of even greater concern, considering the increasing demand and rising grant request to the VCDP/CDBG program here in VT. Many new projects will be slowed and halted and many of the programs supported over the years with CDBG funding, such as the statewide Regional Housing Revolving Loan Funds, could be devastated.

Pat Moulton Powden led a meeting with the Regional Development Corporations to discuss ways to work together, the jobs bill and other program initiatives. Noelle and Jen both participated in discussions.



Like in previous years, TIFs continue to be a topic of discussion at the State House. Pat, Lawrence, Noelle, Joss and Fred met to discuss this year's proposed amendments to the program.

### **Community Development Program**

- The attached link I:\PMD\Ffy10\VCDP Pipeline Application Status and Open Grants Report.xlsx will direct you to an A-3 report for the Vermont Community Development Program. The excel spread sheet has two tabs: Status of Application Review (for current VCDP applications under review by CD staff) and Potential Projects (inquires and projects that may result in a VCDP application). The A-3 provides a brief description of the project, assigned VCDP staff, an assessment of the current health and any actions needed.
- 9 applications have been submitted to-date for the April VCDP Board Meeting requesting over \$3.5 Million for the approximately \$1 Million available at the April Board Meeting. We are still expecting an application from the Town of Craftsbury in support of Pete's Greens for \$400,000. VEDA and/or other lenders must be willing to share their Credit/Business Analysis with us in order for this application to make it to the April Board Meeting. They plan on asking for a VCDP loan to help them purchase farm equipment. They have raised and borrowed enough funds to rebuild and expand the barn & storage buildings lost in the fire, but need additional funding to replace equipment lost in the fire and new equipment for their planned expansion which is expected to add 10 new jobs.

### **Community Planning and Revitalization**

- **Downtown/HP Conference:** The Vermont Downtown Program, Preservation Trust of Vermont, and The Division for Historic Preservation have partnered to produce this year's conference. It will take place on Friday, April 29<sup>th</sup> in Poultney Vermont. Governor Shumlin's office has confirmed that the Governor will be part of our Awards Luncheon. The Green Mountain Awards honors the best in revitalization efforts of both our designated downtowns and Village Centers. The Keynote Speaker is Tripp Muldrow of Arnett and Muldrow with the theme of "Why are our downtowns important?" Sponsors of the conference include Historic Windsor, Inc., Pomerleau Real Estate, VPDA, VPA & Two Rivers Ottauquechee Regional Planning Commission along with several others that Leanne has met with but decisions are pending. The initial announcement of the conference was emailed last week to a wide variety interested parties, and the Conference website is now open for registrations.

### **EB-5**

- **WhistlePig Whiskey:** A new whiskey company in Shoreham, became an official EB-5 project under the Vermont ACCD Regional Center. The company will immediately begin raising funds to outfit their facility and expand production.
- James Candido met with a group looking to use the EB-5 program to fund a myriad of different technology projects that they are interested in expanding. Their interest in EB-5 stems from the group having connections with Chinese investors overseas.

### **Historic Preservation**

- **Upcoming Legislative Testimony: Next week in House Institutions:** further testimony on VT Archeology Center move to the Vermont History Center (details of the draft MOU between ACCD-DHP and VHS); and testimony of using \$20,000 from the Barn Grants program as match for the federal Barn Census grant. Noelle, Gio, Nancy. **Next week in Senate Institutions:** testimony on the Historic Preservation and Barn Grants. Noelle, Gio, Judith.



## **Housing**

- **Condominiums:** The department received several calls about condominium issues in the past few weeks, but the callers are sometimes unhappy to learn that we do not have any oversight or jurisdiction and can only offer suggestions. Arthur contacted the Attorney General's Consumer Assistance Program to see if they can be of help to these people. Condominium owners may be referred to the Attorney General's Consumer Assistance Program at 1-800-649-2424. They don't have any enforcement, but they are willing to take complaints and offer their mediation program to attempt to resolve disputes between owners and condominium associations or management companies. They only offer 'letter mediation' and if the parties can't resolve their differences they may need to hire a lawyer.

## **Recruitment: CONFIDENTIAL**

- A group of Vermont economic development and finance representatives met at Sen. Welch's office at the request of Bove's who is interested in bringing back their product manufacturing to VT. Company representative is in the initial planning stages of this potential re-location and was interested in learning what type of incentives and financing would be available if he moves forward. At this time the prospect has not begun the process of developing a business plan and this was recommended as a necessary next step. This is likely within 2 years. A referral was also made to PTAC for an initial counseling session. We provided detailed information on financing, incentives and other programs to assist. Follow up will continue.
- A request for information regarding Vermont's applicable incentives for a large-scale solar manufacturing project has been received and responded to. Company is apparently in initial stages of a site selection process throughout the U.S. Follow up will continue.

## **Tourism & Marketing:**

**Vermont Life:** Thus far feedback has been predominantly positive on the magazines new look and feel. All Legislators have a copy of the most recent magazine. Mary Nowlan has launched an aggressive, proactive press effort which appears to be paying off.

- **Winter Campaign Performance:** To date the Vermont Department of Tourism & Marketing has collected 11,900 entries via the [www.PathToVermont.com](http://www.PathToVermont.com)

5829 female, 6071 male

7131 without DM code, 4769 with direct mail

Connecticut: 1593

Massachusetts: 4619

New Hampshire: 259

New York: 2635

New Jersey: 1213

Pennsylvania: 250

Rhode Island: 408

Vermont: 279



- **Teleservicing: This Weeks Winter Storm Kites 511 Calls:** After nearly a year of comparatively modest daily call volumes to the live agent service at the CRMI Call Center in Newport, Monday's heavy snow storm brought 66 calls and another 24 calls on Tuesday. By comparison, the all-time daily high was 140 calls during the Valentine's Day snow storm in 2007.
- **Inquiry Trends: February Inquiries:** The general trend toward fewer requests for hard copy vacation packets continues for both domestic and Canadian inquiries, which have both declined slightly each year since 2000 in year to year comparisons. This is reflected in the February report from our Canadian fulfillment center.

| New Engand Tourism Center Fulfillment |         |         |
|---------------------------------------|---------|---------|
| Month                                 | Packets | Camping |
| Feb-10                                | 344     | 112     |
| Feb-11                                | 305     | 105     |
| Percent Change                        | -11.3%  | -6.3%   |

At the same time, a discernable trend from Canada is a relative increase of inquiries from Ontario vs. Quebec. Historically, the count was very close between the two, but over the past two years the Ontario proportion has nearly doubled.

| Month    | STATE | TOTAL | YTD_State | YTD_Totals |
|----------|-------|-------|-----------|------------|
| February | ON    | 162   | ON        | 830        |
| February | QC    | 75    | QC        | 417        |
| February | NS    | 21    | NS        | 90         |
| February | BC    | 9     | BC        | 62         |
| February | NB    | 13    | NB        | 50         |

*\*Fiscal Year to Date*

Overall packet requests from all sources during February declined about five percent from last year: 3412 vs. 3590.



# Memorandum

Vermont Department of Public Service

Privileged and Confidential

To: Hon. Peter Shumlin  
From: Elizabeth H. Miller, Commissioner  
Subject: Weekly Report  
Date: March 11, 2011

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**Status of Governor Priorities:**

VY:

- License cleared for issuance by NRC, likely to issue by Wednesday next week. NRC Chairman respectful of Vermont's jurisdiction in response to reporter inquiries. Next action by Entergy not yet clear, but I expect it will petition Board to reopen proceeding. Alternatively, Entergy may sue immediately. I believe it may argue that the MOU in 2002 contemplated completion of a PSB process; legislative action thereafter removed Board's ability to decide, yea or nay, on the continued operation of the plant and therefore vitiated Entergy's agreement to the state process. We have a briefing with the AG next week on this subject. The DPS has also prepared further briefing for Beth Robinson on the current status of the PSB proceeding and the standard that would be applied in the event that proceeding continued.
- DPS, DOH and DEC are sending joint letter to VY asking for status report and commitment re: test of COB drinking well. If VY fails to respond adequately, DOH regulations allow a finding of noncompliance (faster process than PSB or ANR action, reportedly).
- Entergy asked to schedule a meeting regarding decommissioning issues and its belief that the Gunderson/Fairewinds JFO report is inaccurate. The meeting is likely to occur in the third week of March.
- Utility contact indicates that Entergy has not complied with requests to continue the confidentiality agreement in place with CV and GMP. It is likely in my view that Entergy will release the financial terms of the deal offered to the utilities, and will indicate that the administration's position on VY contributed to Entergy's inability to secure final deal and/or new owner. As previously reported, I indicated to both GMP and CV that the administration will not weigh in, for or against, corporate action regarding contract negotiations while emphasizing that you have remained clear in your views on the retirement of VY. CV apparently viewed that statement as a failure to 'green light' the contract, and ceased negotiations with Entergy for a period of time; I understand, however, that CV subsequently rejoined the process after hearing from GMP that it received the same message from me and believed independent corporate action was still appropriate.
- DPS has prepared further briefing regarding potential deal terms and will share with Deputy Chief of Staff MacLean.



#### State Energy Plan:

- We are moving forward with initial stakeholder meetings.
- We have scheduled a meeting with Secretary Miller to walk him through a rudimentary but very helpful rate impact spreadsheet prepared by Department staff.

#### Broadband:

- We are nearing completion of an Alternative Regulation Plan with FairPoint for submission to the Board; we also have a penalty dollars stipulation in place pushing broadband build out.
- Mike Smith requested a meeting early next week to discuss both issues.
- DPS and Chief Marshall conducted a pole attachment technical meeting this week, viewed as successful by participants.

#### Renewable Energy:

- Technical hearings on **Georgia Wind** occurred; reportedly they did not go particularly well for the developer, related to unresolved setback issues. Developer's witness did not do well; Board does not seem inclined to agree to allow the siting – the tip of the blade would be very close to the edge of the property line, much closer than other states allow for wind towers. Settlement negotiations may continue between developer and adjoining landowners but are not yet concluded; if they do not generate a deal, the project may be at risk. The Department has been supportive of the project generally, but did participate in the questioning regarding setbacks and staff here does have a concern that Vermont has not yet defined setbacks in this context. We are reviewing how other states have handled wind tower setbacks. Staff would be inclined to ask PSB to set rules for setback for cases in which developers are unable to reach an easement or otherwise settle with adjoining landowners.

#### Legislative Issues/Contacts:

- The Department continued to monitor and offer testimony regarding the energy bill, H.56, particularly the Clean Energy Fund charge and net metering rules.
- The Department did not change its position against the 'new biomass' proposal of H.56, despite requests by Beaver Wood Energy. We met with Secretary Miller, Deputy Secretary Recchia, and Representative Klein on this issue.
- The Department monitored S.78, the telecom bill, in Senate Natural Resources. I testified in favor of the bill in Senate Finance. However, Senator Illuzzi (who was not present for my testimony) apparently indicated to some individuals that I had 'trashed' the bill. The only provision about which I expressed concern is the portion regarding permit issuance by the Department (rather than Board); on that provision I said that the Department would meet the obligation and get it done if passed as is, although the role of adjudicator would present some challenge to our traditional role as ratepayer advocate without any real time savings given the manner in which the bill is drafted. It is my understanding that Senate Natural Resources is likely to remove that provision of the bill.



Other than that provision, I indicated the Department's support for the bill and so I am unsure of the origin of Senator Illuzzi's impression regarding my testimony.

- We testified in support of the "bill cramming" proposal in House Commerce.

#### **Press Issues/Releases/Contacts**

- We issued a press release regarding our staffing changes – Sarah Hofmann as deputy; Jim Porter as telecom director – and we also advertised for open positions.
- I spoke with the AP regarding VY licensure and had contact with Platt's Nuclear and Rad Waste also.

#### **Significant Meetings/Events:**

- Verizon Wireless: I met with VW and Karen Marshall regarding VW expansion plans. VW expressed disinterest in providing roaming services for VTEL and generally disparaged VTEL in our meeting. On the regulatory front, VW expressed dissatisfaction with slow Board process on a VW permit; I asked the Department's counsel on the matter to send a letter to the Board that same afternoon indicating that the application was complete and should be ruled upon. VW appreciated the intervention. VW also is concerned about a current Board proceeding involving a prepaid plan customer who asserts VW's advertising was misleading and its treatment of him was unfair. The matter is small but could affect the state's jurisdictional treatment of VW. I have a follow up meeting with VW next week to discuss further.
  - Comcast: Meeting to discuss VoIP ruling and affect on pole attachment fees, among other issues.
  - Efficiency Vermont: Meeting to further align goals and create opportunities to promote efficiency/cost savings.
  - North Springfield Biomass/Winstanley: Met with developers and lawyers regarding this 25-30 MW biomass combined heat and power project proposed for an industrial park in Springfield. The project looks promising and likely is something that the Department would support.
  - Meeting with NRC by telephone regarding license issuance.
  - Meeting with GMP regarding Smart Grid rate design issues; there is disagreement among utilities regarding speed and manner of rate rollout.
  - Spoke at Smart Grid Open House at Legislature.
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## **Summary of Key Department Activity, By Division:**

### **Public Advocacy and Consumer Affairs:**

Tritium investigation at VY – Docket 7600 – Not actually part of the docket but related is that Entergy has not done the testing on the COB well that we have been expecting. Apparently Entergy has a plan that it has sent to corporate for approval. The big concern is that the testing not contaminate the well. The Vermont agencies involved (DPS, DEC and DOH) are all concerned about cross contamination, but we are also frustrated by the lack of action. The three agencies are working on a joint letter to send to Entergy asking why the delay, what is the plan going forward, and setting a firm date for the sample extraction to take place.

Kingdom Community Wind – Docket 7628 – Post hearing briefs are due on 3/21. The DPS's brief will support the project.

FairPoint Alternative Regulation Successor Plan (AFOR) – No Docket No – FairPoint's AFOR expires March 31, 2011. Department and FairPoint are working on the details of the new AFOR. A part of the agreement will involve the use of certain penalty dollars for FairPoint to deploy broadband at 100% levels to exchanges not currently served or not currently under a regulatory commitment for deployment. It is anticipated that the Board will open a docket shortly after receipt of the AFOR agreements.

Georgia Mountain Wind – Docket No. 7508 – Technical hearings to deal with setback issues took place on 03/10/2011. The Department had no witnesses regarding the issue of setbacks but did ask questions to establish a record. The Department's post-hearing filing will focus on a range of what other states have relied upon. This issue of the setbacks is problematic for this project. The developer and the landowners in question have been in negotiations. The hearings went fairly poorly for the developers so there may now be added incentive to settle. Burlington Electric has indicated that it intends to acquire the Georgia Mountain Wind Project.

CVPS Alternative Regulation Amendments – Docket 7627 – CVPS sought to amend its approved Alternative Regulation Plan (ARP), particularly to "re-set" its allowed return on equity (ROE) to a value higher than the ARP formula would provide (10.2% vs. 9.18%), as well as an extension of the ARP until 12/31/13, and other changes. The DPS stipulated to a number of changes, including a bench-marking formula for non-power costs and a ROE somewhat less than sought by CV (9.59%). Despite its apparent skepticism during the hearings, on March 3 the PSB approved the parties' settlement although it reduced the allowed ROE from the figure in the stipulation (to 9.45%). The settlement provided that if the Board did not approve it substantially as filed, either party could withdraw; the PSB asked that the parties notify it if they intended to exercise that option. CVPS has advised that it will accept the Order and its lower ROE.



CVPS Rate Case – Docket 7694 – The PSB opened this investigation at the same time it approved CVPS's base rate filing for 2011, thus effectively making the requested 7.46% increase subject to refund. The settlement in Docket 7627 also affected the base rate for 2011, with DPS agreeing to a higher increase based on the settlement ROE. When the PSB declined to promptly approve the settlement (considering it instead during February hearings in Docket 7627), a disagreement arose as to whether the increased rate would be retroactive to 1/1/11. However, based on the Board's Order in Docket 7627, CVPS reports that the resulting rate just equals the rate allowed into effect on 1/1/11, so that no adjustment is needed. DPS is reviewing CV's calculations.

CVPS acquisition of VMPD—Docket 7660— The parties will be submitting testimony in support of the MOU on Friday, March 11. Technical Hearings were scheduled for March 22, however the Hearing Officer is no longer committing to that date until after he is able to review the testimony.

CVPS acquisition of Readsboro Electric—Docket 7688— The parties have filed their MOU with the Board. A technical hearing is scheduled for March 29.

Sheffield Wind Project—Docket 7156— The Board has not yet issued an order ruling on the Ridge Protectors' motion challenging the sufficiency of the Petitioner's blasting plan and compliance with the plan.

Voice over Internet Protocol—Docket 7316— The Board denied Comcast's motion to reconsider the Board's Order holding that the Board has jurisdiction over VoIP as a telecommunications service under Vermont law and is not preempted by federal law. Vermont counsel for Comcast in this matter does not yet know whether Comcast will appeal. If Comcast does not appeal, the Docket will move on to Phase II, where the specific regulatory obligations appropriate to fixed VoIP will be considered.

New England Power Company (National Grid) Petition to reconductor and refurbish a portion of its existing 115 kV transmission line within Readsboro and Whitingham - Docket 7709 -The Department filed a letter with the Board advising that it did not believe the project raised any significant issues with respect to the substantive criteria of Section 248 and that the CPG should be granted.

Mark Tucker Complaint Concerning Verizon Wireless' INpulse Prepaid Telephone Service Plan. Docket 7701 –Verizon Wireless filed its brief on the matter of state law jurisdiction last week; the Department and Mr. Tucker must respond by March 28. Verizon has requested a meeting with the Commissioner to discuss the Department's response; this meeting will take place next week. This is one of those dockets where it looks like a small case but really is a huge issue for the industry, involving the extent of state jurisdiction over wireless/cell service.

SunGen Sharon Solar—Docket 7700—a Site Visit and a Public Hearing are scheduled for Wednesday, March 16.



### Consumer Affairs:

- CAPI provided testimony to House Commerce in support of H.254, a Bill that would limit billing aggregators access to telephone bills. The Bill came about as a result of an investigation by the Attorney General and supported with data, discussion, and review by CAPI and DPS attorney Jeannie Elias. The Committee members have asked the AG to review a section of the proposed legislation, which will include a follow up conversation between the AG, DPS, and FairPoint. The follow up call has yet to be scheduled.
- CAPI participated in a three-state call with New Hampshire and Maine PUC's to discuss the New Hampshire proposed PAP audit. New Hampshire has asked for the support of Maine and Vermont in their efforts to audit the systems and procedures that support the data included in the PAP reports. This is seen as a precursor to the modification of the PAP agreement for each of the three states.
- CAPI has begun review of FCC's NPR related to the Lifeline and Link Up Reform and Modernization. The 139 page document proposes to expand the Lifeline and Link Up programs to include credits for eligible participants for broadband service. Initial comment date is April 21, 2011.

### **Planning and Energy Resources:**

#### Comprehensive Energy Plan:

- Worked with Agencies of Agriculture, Commerce and Transportation to coordinate stakeholder meetings.
- Continued update of key energy statistics and metrics across all CEP chapters. Reviewed several methods and approaches to model selected energy programs and portfolios. Initiated project to update and re-estimate the energy forecast.
- Finalizing public review copy of current version of CEP to post on website.
- PERD staff continued to review & revise assigned sections of plan.
- Stakeholder meetings to obtain feedback on the existing draft of the Plan and new ideas for the Plan going forward have been scheduled by topic area for March 22<sup>nd</sup> (Separate Energy Efficiency and Renewable Energy sessions will be held) and April 7<sup>th</sup> (Separate Transportation and Land Use sessions will be held).

#### Energy Efficiency and Conservation Grant Program (EECBG):

- A grant agreement for \$17,600 was drafted for the Town of Isle la Motte for energy efficiency retrofits at the Town Hall Building.
- Final invoices were processed for the Town of Fayston, Warren Town School District and Waitsfield Elementary School.
- Staff worked with the Towns of Brighton and Waterbury, and the South Burlington School District, to aid them in submitting accurate invoice documentation for their projects



- Staff finalized preparation for the March 15th Davis-Bacon Act webinar which include participation by Carl Loria of the U.S. Department of Labor. DOE Project Managers Steven (Brett) Humble (SEP) and Sarah Zaleski (EECBG) were included among the 200+ invitees.
- Staff resolved a street lighting issue with the Department of Labor that will have Davis-Bacon implications for grantees working with a utility on street lighting projects.
- Paid \$2,329 to the Bennington Regional Planning Commission for energy project work.

#### State Energy Program (SEP):

- Processed \$36,736.20 invoice for Fairfax Town School District exterior lighting project.
- Paid \$62,106 to Marlboro College for a 104 single-pane window replacement project for a classroom building. This concluded their project and their grant is being closed.

#### Clean Energy Development Fund:

- CEDF Director planned and put together materials for DOE onsite monitoring visit.
- Finalized the Solar Tax Credit list of recipients to send to Tax Department.
- Director attended meeting to discuss H. 56 provisions, hosted by House Natural Resources and Energy Committee Chair Tony Klein.
- Worked on CEDF economic impact report data with Tom Kavet.

#### Energy Efficiency Utility Demand Resources Plan (DRP) Proceeding:

- Electric EE Resource Track –
  - Staff received and reviewed VEIC proposal for performance holdback award and operations fees amounts. The proposal would equal 5% of a status quo three year budget, an increase from ~3.5% from 2009-2011.
  - Staff held multiple meetings with EEUs to discuss resource plan scenarios. Methodological differences are slowly being resolved.

#### Cost-Effectiveness Screening – Externalities:

- Staff filed comments with the Public Service Board following conference with stakeholders proposing that no interim change to EEU screening be adopted because the material impacts to programs appear to be small (with possible negative consequences), and a carbon value will be developed by a the regional avoided energy supply costs study group for public distribution in July.
- Staff researched and provided parties information regarding other jurisdictions methodology for developing externality values and treatment in screening.

#### EEU Evaluation:

- Staff is in the contracting process with Navigant and NMR for both the Business and Residential Energy Efficiency Market Characterization and Assessment Studies.



- Staff conducted internal meetings regarding the Forward Capacity Market evaluation, to discuss project review status and new issues that have arisen in the process of data collection and review of the projects. Staff reviewed contractor reports and provided the first project report to EVT for review.
- Staff conference with EVT regarding issues surrounding their inability to meter all large projects.
- Staff began process of FCM evaluation contract amendment to account for separate Forward Capacity Market and Savings Verification scopes of work.

#### Act 250 Review:

Reviewed pending applications for compliance with Energy Codes. – Only one new construction project (50,000sqf office building in S. Burlington).

#### Biennial:

Continuing reviewing and incorporating material into the draft and dealing with formatting issues. Estimated delivery for release of a review draft is March 25.

#### Vermont System Planning Committee (VSPC):

- Staff attended VPSC quarterly meeting and reported on activities of the Energy Efficiency and Forecasting SubCommittee.
- Staff attended EE&F Subcommittee meeting to solicit opinions and recommendations regarding the future for Geo-Targeting. Subcommittee members offered numerous suggestions, but did not reach a consensus on Geo-Targeting versus a statewide efficiency program.

#### Other Items:

- Staff provided requested information for determination of a Grid Charge to be use to support the CEDF.
- Staff reviewed and ranked proposals for the Vermont Energy Codes Education, Outreach and Training RFP issued by the Department in February. The selected contractor will educate a diverse set of stakeholders to newly updated Vermont residential and commercial building energy codes.
- Continued review and update to Utility Facts Handbook. Added recent data releases to appropriate sections and updated graphics. Additional rounds of editing and formatting.
- The net metering data base is now current and updates continue as applications are received.
- Completed this week's fuel survey and transmitted data to EIA. Unrest in the Middle East is having a major effect on crude oil prices with spot topping \$107/barrel, some easing in tensions as the week progressed and profit-taking have resulted in a retreat from the high to \$102.5/barrel this morning.



- Vermont distillate prices continue to rise and the Hi –Low delta is contracting as dealers stocks are replaced with new costlier inventory. The table below presents the impact on Vermont prices in the past week. Propane remains relatively unchanged (-0.05%).

Distillate Price Change from  
Previous Week

|          | <u>1-Mar</u> | <u>7-Mar</u> |
|----------|--------------|--------------|
| Fuel Oil |              |              |
| #2       | 6.23%        | 3.60%        |
| Kerosene | 6.78%        | 2.99%        |
| Gasoline | 5.39%        | 4.84%        |
| Diesel   | 5.01%        | 4.13%        |

**Engineering:**

Vermont Yankee Operation:

The Vermont Yankee nuclear station continues to operate at 100% power. The station has been online for 119 days. A decision on the 2011 refueling will likely be made in the April/May timeframe when a \$30 million uranium fuel purchase decision is due.

Safety Relief Valve (SRV) Update:

During VY's last refueling outage, two of the four main safety relief valves (SRV) had leaking seals. The finding was reportable to the NRC via a Licensee Event Report. The SRVs protect the Reactor Coolant System from over pressurization. The apparent cause of the leak at the thread seal was thermal degradation. The original seal material in the SRVs was silicone which provided more thermal margin than the current Buna-N material. VY will replace the Buna-N thread seal material in all four SRVs during the 2011 refueling outage with a material that provides more temperature margin.

This event could potentially affect the ability of the SRVs to perform their manual and automatic depressurization of the Reactor Coolant System. However, due to the redundancy in the Automatic Depressurization System design, the availability of the High Pressure Coolant Injection system, and availability of backup nitrogen supplies, the ability to depressurize the reactor was preserved. Therefore, this event did not pose a threat to public health and safety.

Gas Pipeline Safety Focus:

Assuring the integrity of natural gas and propane distribution installations has become a major focus nationwide. In addition, a major initiative begins during 2011 that requires each operator to follow a personalized DIMP (Distribution Integrity Management Program). The custom DIMP assures each operator knows their system and the inherent and specific risks associated with their operation. In that light, the Engineering Division is re-structuring its staff assignments to better cope with a rising work load. GC Morris and Allan St. Peter will now share the responsibilities for the Dig Safe work, each providing support for the other.

GC will take the lead on Process Improvement with the PSB, finalizing Tracking and Reporting software development for report generation, and assembling the 2010 and 2011 grant. Allan will



take the lead in managing Underground Facilities Damage Report (UFDR) processing which includes case reviews with our field investigator and coordinating our administrative staff support to assure NOPV cases are processed and tracked properly.

#### Underground Facility Damage Prevention:

The Department administers the Underground Facility Damage Prevention Program. The Department relies on education and enforcement approaches to ensure compliance with VSA §7001 and Public Service Board Rule 3.800. The education component requires support for and good communication with the Vermont Managing Underground Safety Training (MUST) group. This month, the Department will participate in two MUST training seminars, in Burlington and Lyndonville. Utility operators, public safety and construction officials, engineers and planners, landscapers, safety managers, municipal department, construction equipment operators, and other companies involved in excavation activities have registered for these seminars which focus on safe excavation practices, the Vermont law and promote the utilization of the Dig Safe System to avoid damage to utilities.

#### ISO-NE Transmission Modeling:

A further positive sign that FERC and ISO-NE understand the importance of enabling Non-Transmission Alternatives to compete with regulated transmission solutions emerged when ISO-NE advanced an initiative to change their information policy to be more open and transparent with stakeholders. All transmission planning models including power flow, stability, and short circuit analysis should be available to the public. Currently they are not.

ISO-NE concluded making their transmission model results available is necessary to comply with the terms and spirit of Order 890 – which instructs RTO's to value all resources equitably. Releasing this information to non-transmission owners will allow NTA's to conduct their own studies and develop competitive responses rather than always relying on TO's to build transmission.

#### **Telecommunications:**

FairPoint AFOR – The Department continues to negotiate the terms of an alternative regulation plan with FairPoint. The plan eliminates price regulation for all services other than basic exchange service. Some small disagreements remain, but the Department believes that an agreement is close.

FairPoint penalty funds – The Department is negotiating an MOE with FairPoint in which Fairpoint would be allowed to invest funds to provide broadband to unserved areas instead of directing the funds to the Vermont universal service fund. The Department has suggested that these funds be used in the Target Communities identified by the VTA.

Smart Grid “Technical Capabilities” to support dynamic pricing – DPS staff have achieved a consensus agreement on a set of technical capabilities with GMP and CVPS. These utilities



intend to incorporate these in their procurement contracts with their AMI vendor. They will also circulate them to the remaining utilities and try to build a consensus within the broader utility community.

AMO meeting – Susan Martin is canvassing the AMOs to develop an agenda for a meeting proposed by the Department of AMOs and Cable Operators. Susan will arrange a meeting internally with the Commissioner to go over the proposed agenda before circulating it to the attendees.

Telecom Plan – The Department has incorporated the changes suggested by the Administration and has requested confirmation of the changes suggested by Public Safety. Once these are received, the Department will make the changes to the desktop publishing version of the document.

Board workshop – The PSB held a workshop to discuss the FCC's recent proposed changes to the Federal Universal Service Fund and Inter-carrier Compensation systems. The Vermont Independent Telephone companies and FairPoint both indicated that they believe that the proposed changes are very likely to be implemented, and that they are likely to have a significant negative impact on Vermont telecommunications companies. The Board circulated a data request, which asks for specific detailed information on all revenue streams (regulated and non-regulated) which the Board hopes to aggregate and provide with its comments to the FCC to underscore the negative impacts of the proposed changes.

Vermont Broadband Consortium - The website – [www.broadbandvt.org](http://www.broadbandvt.org) – has generated some feedback from the public which is being tracked. Content generation and editing continues.

BMI Data Collection – The data collection phase of the BMI has concluded. End result was 37 providers reporting. 3 carriers offered no response at all and 1 is attempting offer data but having difficulty providing a format that is useful.

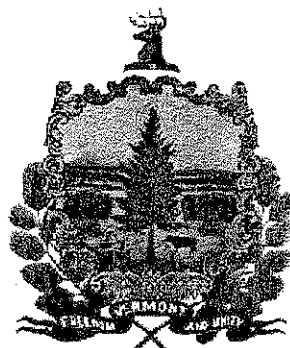
FCC Caller ID rules – The FCC has issued an NPRM dealing with the issue of Caller ID “spoofing” in response to the Truth in Caller ID Act of 2009 which was signed in December, 2010. The FCC is seeking comment about the definitions of wording in their NPRM and about the fact that they are applying the rules to both telecommunications and IP based voice services. Comments are due April 18 with reply comments by May 3

Separations – The FCC Wireline Competition Bureau is seeking comments on extending the 2001 Separations Freeze Order for another year which would change the expiration date to June 30, 2012. This Order established the procedures for separation of costs for Incumbent LECs as detailed in Parts 36 and 69 of the FCC rules. Comments are due 14 days after publishing in Federal Register with reply comments 7 days after that.



## DEPARTMENT OF PUBLIC SAFETY

# Memo



TO: Governor Peter Shumlin  
FROM: Keith W. Flynn, Commissioner  
DATE: 3/11/11  
SUBJECT: Governor's Report

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### Status of the Governor's Priorities

**Public Record Disclosure-** We have been reviewing this area and consulting with Beth Robinson. Pending Supreme Court cases will be helpful in determining our position and approach.

**Marijuana decriminalization-** Bill H.427 has been submitted. Still needs some additional modification at assure appropriate law enforcement response.

### **Legislation:**

**Senate Appropriations-** presentation of DPS budget today at 1:00 P.M.

### Evolving Issues:

**Vermont Police Academy** - No further action has been taken in regard to the Academy. Upon information and belief, another investigation is underway at the Academy centering around racist and sexual comments made by instructors from the Department of Motor Vehicle and a local department to the recruit class.

**Deputy Commissioner of DPS** - Secretary Spaulding approved the Department's request to offer Fire Safety Director John Wood, the position of Deputy Commissioner of Public Safety. The offer was made and Director Wood accepted. I will request the Governor's approval pursuant to statute. If approved I would like to ask that Governor Shumlin make the announcement at next week's press conference.



**Division Activities:**

**Emergency Management**

RPF for visuals in new EOC have gone out  
Awaiting memo from NRC re: Vermont Yankee re-licensure  
Facilitated SSF Assessment Impact call for snow event  
Media Interviews – WCAX, NECN and Corm and the Coach  
Updated State agency and special teams submitted to FEMA  
Conducted Ingestion Pathway Plume Exercise at SEOC/VY  
Ongoing review of SEOP Support Annexes  
Monitored weekly Tritium update call  
Attended Gov media event

**Commissioner comment-** the Division of Emergency Management did exemplary work in monitoring the recent snow storm activities and functioned well as a team. The follow-up report was done in the midst of a Vermont Yankee exercise. Good job by all involved.

**Vermont State Police**

Investigation of Sheffield homicide investigation is still ongoing.

**Finance**

**FY12 Budget:** FYI, our FY12 Budget Submission documents are now posted on the DPS website homepage. Senate budget testimony takes place this Friday 3/11/11.



Confidential and Privileged

To: Governor Peter Shumlin

From: VDOL Commissioner Annie Noonan

Date: March 11, 2011 --- Weekly Report: Week ending March 11, 2011

#### Governor Public Events Upcoming Week

VDOL Burlington Office: I have notified VDOL Regional Manager John Vowles to make sure the office staff are ready for your visit on Monday. Some of the issues you may want to discuss with staff include (1) impact of federal cuts to the services they provide (be aware that federal cuts may also impact their job security); (2) the diversity of client population in the Burlington area and ideas on how to best serve Burlington's changing demographics; (3) their work with Youth; and (4) how to better engage the Employer community to utilize VDOL's services. On Tuesday morning, you are scheduled to visit the Federal Mediation & Conciliation Services (FMCS) conference before a group of about 60 labor and management practitioners (mainly public services). This is being jointly sponsored by the Labor Relations Board, VDOL and the FMCS. I will send you talking points this afternoon, but the real message should be that disputes can be resolved without rancor or resort to litigation in many situations, and that in many cases, the practitioners have become too reliant upon the courts and lawsuits to settle issues that could and should be resolved with more effective communications, fair dealings, and compromise as a tool to building trust.

#### VDOL budget issues

1. The federal funding situation for VDOL's Workforce Development division continues to be uncertain. As you know, the House Republicans "zeroed out" WIA (Workforce Investment Act) money, and while that may not be the end result, it appears that the President has more or less conceded a 50% cut to WIA. About 16% of the VDOL budget is tied to WIA money, and we have about 50 staff salaries drawing in whole or in part from WIA. We won't know much more until some budget resolution is finalized in congress. As mentioned last week, we are preparing for the possibility of the loss of money by holding all department vacancies (currently about 8 openings) and curtailing any new expenditure. I would like to talk with you about the statutory provisions about keeping our offices open, and how to address this issue with the Legislature - i.e. providing me the latitude to do what makes sense in operating the offices, but at a different schedule and level of service. We may also need to get out of some of our square-foot obligations in leases with BGS.

One good piece of news VDOL staff members are working on searching out new grant sources. I am preparing the memo to the other agency and department heads identified for a joint collaboration on funding a grant researcher/writer after having received word from Secretary of Civil and Military Affairs Alex Maclean that the administration supports this concept.

2. Fee Bill Request: VDOL had originally requested a fee rate of 1.61% on the worker compensation (WC) premiums on policies in the state of Vermont. This fee, established under statutory authority (21 VSA and 32 VSA), and is to be utilized for the administration of our WC and VOSHA programs. (*"A workers' compensation administration fund is created pursuant to subchapter 5 of chapter 7 of Title 32 to be expended by the commissioner for the administration of the worker's compensation and occupational disease programs.*) At the time the VDOL provided the request of 1.61%, we based that on projections from BISHCA and NCCI that WC premiums would total \$148 million. About a week after the House passed the Fee bill, VDOL was notified by NCCI that the projected premiums would more likely be in the range of \$136 million. As such, I contacted Finance Commissioner Jim Reardon who, in consultation with Secretary of Administration Jeb Spaulding, advised that VDOL should amend its request in the Fee bill to 1.75%. An interesting note to this situation is that WC premiums for Vermont employers are projected to decrease this year, and, even with our requested increase, employers should still see a decrease in their rates. If we don't amend the percentage we have requested, the WC Division of DOL will suffer a continuing deficit, and the Administration would



like to start retiring the division deficit through a fair and reasonable levying of a more realistic fee on the insurers.

3. We have also been asked by the Administration to cut approximately \$65,000 from our General Fund expenditures. We are meeting internally to determine how to meet this request.

#### LMI – Vermont's Unemployment Numbers

Press release yesterday announced that the Vermont unemployment rate is now 5.7%, down from last month's rate of 5.8%. When noting this, however, there are many regions of the state that are above the statewide average, so we have to be mindful of this fact when discussing the decrease. In fact, we have received several emails from the public commenting that their personal situation has not improved and/or that they are still unable to find a job.

#### Legislative

The Next Generation money division, recommended by the Workforce Development Council (WDC, chaired by John O'Kane), has been sent to Secretary Spaulding. I suspect that it may face some changes from Senator Illuzzi who wants to fully eliminate the workforce investment boards. We have also done some research for him relating to the legislative history of Next Gen money.

Rep. Kesha Ram's bill on work study (proposed to draw \$800k from Next Gen) is now going to be a proposal for a much smaller contribution from the Next Gen money (\$100,000) that we may be able to draw a federal match of \$300,000 down and place 250 Vermont students with Vermont employers, including non-profits, based upon a match with the course of study. She has been invited by VDOL to speak to the WDC at its meeting on Monday afternoon (2:30pm, if you would like to stop by).

The SED's bills on Workers Comp and Unemployment Insurance have several changes of note that I will summarize under separate memo, because they are not yet finished (we are meeting at 4 today).

#### UI Division

Trust Fund Borrowing: As of 03/10/11, Vermont has borrowed \$6,072,931 during the month of March, and will probably have to borrow another \$13M for the remainder of the month. Total amount borrowed as of today (March 11) is: \$60,853,303

We have 29 employers drawing on our Short Term Compensation plan program.

During the week ending 3/5/11, the center handled 1,281 initial and additional claims. Wait time at the call center was Tuesday (day after the state closing for weather), was between 12-26 minutes.

The following cases are pending our VDOL Legal review: Mack Farm, Howrigan Farm and Somosa Man Café.

UI Division Director Tracy Phillips submitted a grant application on March 3 to extend and expand Vermont's Reemployment Eligibility Assessment program (REA), and we may hear by early April.

#### Workers Comp and Safety Division

Most notable issue this week has been the Starr Trucking issue. I met with co-owner of the 2 companies involved, (Senator Starr) to advise him of the ramifications of continuing to operate in violation of our Stop Work Order and to operate without Workers Comp. In addition to the ability to levy \$150 per day fine for every day without WC, every ticket issued ranges between \$5-10k, and every day the company operates without WC after a SWO is \$250 per day per employee. We were advised this morning that one of the companies has a policy now (appears to have been effective mid-February), and we are uncertain if the 2<sup>nd</sup> company has coverage. We will continue with the investigation and the penalty review phase of our work.

VDOL WC division has filed proposed findings of fact in the Howrigan case. No resolution has been reached despite what I believe was an extremely reasonable proposal by VDOL staff.

I have asked our 2 key VOSHA inspectors to participate in a presentation to state agency and department heads about the benefits of a safe workplace to the State's WC costs (\$6.4M last year), as well as to the employees' health, safety and morale.



OFFICE OF THE SECRETARY

Phone: (802) 828-2657

Fax: (802) 828-3522

**Executive Privilege**

**TO:** Governor Peter Shumlin  
**FROM:** Secretary Brian R. Searles  
**DATE:** Friday, March 11, 2011  
**SUBJECT:** VTrans - Confidential Report to the Governor

- **Federal Transportation Funding Update:** Late last week the President signed H.R. 622 which extends authorization of current highway and transit programs through September 30, 2011. The bill continues programs and funding through FFY2011 at approximately the same level as FFY2010. The extension bodes well for Vermont as the State continues to benefit from the extensions of SAFETEA-LU earmark funding at FFY2009 levels that is anticipated to provide additional funding of roughly \$64 million for FFY2011.
- **Chester Bridge project; Route 103 & Vermont Country Store:** VTrans is undertaking a reconstruction of 2 bridges in Chester, along Route 103, this summer. The combined bridge project has been in the works for many years, and while finally re-building badly deteriorated bridges, the project will have a significant impact to the community & local businesses. This is a "rapid bridge reconstruction project" in which we are removing and replacing the bridges all at once (rather than installing a temporary bridge and rebuilding the old one over 2-3 construction seasons). This technique is one of several that VTrans is deploying state-wide to expedite bridge reconstruction, and reduce the costs. While reducing time & cost of the project, the downside is that the road has to be closed, and traffic re-routed, for a relatively short time period (in this case, 9 weeks). Your office has received numerous calls & correspondences on this subject, most recently from the Vermont Country Store. Officials at VTrans (Sue Minter) and ACCD/Tourism, (Megan Smith) have each met, individually, with representatives of the Country Store to discuss their concerns. It should be noted that the previous Administration also worked to do significant community outreach and address concerns/ issues over the past 2 years. The project is under contract now, and expected to begin in Mid May. No changes to the project can be made at this time without significant cost & delay to the project. At the request of the community, the project timeline does not interfere with the school calendar (although due to additional snow delays, we now anticipate a short impact);



however, it does occur at peak times for some businesses, including Vt. Country Store.

VTrans & Tourism staff met this week to see how the state can assist the affected businesses. We discussed detour routes and signage, as well as community outreach needs. ACCD/ Tourism is planning to develop placards for the Welcome Centers and Ski Area to inform the public that the local businesses are open, even though the bridges are out. VTrans is restricted by federal rules as to the wording of the Detour Signs on the interstate, but is working to see how the 511 system can convey information to the public regarding the open businesses. Finally, the project contract includes retaining a PR firm to do ongoing outreach, which will include developing a website and ongoing outreach to the media, travelling public, and community.

- **DMV/ Traffic Bureau Reports:** DMV reports that they are getting numerous calls regarding the re-instatement of licenses and suspect your office may also be receiving calls. The DMV can only process documentation of reinstatement when they receive information from the Traffic Bureau, which, it appears, may be backed up, as information from the Bureau is slow at this time.
- **Winter Storm Info:** I thought you might appreciate some facts about the most recent storm and an update on where we are compared to other winters:
  - The storm on March 6<sup>th</sup> ranked as the third largest in recorded history at the Burlington Airport, more than 27". Other parts of Vermont had more than 30".
  - This is now the third snowiest winter of all time according to the National Weather Service, as measured at the airport.
  - The sequence of rain, ice, snow and high winds left many roads impassable and yet some people tried leaving vehicles stuck on roads like Vt. 22A and 125 in Addison County. This prevented plows from dealing with the drifts until vehicles were removed.
  - Our crews spent an inordinate amount of time digging out motorists, by hand, when they might have been clearing the roads. This caused a much worse situation on some roads for a longer time.
  - VTrans workers, sometimes knee-deep in water spent a lot of time clearing culverts and drainage ditches in order to clear ice jams. This also took time from clearing of roads.
  - We have only one maintenance shift in Vermont which resulted in a number of people working 16-20 hours straight from Sunday through Monday.
  - This storm cost the state about \$1.4 million and runs our cumulative maintenance costs to about \$20 million, or the entire FY-11 winter maintenance budget.



- By comparison, last year VTrans spent a total of \$14 million on winter maintenance.
- Thus far we have used a total of 88,500 tons of salt as compared to 57,000 lbs. for the entire winter last year.



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## MEMORANDUM TO GOV. PETER SHUMLIN

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To: Gov. Peter Shumlin  
From: GIRO Staff  
Date: March 11, 2011  
RE: Weekly Constituent Update

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### **Current Trends:**

#### **Road Conditions**

- Received several calls from residents north of Saint Albans complaining about the conditions of the routes 105 and 242 (potholes, frost heaves, etc.)
- People have seemed generally understanding of the nature of the recent storms, and have been grateful for the hard work of VTrans crews, to ensure the safety of the roads—others have not been understanding and have advocated for a

#### **Vacation**

- Received a few calls from residents all over the state about your recent vacation—the split between those opposed to “the secrecy and lack of transparency” and those in favor of the governor’s right to a vacation away from prying eyes has been even.
- Some residents were concerned about the fluidity of the state’s contingency plan in the governor’s absence, while others have mentioned that they believe you will be a more effective governor after some relaxation.

#### **H.137**

- The H.137 bill to repeal the 6% arts tax resulted in almost 200 e-mails this week alone. We have formed a response to both sides. The stance has been about 70/30 in support of the repeal due to a form e-mail the VT Arts Council sent out by Alex Aldrich.

#### **Health Reform Insurance Rate Review**

- VPIRG sent out an e-mail, asking constituents to contact the Governor regarding insurance rate review transparency. After working with Anya, we have a response that discusses how BISCHA is using grant money to do just that, along with how H.202 will incorporate insurance transparency.
- E-mails are still coming in for it, but it is a generic form with only names at the bottom. So far we have received almost 200 on the topic.

### **GIRO Management Update:**



- GIRO is in the process of transitioning from using CorrTracker and Phone Tracker within Access, to two different programs called Sharepoint and a web server created by the Vermont Information Consortium (VIC). We will use these for constituency record keeping. We are in the process of figuring out records regulations with Rachel Muse.
- Sharepoint, a program within Microsoft, will be beneficial for the management of e-mails. We will be able to pull any town, region, or subject of interest to a particular constituency group and let them know when you are going to an event in their area, or if there is an event/meeting going on that they may be interested in attending. If we ever wanted to send out an update newsletter about agriculture or broadband for example, we could use this system for that as well.
- The website VIC is finishing will be used to organize form letters and update constituency information. We have put the most recent Voter File from the Secretary of State's office into the site. It allows us to find anyone's address as long as we have their name or phone number, but we can edit as well to maintain the system and add e-mail addresses.



**Privileged and Confidential**  
**Memorandum**

**To:** Peter E. Shumlin, Governor  
**From:** Douglas A. Racine, Secretary of Human Services  
**Re:** AHS Weekly Report  
**Date:** March 11, 2011

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**Vermont Department of Health (VDH)**

**Status of Governor's Priorities:**

Vermont Yankee Exercise. On March 8<sup>th</sup> and 9<sup>th</sup> the department participated in the state's Vermont Yankee Ingestion Pathway functional exercise by utilizing the Radiological Emergency Response procedures. The department's Health Operations Center (HOC) was activated and operational in support of the decisions made by State Support Function 8 (Health and Medical Services) representatives located at the State Emergency Operations Center at Vermont Emergency Management. The focus in the HOC was the creation of critical communication for the public and medical providers related to the simulated radiation release and the identification and collection of necessary epidemiological data.

Substance Abuse and Mental Health Services Administration (SAMHSA) Meeting - Role of State Mental Health & Substance Abuse Authorities. On March 2<sup>nd</sup>, Health Department Deputy Commissioner Barbara Cimaglio attended a meeting with SAMHSA management to discuss the role of state mental health and substance abuse authorities in the era of health care reform. She was one of seven state leaders invited to advise SAMHSA about work being done in states and the impact on future state roles, and the use of the Substance Abuse Prevention and Treatment Block Grant funding.

**Legislative Issues/Contacts:**

Green Cleaning Products in Schools. The Senate Education Committee continues to work on a bill that would require the use of green cleaning products in schools. Dr. Chen has been working closely with the Committee to ensure that the bill does not compromise schools' ability to use disinfectants to prevent spread of disease and to ensure that the provisions of the bill are not exceedingly burdensome to the Health Department.

**Evolving Issues:**

Raw Milk Quarantine on Essex County Farm. The Agency of Agriculture notified the Department of Health that a cow from a milking herd on an Essex County farm has been classified as a "suspect" TB animal based upon the results of a skin test. The farm sells raw milk for public consumption. The animal will be re-tested in 60 days according to protocol. Pending the results of follow-up tests the animal, as well as raw milk from the farm, have been quarantined.



## **Department of Mental Health (DMH)**

### **Legislative Issues/Contact**

Senator Ayer. Commissioner Oliver spoke to Sen. Ayer about S.88 (Involuntary Medication) and advised that this issue is too controversial to try to do quickly. More time is necessary to develop a comprehensive approach to involuntary treatment, including medication. In addition, cost should not be a determining factor in this discussion. We need to find the right balance of treatment and protection of a patient's right to refuse treatment.

### **Significant Events/Meetings:**

VSH. Christine Oliver, Patrick Flood and I met with Jeb and several of your staff Thursday regarding both VSH leadership and replacement of VSH. If you would like to get more details of the meeting you can speak with Bill Lofy.

VSH. There was an incident at VSH where a patient attacked a staff member. The staff at VSH felt that the incident warranted calling the state police to file assault charges on the patient.

## **Department of Disabilities, Aging and Independent Living (DAIL)**

### **Legislative Issues/Contacts**

Met with Rep. Martha Heath. Commissioner Wehry discussed the wish and rationale to permit private, non-medical care providers to provide assistance with Independent Activities of Daily Living (IADL) services under the Choices for Care (CFC) program and to be reimbursed by Medicaid. IADL assistance includes activities such as house cleaning, meal preparation, laundry and shopping. Sometimes referred as the "Insteads," these include organizations such as Home Instead and Armistead and while the services vary somewhat by provider they include personal care and IADLs. Currently under CFC these services are provided only through certified Home Health Agencies or through consumer- or surrogate directed services where the person receiving services hires their own provider and the State helps with payroll and related functions through a fiscal intermediary. The private, non-medical home providers assert that they can provide services for less cost than the current rate of \$26.15 reimbursed to the Home Health Agencies, but likely higher than the rate of \$11.32 for consumer- or surrogate directed personal care. At present, many Home Health Agencies state that the rate currently paid is insufficient and that they are losing money when they provide the service. The Governor's proposed budget includes a reduction in IADL service from 4.5 hours per week to 2 hours per week. By opening CFC IADL assistance to private non-medical home providers it may be possible for people on the program to experience less of a reduction if we are able to reimburse at a lower rate. Representative Heath appreciated the input and suggested Commissioner Wehry speaks with Home Health. Commissioner Wehry has spoken with Peter Cobb, Executive Director of the Vermont Assembly of Home Health Agencies (VAHHA) who will take it up with his Board next Monday. The door is neither open nor closed.



## **Press Issues**

Last week Commissioner Wehry sent a heads up about an ACT 248 client which I am re-pasting here. ACT 248 pertains to individuals who have been found incompetent to stand trial based on mental retardation (statutory language) and who have been charged with a serious crime such as sexual assault, lewd and lascivious conduct with a child, etc. These individuals are then placed in the custody of the Commissioner of DAIL and usually the court order includes a requirement that they follow the treatment prescribed by the Designated Agencies.

*There may be coverage of today's hearing on this situation. Our counsel, Dena Monahan, said there were several members of the press in court. The primary issue is whether or not the commissioner of DAIL is illegally holding William Bennet, an individual with a developmental disability, under an invalid ACT 248 order as his mother alleges. Her argument is over procedure and likely does not have merit.*

*Mr. Bennett lost his placement at Sterling as a result of mother's action last week and he is now at Safe Choices (Lowell House) in the Northeast Kingdom. It is apparently a popular press topic because of the nature of the crimes (sexual) alleged to have been committed by persons with developmental disabilities.*

As predicted, there has been press follow-up which Commissioner Wehry sent earlier today. Commissioner Wehry has not been contacted.

## **Significant events/Meetings**

Commissioner attended the Mental Health Rally at the State house yesterday. Same themes, no new insights.

## **Evolving Issues**

There is more coverage on YouTube from the AAA's on the Budget Cuts. Below is the main message that is out there right now.

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If the budget cuts proposed by Governor Shumlin are enacted many Vermonters will be forced to move to nursing homes. Should this occur, it will cost tax payers more, not less, and we'll be in a deeper financial hole than we already are.

Call the Governor's office (800-649-6825) and your representatives at the Statehouse (1-802-828-2228). Say "NO" to cuts to the Meals on Wheels program and other services that help older Vermonters remain independent.

## **Department of Corrections (DOC)**

### **Legislative Issues/Contacts:**

On March 8<sup>th</sup>, Deputy Commissioner Menard testified before the Senate Committee on Judiciary regarding Justice Reinvestment: Update on Justice Center; Misdemeanors and the Facility Switch.



On March 9<sup>th</sup>, Deputy Commissioner Menard also testified before the Senate Committee on Institutions regarding capital construction and state bonding – DOC Master Plan.

On this same day Menard testified before the House Committee on Corrections and Institutions regarding the switch of facilities reorganization. The committee had concern regarding the transition of the two facilities Deputy Menard handed out a memorandum describing the details of the movement of populations between the two facilities and, in addition, we submitted the cost savings already contained in the 2012 Governor's Budget and the draft facility movement plan. The committee's concerns were:

- not specific enough- responded the detail they were asking for were internal operating decisions and would be forthcoming
- no proof that the Marshalls want more beds- I explained we couldn't enter into that agreement without the beds at Northwest to offer
- if Marshalls want 40 beds we are only talking about 9 returns from OOS
- if Marshalls don't want beds no savings
- the savings aren't clear
- the module home project is important to women
- module home project has 1 percent rec. rate
- too fast
- this will cost more
- women released from transition unit will fail
- need a plan B

#### **Significant Events/Meetings:**

On March 3<sup>rd</sup> Commissioner Pallito, Deputy Commissioner Menard and Special Assistant Bartlett met with representatives of several Chittenden County non-profits (Lund Home, Kids a Part, Mercy Connections, United Way, Vermont Works for Women and Burlington Housing Authority). Representative Lorber also attended. The focus of the meeting was the transfer of female offenders from St. Albans to the Chittenden facility. Overall the meeting was very positive. The group is going to get together and prepare proposals for community services for offenders.

Commissioner Pallito is in Washington, DC this week participating as an advisor on a national review panel on cost containment in Corrections for the National Institute of Corrections'. Deputy Commissioner Menard is covering for Commissioner Pallito.

#### **Other:**

Population. The Department of Corrections incarcerated population achieved a low of 2086 on March 9<sup>th</sup> down from a high of 2170 six months ago. The Department has released 40 inmates to field supervision status last week and have already released 17 inmates to field supervision from March 6<sup>th</sup> to March 9<sup>th</sup>.

Inmates at Lee Adjustment Center. Inmates in the Lee Adjustment Center (CCA) have contacted VT DOC staff to express concern that tensions are very high- they are reporting that CCA staff is



intimating that a deal is in process to house federal inmates in LAC and displace VT inmates. Inmates are concerned where they may be sent to. The reported tension is such that we are sending a small team to LAC to be there on Monday and Tuesday to meet with offenders and try to resolve some concerns.

### **Department for Children and Families (DCF)**

#### **Press Issues/Releases/Contacts:**

Death of a Child in DCF Custody. Tayler Moses, age 7, was in DCF custody since 3/31/10 for lack of appropriate supervision by his mother. DCF placed Tayler with his paternal grandmother. During the time Tayler has been in custody, both of his parents have worked well with DCF and with Tayler's grandmother.

In December 2010, Mary decided that it was in her son's best interest for custody to be transferred to his father, rather than back to her. A plan was developed that involved the father moving in with his mother, in order to provide continuity of care for Tayler. Tayler was due to be discharged from DCF custody on 3/14/2011.

On 3/7/11 Tayler was sledding at his grandmother's home with some of his cousins. He slid across the road and into a stream. He became lodged between a rock and culvert. The children ran for help from a neighbor and the grandmother, who immediately called 911. The Chester Police and rescue responded but Tayler was in the water for 20 minutes before being freed. He had severe hypothermia and was sent to Springfield Hospital and then by helicopter to Dartmouth Hitchcock and eventually transported to Boston. He was pronounced dead early on March 8<sup>th</sup>.

Tayler's parents and grandmother were all present at the hospitals. The Springfield Family Service Director, Brenda Pellerin, was also present, assisting with permission to medically treat and support to the family.

The Adams Funeral Home is arranging for Tayler's body to be returned to Vermont for burial. Brenda arranged for the local mental health agency to provide grief support to the school, the family, and the FSD social work staff. Wednesday, our social work staff in Springfield provided food for the family.

The family has repeatedly thanked our social workers and Brenda for their support during the past year and especially the past few days. The grandmother has stated that DCF gets a bad reputation that is not warranted. This has helped our staff tremendously, as they cope with this tragic loss.

A Chester Police Officer, Paul Larochelle, and a neighbor of the grandmother were both treated on the scene for hypothermia.



## **Evolving Issues:**

DCF Owes Premium Refunds Dating back to 2004. DCF has recently discovered that we owe premium refund credits resulting from premium overpayments for VHAP, Dr. Dynasaur and Catamount, totaling \$612,846 to 19,447 households dating back to 2004.

The software that we use to manage premium payments, which was developed by a private contractor, has a component which accounts for and manages premium refunds when necessary. That aspect of the system was active in 2004 but malfunctioned, issuing erroneous refunds to beneficiaries. The Department elected to turn it off for repair and continued to issue manual refunds. As far as we can determine, the software was never fixed and never turned back on and the manual work did not keep up with the demand; resulting in the recently discovered backlog. Of the total \$612,846 owed, \$403,691.37 is owed to the 11,030 households closed or not on current benefits and checks will be issued to them. The remaining \$209,154 is owed to the 8,471 households currently active in benefit programs that require a premium and they will be issued a credit.

The average premium refund owed to the 11,030 closed or non-premium households is approximately \$36.50 per credit however the 100 highest refunds range from \$266.00 to \$1,155.00.

It is important to note that, at this point in time, we do not see this as a new financial obligation; the owed dollars are captured in a "Futures" bucket in our accounting system and they are available for refunds.

A comprehensive solution for this issue will address four areas:

- a process to issue the refunds,
- messaging to both our beneficiaries and our outside constituents,
- management of the workload issues,
- future processes to ensure timely refunds.

We will work with Sue Allen to make sure our messaging on this issue is structured in the most appropriate fashion.

Crisis Fuel Assistance. Record high demand for crisis fuel assistance continues at all five community action agencies (CAPs). Current benefit funding of \$4 million will be exhausted by March 18. An additional \$800,000 from the federal LIHEAP block grant will be made available to maintain the program until April 8 when bulk fuel crisis grants end (oil, propane, kerosene).

Primary factors driving demand for crisis assistance are: high petroleum fuel prices, low seasonal fuel benefits in November, December and January, and one-third of crisis dollars granted to maintaining electric service. Secondary factors include: expanded program eligibility, colder weather, special trip and service charges, growing caseload due to the economy, and late issuance of seasonal fuel bonus benefits.



Crisis fuel assistance begins the last Monday in November and ends the second Friday in April for delivered fuel (oil, kerosene, wood, etc.) and the last business day in April for metered fuel (VT Gas and electric).

Prior Year's Crisis Fuel Grant Expenditures

|          |             |
|----------|-------------|
| FFY 2010 | \$2,956,000 |
| FFY 2009 | \$2,353,000 |
| FFY 2008 | \$2,507,000 |

**Department of Vermont Health Access (DVHA)**

Media: The Blueprint for Health has received national attention twice this week: the New York Times ran an article that highlighted the Blueprint: <http://well.blogs.nytimes.com/2011/03/10/when-home-life-trumps-health-care/?scp=2&sq=pauline%20chen&st=cse> and the most recent Health Affair Journal featured the Blueprint as one of 15 Innovations in Healthcare (attached).

Provider taxes – DVHA has been spending a lot of time in the House Ways and Means Committee on the provider tax proposals. The Committee is clearly not very supportive of the dental assessment; they have gotten strong lobbying from individual dentists, and the dentists' testimony has emphasized that this will cause dentists to not want to practice in Vermont and the costs will be passed on to self-pay patients (49% of dental revenues). The Committee also seems unsupportive of the Managed Care Organization (MCO) tax, and would prefer to implement a broad based medical claims tax (similar to the existing Health Information Technology Fund tax) to raise the \$16 Million currently proposed from the dental and MCO tax. The primary issue is how to do this without contributing to the cost shift.

Due to all the scrutiny on provider taxes, we have uncovered some components of the hospital provider tax methodology that may need further action due to Vermont statutory language. We are meeting Monday with AHS, AoA, and BISHCA to decide how to proceed.

Family Planning Option and Planned Parenthood of Northern New England – At the request of Jeb Spaulding, DVHA is meeting with PPNNE on Friday (March 11) to show them our cost analyses so (hopefully) they can understand why our projections are so much higher than the National Guttmacher article that they reference (in sum, our data is specific to Vermont). We will then wait for decision from AoA and the Governor's office about whether to proceed.



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Chuck Ross, SECRETARY

STATE OF VERMONT  
AGENCY OF AGRICULTURE

**Confidential and Privileged**

**TO:** Gov. Peter Shumlin  
**FROM:** Chuck Ross, Secretary of Agriculture  
**RE:** Weekly Memo  
**DATE:** March 11, 2011

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**Status of Governor's Priorities:** Jobs Bill discussed with Senate Agriculture. Appears Senate Ag will produce their own ag related Jobs Bill including appropriations figures. Bill is similar to the one being worked on in the House but includes an appropriation for EBT card readers for Farmers Markets and a descriptive Web to Farm internship program.

**Legislative Issues/Contacts:**

The Chair of the Senate Agriculture committee requested a synopsis of the barn collapse events that have occurred in the state over the last 2 months. This was provided to her on 3/10, and pertinent statistics are as follows: there have been at least 10 barn roof collapses since January 1, involving more than 160 livestock animals and resulting in 30-35 livestock animal deaths. This does not include the many others that are not reported to the media or the Agency. Several people have been injured during rescue/response activities. Barns have included wood structures as well as hoop barns; some styles of hoop barns have no snow load rating despite the fact that they are marketed in the northeast.

On Weds, 3.9.11, Tim Schmalz provided testimony to the House Ag Committee on H.409 (*An Act relating to the control of invasive species*). Questions raised by the committee included whether the existing noxious weed rule could be / would be opened up soon for amendment, should the bill go forward as written, should the bill be changed to include language authorizing the Vermont Invasive Exotic Plant Committee (IPC) in statute (currently the committee is an ad hoc/volunteer body that has no specific authority to operate), and can the rule be amended to provide a more streamlined process for adding/deleting species from the prohibited lists.

Schmalz's comments centered on the Agency's intent to go forward with rule amendment to reflect the addition of these and some other plant species occurring in commerce (reflecting those in the bill), our interest in seeing the IPC authorized, either in the rule by the secretary or in statute, whichever is more appropriate, and addition of rule language allowing the addition of species by procedure after consideration of the pest risk assessment by the secretary. I also suggested there should be a single document containing the lists of prohibited plants, rather than a law with some, and a rule with others, in order to reduce the potential for confusion in the public as to which list was current, or worse, if one list supersedes the other.

Other concerns raised by the membership centered on whether the process would be rapid enough for effective control of invasive species, what the economic consequences of a prohibition might be (as regards the horticultural community), and how quickly could we proceed with rulemaking.

Jobs Bill: Deputy Secretaries Bothfeld and LaClair testified in Senate Ag Committee this week to review new language the committee introduced regarding the Vermont Internship Program, as well as existing language and corresponding budgets for each section as passed by the House.



Discussed Agency's budget with Senator Bobby Starr. Concerns over funding level allocated to Conservation Districts.

**Press Issues/Releases/Contacts:**

Assistant Vet Russo wrote an article for Agriview describing the Vermont Agency of Agriculture's role in protecting animal health in the State.

**Press Releases & Media Advisories:**

Three media advisories and press releases this week Governor's Tree Tapping, Maplefest and Maple Open House Weekend

**Issues:**

- Raw milk update inquiries from the media and public continue come in
- Working out details for the June NEASDA meeting
- FarmFresh Radio – Maple season
- VPR – Snow storm impact on farmers

**Media Inquiries:**

- Associated Press interview with Secretary Ross
- VT Press Bureau – Raw Milk update
- WCAX – Snow storm and milk transportation issues; butter event; raw milk update
- Boston AP – Vermont's Buy Local program

**Significant Events/Meetings:**

The Renewable Energy World Conference and Expo held its North America conference this week and Dan Scruton was one of the speakers addressing the affect of the standard offer program on farm-based renewable energy. For the month of February 2011, 1,240,118 Kwh of renewable energy was produced in the Standard Offer Program. 1,099,381 Kwh was produced by methane digesters on dairy farms throughout the state. This represents 88% of the renewable power generated under the Standard Offer Program and the value of that energy was \$167,472.25.

State veterinarians met with FDA regional personnel on March 9<sup>th</sup> to formulate a plan for the development of a task force to address the high incidence of tissue residues in Vermont. Between January '09 and February '11, Vermont has had 130 tissue residue violations as compared to 64 combined across the rest of the New England states. This is a serious state-wide problem, and the task force will address the areas of industry outreach/education, investigation effectiveness at the state and federal levels, and compliance outcomes in an effort to improve Vermont's violation rate.

Secretary Ross, Deputy Secretary LaClair, Koi Boynton and I met with the mayor of Rutland Chris Louras and Tara Kelly the Executive Director of the Rutland Area Farm and Food Link (RAFFL). Mayor Louras recognized the Ag sector as a vehicle to bring jobs to Rutland and he expressed an interest in working with VAAFM in moving forward. VAAFM recently administered a \$5,000 grant through Farms to Institution and is in the middle of negotiating a \$26,000 contract through the VT Ag Innovation Center, with both source of funds going directly to increasing the capacity of RAFFL.

**Evolving Issues:**

The Canaan dairy producer, whose cattle and raw milk sales are under quarantine due to a suspect TB test result from one of the milking animals, has requested a hearing on the quarantine notice. The date of the hearing has been set for March 15<sup>th</sup>.



The state veterinarian is continuing to work with a private veterinarian in Middlebury to address the issue of a positive Coxiella diagnosis on a sheep farm; this is the causative agent of Q Fever, which can affect humans. Following a short time where the lambs were refused slaughter by the licensed slaughterhouse that generally provides service to the farm, that service was resumed. Funding support has been offered for additional diagnostics by USDA and researchers in Iowa who have interest in this disease. The annual farm open house that was scheduled on that property for this month has been cancelled. Continued abortions within the flock, the primary clinical manifestation of this disease in sheep, have ceased.

Assistant State Vet conducted a field visit to a farm in Lyndon that was reportedly not feeding their cows and housing cows in unsanitary conditions. Advised farmer that the conditions on his farm did not meet acceptable agricultural practices. Referred case to the Lyndon Animal Control Officer (ACO) and local Humane Society. Farmer was arrested and cited with 2 counts of animal cruelty. The Humane Society and ACO will be visiting the farm every three days to check on the cattle.

Potential dairy housekeeping bill discussed with Senator Kittell and Representative Partridge. Bill includes language to alleviate the issue with raw milk and dairy bonding along with other housekeeping issues. Request that the bill be introduced as a committee bill. Two sections of the Housekeeping bill coincide with changes made in the Fee Bill surrounding fees for handlers licenses. Copy of potential bill provided to Alex and Bill.

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### **Summary of Key Agency Department Activity:**

#### **Ag Development**

The Commonwealth yogurt plant in Brattleboro is in start-up mode and this week passed its US Public Health rating so it is now considered a Grade A plant and can ship product anywhere in the US. Greg Lockwood our senior plant specialist works with all of the start-up plants and has been actively assisting them through the planning and construction process.

Chelsea Lewis and Colleen Leonard met with an individual who is planning to build a food hub facility within the next 12 months. They have producers & businesses lined up and have been coordinating conversations with the Windham Farm & Food Network. They want to be a "for-profit" entity with the intention of being sustainable. He is interested in forming a Limited Cooperative Association (LCA). The ability for him to form an LCA hinges on the outcome of Bill H21. The intention of his meeting with VAAFM was to discuss possible funding streams to off-set the start-up costs and initial infrastructure costs. The final goal of this planned food-hub is "education".

#### **Food Safety and Animal Health**

##### **Animal Health Field personnel**

- Followed up on consumer complaint on gas pump.
- Conducted an inspection of a rabbit farm that is under Agency quarantine. Observed sanitary conditions and animal health at the farm.
- Conducted 2 animal welfare field investigations
- Submitted CWD sample to lab from a white-tailed deer mortality at the Nelson Farm

##### **Assistant State Veterinarian- Dr. Joel Russo**

- Sent a letter to large animal veterinarians in Vermont reviewing proper drug labeling laws in anticipation of FDA Tissue Residue testing at their client's farms.
- Participated in a conference call with the Animal Health Network. Discussed expectations surrounding a July 2011 practice exercise.
- Provided assistance to three complainants that were concerned with beef cattle being housed outdoors.



- Consulted with a private practitioner that is interested in becoming involved in Vermont's Johnes Control Program.
- Participated in a FDA Tissue Residue Task Force conference call.
- Performed a site visit of a St. Albans dairy farm with the farmer's veterinarian. Developed management strategies designed to help the farmer reduce the incidence of Johnes disease on his farm.
- Participated in two conference calls with VEM. Discussed the issues dairy farmers were facing as a result of the winter storm (dumping of milk, snow loading of roofs).
- Provided the Lt. Governor's office with information about the status of farms affected by the snow storm.

#### Meat Inspection Points of Interest

Meat Program Chief Quenneville updates – these updates show continued need for an additional meat inspector for the Agency to be able to inspect these potential new entities.

- Continuing work with VDH and UVM Extension on obtaining a grant to start a food safety taskforce in the state.
- Met with individual in Wolcott with plans for retail outlet and custom curing and smoking operation
- Also met with representative from Vt. Smoke and Cure in Barre to discuss options for co-packing operation with Black River Produce at proposed new USDA commercial packing plant in Hinesburg
- Also continuing conversations with representatives from the "Mad River Food Hub" for the development of a state inspected processing facility for use by multiple producers
- Also had conversation with individual in Irasburg concerning on farm slaughter and facility requirements.
  - Sent construction guide and custom operations packet, prepared custom processing operation package to an individual in Orleans.
  - Set appointment to review custom processing facility for individual in Brookfield
  - Spoke with Cloudland farm concerning expansion of retail business to include more prepared foods
  - Sent info package for on farm retail outlet and possible inspection facility for producing sausage to Full Moon Farm in Burlington
- Still working with licensed slaughter facilities to complete written Humane Handling plans to address all facets of the establishments handling activities
- Discussing requirements for a custom processing facility for an individual in Tunbridge
- Continuing discussions with individual consultant for Vt. Highland Cattle Company on Proposed slaughter facility in No. Troy or possible location in Orleans.

#### Meat Inspection Compliance issues:

- Reinstating "approved Source" designation for Weston Rabbitry in Underhill to allow them to resume sales to restaurants in Vermont

#### Agriculture Resource Management

##### Enforcement Actions:

ARMS/ Water Quality: On March 9, ARMS Division staff held a pre-hearing settlement conference with Jean Denis Michaud of Clair-A-Den Farm in East Hardwick to discuss a notice of violation issued to the farm for violations of the State's Medium Farm Operations General Permit. Also present at the conference were Jeremy Michaud, Jean Denis' son and farm manager, and Leslie Michaud. During the meeting, solutions to each of the four identified violations were discussed and an Assurance of Discontinuance outlining those solutions with required completion dates will be drawn up and sent to the Michauds for signature.



Reports taken of a horse farm in Rochester that has been flooded due to an undersized culvert under Rt 100 and a whole bunch of water. Water is flooding into some manure storage areas. Technical assistance will be provided but it does not seem that there are any AAP violations; just too much water and too little culvert.

**Secretary's Commentary:**

Secretary Ross undertook the following activities:

- Federal Judiciary Committee Field Hearing on Vermont Branding was postponed due to weather.
- Continued discussion of Agency of AG Budget with Representative Kitty Toll of House Appropriations Committee.
- Discussed food system development in Vermont with Tom Bivens of NECI.
- Discussed future of Intervale Center with Travis Marcotte.
- Participated in selection of vendors for the Vermont Building at the Big E this fall. Competitive process for booth space. Booth space is contracted for a period of 1 to 3 years.
- Met with Will Wooten from Sterling College to discuss programs at the college around local foods and food systems.
- Attended the Governor's Tree Tapping in Saxton's River.
- Took part in discussion with Dairy Marketing Services regarding bonding.
- Attended meeting with DMS and Attorney General to discuss Dean Foods Lawsuit.
- Lead discussion on composting with legislatures and representatives of the composting – farmers and organizations.



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**State of Vermont  
Agency of Natural Resources**

Deborah L. Markowitz  
Agency Secretary

Christopher Recchia  
Deputy Secretary

**CONFIDENTIAL and PRIVILEGED**

**To:** Governor Peter Shumlin  
**From:** Deborah Markowitz, Secretary, Agency of Natural Resources  
**Date:** Friday, March 11, 2011  
**Subject:** ANR Weekly Report

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**Status of Governor's Priorities:**

- **Vermont Yankee** – As expected it was announced that NRC will be relicensing VY for continued operation. We will now begin to process their renewal application for an NPDES permit to discharge cooling water to the Connecticut River. We are also updating procedures regarding the cooling tower usage to ensure we can consider the role cooling towers can play in any permit discharge under consideration. In addition we will be evaluating options for enforcement action on the groundwater contamination at the site.
- **Telecommunications** – We are comfortable with the language of S.78 regarding licenses on state lands, and are working with the legislature on language relating to the stormwater processing section.

**Legislative Issues/Contacts:**

- **River Program:** A draft Stream Alteration General Permit was sent to House Fish and Wildlife and Water Resources Committee, and staff provided testimony on the permit this week. The Program anticipates putting the General Permit on public notice during the week of March 7<sup>th</sup>. We will work with Representative Krebs on revisions to the legislative report provided last month.
- **Energy (H.56)** – We're good with this as it stands. Although we were happy with most recent language on State Facilities, it has been taken out entirely and will reappear in some form in a bill Representative Hooper is working on, and after coordinating with the Agency of Agriculture we have made changes to the "sulfur in heating oil/biodiesel" sections to be consistent with our regional efforts and rulemaking on this issue. Finally, through coordination with ANR, DPS and ACCD, new baseload biomass electricity generation is no longer in the bill.



- **Management of Wildlife (H.91)** – We continue to expend much effort on H.91 (captive hunt/public trust). The bill passed out of committee yesterday 7:2, and we have a strategy for ensuring its successful passage.
- **Mercury Lamps (S.34)** – This is moving along well and we expect it to proceed over the objections of the Lamp Manufacturers. We have made some suggested changes to the bill for clarification, and expect those to be incorporated.

#### **Press Issues/Releases/Contacts:**

- **Press Contact/Baitfish:** News Channel 5 interviewed staff regarding the baitfish press release issued a couple weeks ago. Staff reiterated the points of the press release, saying the Department is testing for VHS routinely, but haven't found it in Vermont yet; however, it is still important to remain vigilant and have proactive regulations in place which will guard against the spread of not only VHS, but other fish pathogens and aquatic invasive species.
- **Other Media Contacts:** Mark Scott was featured in a full five-minute interview about deer and the impact of winter on wildlife on WCAX. Doug Blodgett was featured on WCAX, VPR, and in print media about the USFWS announcement that catamounts are extinct. Mark Scott and Commissioner Berry were featured in a Rutland Herald/Times Argus story about the upcoming deer hearings.

#### **Significant Events/Meetings/Evolving Issues:**

- **Stormwater Management Program:** held a public hearing for the Kingdom Community Wind draft stormwater discharge permits. The public hearing was well attended (50+) and a fair number of comments on the draft permits were received. Many comments were not specific to stormwater permitting but addressed Fish and Wildlife issues and lack of confidence in ANR's environmental protection and review of the Lowell project.
- **Wetlands Program:** Staff met with the Army Corps of Engineers (Corps) and VTrans regarding the ANR position on the 401 Water Quality certification relative to the CIRC Highway. Essentially, the Corps would like the Agency to weigh in regarding its position before it issues its draft 404. VTrans and the Corps will be asking for a meeting with the management of VTrans and ANR-DEC in the near future to clarify this. We have discussed the EPA/ACOE 404 permit issues with the Governor's staff and have a plan for dealing with the expected objection of EPA to the ACOE decision to approve the permit.
- **Omya Appeal Decision:** Judge Wright issued her decision on the appeal of Omya full certification as amended. The decision interprets the statute (10 VSA 1390) to apply to both groundwater quantity and quality and the need for a public trust analysis to be conducted by the Agency. The decision remands the certification back to ANR to perform a public trust analysis and make any necessary changes to the certification based on the analysis. The ramifications, challenges and opportunities this presents to ANR are in active discussion.
- **Deerfield Wind:** Staff finalized comments on the Deerfield Wind SDEIS. Staff believes the document was poorly done and is biased against the Department's bear habitat protection efforts.



- **Georgia Mountain Community Wind:** Staff are working with the Department's legal counsel on conditions for the conservation easement to mitigate for natural community impacts for the Georgia Mountain Community Wind project, as required under the PSB order.
- **Bat Hibernacula Surveys:** Wildlife Division staff conducted bat hibernacula surveys at the Ely Copper Mine. The little brown bats, northern long-eared bats, and tri-colored bats are nearly completely gone; even the big brown bats and small-footed bats declined by nearly 40 – 50%.

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## **SUMMARY OF KEY DEPARTMENT ACTIVITY**

### **Environmental Conservation**

**Dam Safety:** Contract extensions are being prepared for the operation of Lake Bomoseen Dam, the operation of the recreation facilities at Wrightsville Dam, and the Emergency Action Plan contract. Work continues by Green Mountain Power Corp. on the turbine at Waterbury Dam. **Note: Developing issue:** The VT chapter of the American Society of Civil Engineers (ASCE) is preparing a report card for certain Vermont infrastructure, including dams. This is modeled after the national infrastructure report card. Representatives of VT ASCE have sent the VT Dam Safety program a list of questions pertaining to the Dam Safety program. Topics include inventory, budget, staffing, inspections, deficient dams, and cost of repairs. Dam Safety is preparing responses, but has not sent anything to VT ASCE at this time.

**Lakes Program:** We received a letter from the Lake St Catherine Conservation Fund informing us of their intent to submit applications for hydraulic dredging and aeration/bioremediation in Little Lake (part of the Lake St Catherine system). The letter contains criticisms of the Lakes program and some staff; we have basic disagreements with them regarding both the natural/expected condition of the lake, the severity of the problems and the potential solutions. We intend to respond only to the point of informing them of what we need to consider their application(s) complete.

**Wetlands Program:** West Bowl development at Jay Peak may have substantial wetland, stream and wildlife habitat fragmentation issues according to a preliminary review.

**Rivers Program: East Highgate Dam Removal** - Streamflow Protection staff met with NRCS staff and a representative of the Northern Forest Canoe Trail (NFCT) to discuss removal of this navigation hazard on the Missisquoi. There have been two or three documented incidents in recent years when paddlers have been pinned against this remnant dam and there is high potential for future incidents. Warning signs have been posted which should mitigate the situation for the near term. Lack of funding remains the most significant challenge.

**Marshfield-8 Dam Removal** - The project team met to review near-final plans for the removal. With the addition of a few minor suggestions, we'll have final plans and can file state and federal permit applications. This project continues to enjoy good support from community members and we remain hopeful that the dam will be removed this year.



**West Charleston Hydro Repowering** - Work with Great Bay Hydro to complete the final steps to repower this inactive hydro facility continues. Replacement of the old penstock, powerhouse and turbine/generator with a new 675 kW unit in a powerhouse adjacent to the dam is nearly complete. Testing of the unit and verification that bypass flows and other operational requirements will be met remain to be done. The station should be on line soon.

**Vermont Tissue** - Exchanges continue with the consultant for this proposed small hydroelectric project in Bennington. The project would use an existing dam, but the developer is trying to avoid a study to determine appropriate flows for the project's two bypass channels, and is essentially asking the Agency to make a determination regarding conformance with water quality standards without adequate information. David Deen has informed us that some of his legislative colleagues are very interested in seeing this project move forward, and it's not a coincidence that S.33, the hydropower general permit bill, is sponsored by a Bennington County senator.

**Morrisville Hydroelectric Project** - The Agency filed comments on Morrisville Water and Light's proposed plan of study for this FERC relicensing. For the most part, MW&L was responsive to our comments on the draft plan. The only disagreement is over the need to study fish tissue mercury levels at Green River Reservoir. We have made a strong case for the study; we should know within a few weeks if FERC will require the utility to do the work.

**Wetlands Program:** As new Class II wetlands are identified and enter the permit process, a formal determination of classification is made at the same time. These new Class II wetlands need to be added to the Vermont Significant Wetland Inventory maps. We have been working with the GIS program to formalize this process, and have it nearly complete.

**Variance Public Meeting:** Staff held a public meeting on Wednesday, March 2, 2011, for the Moretown Landfill Inc. who is requesting a variance from the required 300 foot setback to surface waters; from the required 6 foot separation from bottom of liner to season high groundwater; and from the required 10 foot separation from bottom of liner to bedrock. Only 6 people from the town attended the meeting.

**Illegal Disposal:** Solid Waste staff and ANR Enforcement are preparing for a trial next week regarding an illegal disposal and burn site in Athens. The site has already been cleaned up, with over 20 tons of waste and several tractor trailer loads of scrap tires hauled to a certified facility. This is the 3<sup>rd</sup> trial in 6 months that staff has had to testify at.

**Small Business/Municipal Compliance Assistance Programs:** We are working on revisions to our 2002 auto body and refinishing guide to environmental regulations and pollution prevention. We hope to complete the guide in late spring for distribution to about 250 auto body shops, with workshops to follow.

**Pollution Prevention/Recognition Programs:** Finalized 2011 Pollution Prevention Planning Guidance and Worksheets which will be mailed to about 80 facilities this month who must develop their 3-year P2 plans.



## Fish and Wildlife

**EQIP/WHIP:** Staff met with representatives from NRCS and Audubon to review and assist with 2011 EQIP and WHIP management ideas as part of their outreach effort with forest landowners.

**Connecticut River:** Staff participated in The Nature Conservancy's (TNC) webinar on TNC's Connecticut River flow project in advance of next week's meeting on the subject. The flow model TNC is building for the entire basin will be helpful in upcoming FERC relicensing of the Wilder, Bellows Falls, Vernon, Turners Falls, and Northfield Mountain Pumped Storage projects. The goal of next week's meeting is to determine optimal flows for Connecticut River targets (aquatic organisms, plants, natural communities, etc.)

**Jay Peak Ski Resort:** Staff met with representatives from Jay Peak Ski Resort to discuss plans for a major resort expansion and master plan. Jay's representatives shared information on bear habitat, wetlands, streams, and Bicknell's thrush habitat. There are serious and significant concerns with this proposal including significant impacts to bear habitat and wetlands. If the parties are able to settle on a project design, it will undoubtedly require a significant amount of mitigation.

**Burke Mountain Ski Resort:** Staff met with FPR legal counsel, Meghan Purvee, to discuss one remaining issue with the conservation easement at Burke Mountain Ski Resort. The Department hopes to have this matter settled soon.

**Lake Champlain Walleye Association (LCWA) Annual Meeting:** Commissioner Berry attended the LCWA annual meeting over the weekend and followed up with a private meeting with LCWA directors. The outcome was a renewed commitment of both the Department and the LCWA to work together in an effort to improve the walleye fishery in Vermont.

**VELCO Substation Expansion/Georgia:** Staff met with ANR Planning Division staff regarding VELCO's Act 248 permit for a substation expansion in Georgia. The issue involves the 50' wetland buffer in the Conditional Use Determination (CUD) versus the 100' buffer from the top of bank which the Department would prefer. The project is along Stone Bridge Brook, a significant local wildlife travel corridor. VELCO is not proposing anything within the top-of-bank, but the Department believes the corridor needs to be recognized now in the permit.

**Warden-assisted Rescue/Derby:** Wardens assisted the State Police with rescuing a mother with her five children who became stuck while inadvertently driving their mini-van on a snowmobile trail. The woman advised she was only following her GPS. All were located and retrieved without incident. It took a snowmobile trail-grooming machine to pull the family's vehicle out. (Don't laugh – I ended up in the middle of a pasture during a snowstorm once thinking I was on a road but was really following a cow path!)

## Forest, Parks and Recreation

**Legal Update:** Farm and Wilderness Foundation Inc. and Ninevah Foundation v. Town of Plymouth and the Department of Forests, Parks and Recreation: A settlement agreement has been reached between Farm and Wilderness and Ninevah and the Town of Plymouth to which the Department of Forests, Parks and Recreation has no objection. This litigation involves private land which is encumbered by a Forest



Legacy easement held by FPR. The town of Plymouth sought to add certain roads on these properties to their town highway maps under the so-called ancient roads law and Ninevah and Farm & Wilderness objected and opposed the effort at the town selectboard meeting. The town proceeded and Ninevah and Farm & Wilderness sued, naming the Department as a defendant because we declined to join them as a plaintiff.

### **Parks Division**

Details are being worked out for the next evolution of the relationship between State Parks and VYCC. This summer VYCC will provide a crew for 11 weeks to be supervised by a skilled craftsperson (employed by Parks) to do a variety of tasks at Kettle Pond. \

Details are also being finalized to fund the new State parks iPhone app in partnership with VDTM.

Our northwest region is working with the Northwestern Vermont Correctional Facility in St. Albans to have the inmates plant and tend about \$2,000 worth of annual flowers to be planted in the region's parks next summer at a cost of only \$315.

Plans are being developed to coordinate the second year program to control invasive plant species in State parks through an ARRA USFS grant. Bids are being received and a contractor will be selected within the month to spend next summer in a pilot eradication effort at 34 parks.

### **Forestry Division**

New Hampshire has passed a firewood quarantine, joining New York in restricting firewood movement, particularly from outside the state. This will affect wood from Vermont, even within the fifty-mile radius NH has designated as limits. VT has no plans for a quarantine, relying instead on the information and education outreach that FPR and Dept. of Agriculture have instituted. NH has asked that firewood from out-of-state be "certified" by the receiving entity as being pest-free, but we are unclear as how this will affect Vermont sellers or state staff.

### **Lands Administration Division**

Ski Area Leases (Lands Administration Division): We will be meeting with the State Auditor's Office in the near future to discuss a possible audit of the Department's ski leases. This is not being pursued as a means to address an identified or perceived problem with any particular ski area. Rather, we see the audit as being helpful to the Department in administering the ski leases. A 2007 report of the Department's ski area leases by Economic and Policy Resources, Inc. recommended that the Department conduct periodic audits of its ski area leases. We are meeting with our ski area partners throughout this winter to discuss ski lease issues and other matters of mutual concern.

