

# WEEKLY REPORTS

Checklist  
2/18/2011

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: \_\_\_\_\_

\_\_\_\_\_ Additional Report: \_\_\_\_\_



**To:** Governor Peter Shumlin  
**From:** Lawrence Miller, Secretary, Agency of Commerce and Community Development  
**Date:** February 18, 2011  
**Re:** ACCD Weekly Report

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The Agency is presenting the FY12 Budget Proposal to the House Appropriations Committee on Friday morning. We are hearing mostly support but questions about money for the Jobs Bill items. Some members seeking to add to certain programs but we are consistently responding that perhaps next year would be better.

#### **EHCD**

- Working on issues around the proposed Creative Economy Office, Lawrence meeting with filmmakers on Friday afternoon.
- With Steve Cook, Noelle participated in a number of meetings, including with AOT, related to the administration's strategy on rest areas. We have substantial concerns about the size, scope and balance of the proposed "public/private" partnership building discussed for Randolph. Please discuss with us before publicly supporting.
- Working to help plan for quick management of any Federal historic preservation issues related to broadband rollout.

#### **Business Support**

- **Blue Seal Feeds:** Tim Smith and Connie Smith of FCIDC and Paul Lambert of Efficiency Vermont were joined by Ken Horseman in a meeting with company management. The company is very concerned about potential rising utility costs which would endanger the future of the business and has also experienced recent increases in workers compensation claims. Fulltime employment is at 75. The company recently restructured and they are now owned by the Kent Nutrition Group under the same parent company.
- **Franklin Foods Inc.:** The company is expanding having changed strategic direction from developing their own brands to co-packing for store labels including Publix, Kroger and several other grocery chains throughout the U.S. Some product is sold to Korea. The company has made major investments in new equipment for both production and wastewater management. Efficiency Vermont will be working with them, and appropriate referrals will be made.
- **Southeastern Vermont Community Action, Inc.:** Ken Horseman and Chelsea Lewis of the Agency of Agriculture attended a meeting of the Great Falls Food Hub with regional farm and food representatives. The region is actively organizing local food producers to promote more collaboration.
- **Northern Power** has some substantial possibilities and will need a GPS visit at some point. Chairman (NYC) excellent candidate for out of state CEO council.

- Worked with several VEGI participants to resolve VEGI claim filing issues. Still too complicated.

### **Vermont Training Program**

- Were contacted by Rob Conboy (formerly of Draker Laboratories) of Thermal Storage Solutions. The company works with home owners to develop a system of renewable power and storage solutions. The company is now looking at starting production in St. Johnsbury and is looking for assistance with training. Beth has set up a visit to discuss VTP and will be coordinating with NVDA and GBIC.

### **Vermont Community Development Program**

- The Vermont Community Development Board meet last week and recommended over \$2.3 M in new VCDP grants. The grant recommendations were approved by Secretary Miller and are awaiting a date and location for an awards ceremony from the Governor's office.
- 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 - last Board Meeting apps have been removed) 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.
- Josh attended a facilitated, planning and input meeting of the Great Falls Food HUB in Westminster, VT. They may be seeking VCDP funding in the near future. Their mission is to make locally produced food affordable and available to all people of the region by connecting farms, communities and consumers. This is a four county region including Windham/Windsor counties in VT and Cheshire/Sullivan counties in NH. This effort has been funded to date from USDA-Rural Development and they are moving forward by identifying their coordination/networking role and identifying needed Ag infrastructure in the region.
- Julie K. has been assisting VCDP with a citizen complaint concerning the Town of Randolph Grant for the Salisbury Square Project. This project has faced opposition in town by a small but vocal group of residents. The Developers (RACDC & The Hartland Group) are hoping to have a loan closing next week and begin construction in spring.
- Josh continues to watch the Federal Budget discussions in DC as they relate to HUD and CDBG cuts. Cuts to CDBG are likely, but to what extent is the question.....it will be a long fight.

### **Community Planning & Revitalization**

- **Downtown and Village Tax Credits:** The administration approved proposed amendments to the downtown and village rehab tax credits. One allows the Downtown Board to reallocate credits on projects that do not go forward and the other allows the credits to be claimed on an incremental basis. Both changes are respond to challenges posed by the economic downturn and, if enacted, will align the program to the meet the current needs of the commercial real-estate market and increase investment and revitalization activities in Vermont's downtowns and villages.
- **Healthy Communities/Smart Growth:** The first advisory committee meeting of the Healthy Community Design project was held. This is a federal stimulus-funded obesity prevention project that seeks to link local/regional community health organizations with their counterparts in the planning world to work together on improving the built environment in ways that will increase physical activity and access to healthy foods. The advisory committee includes representatives of Department of Health, VTrans, Agriculture Agency, UVM, RPCs and AARP.

- **Land Use Education and Training Collaborative:** The Collaborative met this week to begin the study of training needs and preferences of members of local zoning and development review boards, with the goal of stronger municipal decision-making.

### Housing

- **Bunker Hill MHP, Windsor (park sale)** – On February 12 the Resident’s of the park submitted an offer to purchase Bunker Hill with the intention of converting the park to a cooperative. As of February 17, 2011 the Department has not received any further updates on any negotiations or whether or not the offer has been accepted by RACLT.

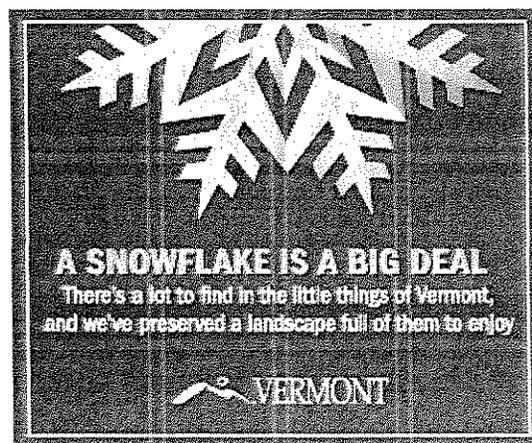
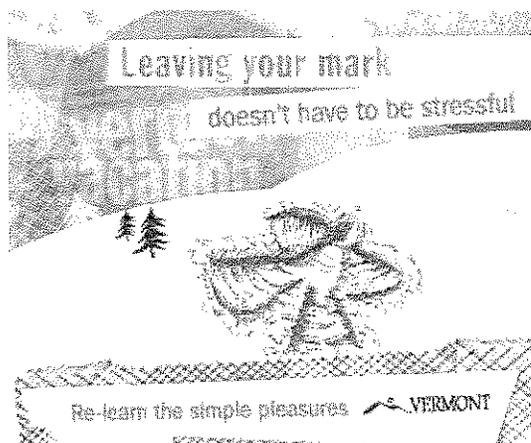
### Historic Preservation

- **Coolidge Permanent Exhibit Project Underway:** John, Bill, Elsa, and Catherine Brooks traveled to Montreal last Thursday to meet with Media-FX, an internationally acclaimed museum design firm selected in a competitive process to design, fabricate, and install the new permanent exhibit in the Calvin Coolidge Museum and Education Center. The exhibit will make extensive and exciting use of technology and will not be the old-type of museum exhibit heavy on text. It will open on July 4<sup>th</sup>, so the schedule is ambitious but it’s off to a good start.
- **Telecom Update:** Noelle, John Kessler and Gio met with Beth Robinson and Karen Marshall to discuss ideas for using the federal Section 106 historic preservation telecom review process to help streamline the Vermont process. For example, existing broadband and collocation Programmatic Agreements (PA) executed by the Federal Communications Commission and USDA Rural Utilities Service include “exempt” activities that do not require review. This allows various categories of telecom undertakings to move ahead without further consideration. Educating providers about these exemptions and federal requirement where consideration of resources is necessary will also improve the process. DHP received a draft this week of the Vermont USDA RUS Draft PA for the 1,700 mile VTEL project for review.
- **Archeology Exhibit at the Bennington Bypass Visitor Center Approved and Planning Can Start:** Gio met with BGS project manager Ray Rossi who’s received authorization from VTrans to move forward with planning this modest exhibit. It will interpret the remarkable 4,000 year old village discovered along the Wallomsac River during studies for the Bypass project.

### Tourism & Marketing and Vermont Life

- **Online creative testing:** VDTM is testing two creative concepts via online advertising in market. These tests will help VDTM to determine creative direction for future advertising:

These concepts were developed as a direct result of Vermont’s branding study.



## Sales

- Vermont trails received the Outstanding State Trail Program Award from the Coalition for Recreational Trails during a ceremony last June in Washington DC. More information can be found at: <http://www.americantrails.org/awards/CRT10awards/Outstanding-State-Trail-Program-Award-Vermont.html>

## Travel Trends

- **Leading Indicators Are Positive for 2011:** Consumer confidence, particularly among the affluent households most likely to travel, has recovered substantially from the late summer/fall sag in the third quarter of 2010. While relatively high unemployment and a housing market still laden with foreclosures remain concerns, USTA Senior Research Analyst Dr. Suzanne Cook notes that “The economy (in inflation-adjusted terms) has now completely recovered from the Great Recession of 2008-2009 and is now 2.5 percent higher than where it stood at its previous all-time high. As a result of these positive results, Oxford Economics has upped its forecast for 2011 GDP growth to 3.2 percent from 2.9 percent in its previous forecast.” -- *Source: US Travel Outlook, February 15, 2011.*

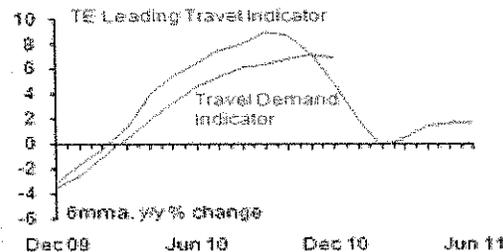
### U.S. Travel Dashboard

Employment and Consumer Confidence



Source: Bureau of Labor Statistics, Conference Board

TE Leading Travel Indicator



Source: Tourism Economics

## Cultural Heritage Tourism

- Catherine is assisting in managing Vermont State Craft Center business for the CMO office. The volunteer Standards group is currently recruiting two new members; once this is accomplished, an Oversight and Standards meeting will take place. Frog Hollow was left out of the process when the executive order was changed a few years ago. This is taking way more attention than it should require.

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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:** February 18, 2011

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**Status of Governor's Priorities:** Jobs Bill testimony continues this week. Farm to Plate/Agriculture initiatives discussed with House Commerce Committee and House Agriculture Committee. Concern voiced by House Commerce and Agriculture Committee member of origin of \$500,000 to support Farm to Plate Initiatives – clarified that those funds are in Agriculture base budget.

**Legislative Issues/Contacts:**

Assistant State Vet Joel Russo consulted with Rep. Bartholomew on H.229 a bill to “require that debarking, tail docking, and surgical birth procedures on dogs be performed only by licensed veterinarians and with the animal under general anesthesia.”

Jim Leland, Division Director Ag Resource Management provided testimony regarding H.26 in House Fish and Wildlife. This bill proposes to ban phosphorus fertilizer use on turf and restrict nitrogen use as well. The bill exempts agriculture and golf courses from these restrictions. Golf courses will be required to submit nutrient management plans to the Agency of Agriculture as part of the Golf Course Permitting process. This will require the Agency to amend the Regulations for the Control of Pesticides by July 2012. The bill will also require 25 foot buffers from surface water, prohibit application to impervious surfaces and prohibit application after a certain date in the fall and before a certain date in the spring. The proposed bill was covered by VPR this week and the story can be found on their website.

Henry Marckres, Consumer Protection Chief testified on February 11 in regard to the Draft bill on maple law changes. There will be further review and a rewrite of the proposed legislation sponsored by Senator Kittell.  
Bills of Concern for Consumer Protection

- H 56 – Energy – Of particular concern is the responsibility for regulating the sulfur content of heating oil. Agency of Agriculture does not have the equipment, expertise or staff to do sampling and testing for sulfur content.
- H221 – L.P. Gas – This bill places the responsibility for the L.P. gas industry under the Public Service Board. Agriculture maintains the licensing and accuracy testing for these LP Gas meters and tank fill stations. Agriculture finds numerous errors, and the program is an important way to protect both businesses and the consumer is through the Agency's testing and licensing program.

Diane Zamos, Assistant Attorney General assigned to the Agency and Deputy Secretary Bothfeld provided input on an amendment to the Human Trafficking bill, H.153 that would clarify family farmers are not subject to criminal sanctions under the proposed human trafficking law simply for having minor-aged family members work on the farm unless through force, coercion, etc.

Randy Quenneville, Meat Inspection Program Chief – Legislative Interaction Week of Feb 14.

- Cure products at retail is becoming a topic of interest. Currently our statutes prevent it, unless a variance is applied for by the Sec. of Agriculture. The Meat Inspection Section has been working with the Dept. of Health in the enforcement of their regulations surrounding curing at the restaurant level. We have had internal discussions around allowing curing at retail, with the same safeguards and requirements that the Dept of Health has, specifically, the requirement for a 3rd party audit to assure the safety of the process, and a HACCP plan for the firm to document their adherence to the food safety plan and production of a safe product. This topic has been brought up in legislative hearings recently.
- There has been a draft Senate resolution to the USDA FSIS to give an explanation of their interpretation of their custom slaughter regulations.
- Program Chief met with House Ag concerning the slaughter and processing industry in VT and possible training programs for cutters and slaughters to fill the need to provide for skills necessary to assist small producers in the development of the animal products food business
- Discussed amenability issues with Legislative council and the effect on Fish and Wildlife rules and regs

State Vet Dr. Kristin Haas

- Testified in front of House Fish and Wildlife on February 17th on the proposed H91. Reviewed the compliance record of the Irasburg facility owner, discussed briefly CWD, and concurred that the Agency of Agriculture supports the transfer of regulatory authority of that facility to F&W. I stressed that all of the captive cervid, regardless of species, on the Irasburg property should be under the jurisdiction of F&W.

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

Raw Milk and Rural Vermont Issue - News outlets talked to as of 3 PM

- Joel Baird, Burlington Free Press – he also wants to do a story on the processing plants in Chittenden county and Bob-White Systems
- Howard Weiss-Tisman - Brattleboro Reformer
- With Kelly interviewed by the following:
- Jenna Bullard, WCAX on camera
- Peter Hershiefeld – Vermont Press Bureau
- Shay Toten – Seven Days

Press Inquiries this week:

Bon Appétit – Vermont Cheese makers  
 NYT – Raw Milk cheese producers  
 Seefoodmedia – processing in Vermont

The February issue of Agriview was completed and mailed.

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

This week the governor appointed Citizen's Advisory Committee (CAC) met to discuss their legislative agenda. Overall the committee has done a good job of being reasonable considering the resources available to do the work necessary to clean up the lake, however they aim to keep pushing the bar where applicable. Their priorities that impact agriculture are:

1. Fund the Clean & Clear Nutrient Mgt and Farm Agronomic Practices program at \$516,674 (currently this budget is down to \$461 in the Gov. budget).
2. Replenish the Capital Equipment Assistance Program (CEAP) at the Agency at \$100K (currently this is \$0 in the Gov. budget) There may be an opportunity to apply to ANR for an ecosystem restoration grant to help the farming community achieve this desired program rather than to increase the Ag budget.
3. Exclude livestock from waterways by supporting Best Management Practices (BMP) program to provide grants to local partners (no monetary value in CAC priorities)

On Thursday, February 10, Henry Marckres attended a meeting of the Vermont Maple Industry Council representing Secretary Ross. One issue that came up was the industry goal to establish some type of registration or certification of maple producers. The large packers are expected by the businesses they supply to have a third party certification. This would help them in their operations. A committee was formed to meet with Secretary Ross to discuss this issue.

Randy Quenneville, Meat Inspection Program Chief

- Jim Holkenburg, select board member in Alburgh, has inquired about creating a custom slaughter facility for use by the community.
- The Meat inspection section received a response from the USDA FSIS related to the interpretation of the flyer that Rural Vermont has distributed related to on farm slaughter. The response is in line with the previous communications received, in that custom slaughter activities performed for others is required to take place in a sanitary facility.
- Champlain Valley Meats have been asked to supply more information for their license process
- We received our rate for cross utilization from the USDA FSIS, and it is significantly less than originally proposed. It is being determined by the finance dept. if it is still feasible to provide these services at this reduced rate.
- We have had our "entrance meeting" for the on-site federal audit to be conducted in April. We are currently supplying them with requested information.

Dr. Kristin Haas and the Diane Zamos agency's assistant attorney general met with the owner of the Irasburg captive hunt facility on Feb 17th for a pre-hearing settlement conference. Both parties agreed in principle that a helicopter-based inventory method using infrared cameras would be utilized sometime before the end of April in order to obtain a herd inventory and that a cull plan will be submitted for 2011 after that inventory is obtained. The noncompliance issue that still is unresolved is the catch facility mandate.

#### **Evolving Issues:**

**Bloom** the movie was shown to the Vermont Legislature, approximately 25 people attended, mainly the agriculture, natural resources and fish & wildlife committee members. The discussion afterwards revolved around the realities of how much the Clean Water Act has worked on point sources, the need for more funding which is not feasible currently to resolve these issues, and that we all need to keep moving forward with the resources we have and perhaps increase the rules and requirements for polluters.

Diane Zamos, Assistant Attorney General assigned to the Agency continued informal conversations with lawyers in other state entities involved in Act 250 proceedings with the goal of ensuring state entities are all "on the same page" to the extent possible. This needs continued work to improve efficiencies and align policy priorities.

In re Justin Poulin. AAFM#2011-02-01 SF involves a request for variance from the Secretary for an "as built" farm structure in the Town of Brookfield. Site visit scheduled for 2/22. Allegation is that the structure is built within the Town road ROW. There are a number of factual and legal issues. The case may provide sound basis for a firm policy stance, going forward, regarding "as built" structures, variance requests involving road ROWs, technical and engineering assistance provided to farmers by the Agency, internal communication, and potential amendments to the AAPs.

Rural Vermont was sent a warning by the Dairy Section in regard to educational workshops that teach the production of dairy products (cheese and yogurt) using raw milk. The classes are listed for a fee on the web site and the tag line is "\* Farmers Interested in boosting your raw milk sales by teaching or hosting a dairy processing workshop? Let's talk!" There are three issues: 1. Current Raw Milk Statute 6 V.S.A. §2776 limits the sale of raw milk. *For the purposes of this chapter, "unpasteurized milk" or "unpasteurized (raw) milk" means unpasteurized milk sold for fluid consumption and does not include unpasteurized milk to be pasteurized*

or unpasteurized milk produced for use in manufacturing of milk products other than fluid milk. (Added 2009, No. 62, § 2.) The Rural Vermont web site advertised the class as for farmers to increase their raw milk sales. That would put the producers in the position of violating the law by knowingly selling raw milk for further processing.

2. Charging for the class, producing finished dairy products and providing those products to the students of the class for consumption would require a handlers license to process dairy products.
3. If the above product is a raw milk cheese, further regulations require a raw milk cheese to be aged for 60 days prior to consumption. Issue has caught the attention of the press.

The Vermont dairy industry is vibrant and growing there are new plants coming on line regularly and one third (26) of the plants in Vermont are small operations processing less than 500 pounds of milk per day with fully licensed and inspected plants. The rules in place to process the milk safely and properly are not that onerous and public safety is better protected with inspected facilities and it opens up the entire country as a potential market. FDA does not allow raw milk to cross state lines unless it is to be processed in a licensed facility.

Update from Tom Berry, Senator Leahy's Staff on future funding of the USDA Agriculture Innovation Center (AIC):

AIC lines don't appear in the appropriations bills until they are put there during the Committee process, and so would not appear in the President's FY12 request. Whether they meet the definition of an earmark is something that we will need to work through as FY12 unfolds. FY11 - will be protracted uncertainty, the rather harsh CR coming over from the House will be countered by more moderate CR prepared by the Senate, probably in two weeks. It is likely that those will not be quickly reconciled and there will be another CR(s) for days or weeks into March.

AIC Board meeting to be held on 02/23/11, 9:00 a.m. – 12:00 p.m. in the 4th Floor Conference room of 109 State Street. Board members will hear recommendations from the work group around the allocation of \$125,000 to sub-state food centers/food groups and \$25,000 to Farm to Plate Leadership Development. The Board will also listen to a presentation from Encore Redevelopment to consider funding their project that will look at the feasibility of creating a SLOW money investment tool for establishing renewable energy projects on farms.

Agency veterinarians have been working collaboratively with the Department of Health to provide technical assistance to a farm owner in Middlebury who has been dealing with a possible Q Fever related abortion storm in her sheep. This is of potential great significance because the causative agent of Q Fever is highly contagious to humans and has the potential to cause significant disease on rare occasion. This organism has not been definitively identified as the causative agent in this abortion storm, but owners are implementing appropriate biosecurity measures on the farm in order to protect themselves. In addition, their annual "Open Farm" normally held in the beginning of March is being cancelled, and they are having some difficulty being able to get their lambs and hogs slaughtered. The discussions are ongoing at this time.

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

#### **Ag Development**

Attended a Technical Hearing in PSB#7645 Cross Pollination Inc.. Petitioner has filed for a Certificate of Public Good for construction of a solar project on 40 acres of primary agricultural soils in the Town of New Haven. Petitioner plans to compliment the renewable energy production with integration of a diversified agricultural operation. AAFM stipulated to certain facts and supports the issuance of the CPG. This particular project, when it breaks ground and/or goes on line, may be worthy of attendance by the Secretary and/or Governor.

A SurveyMonkey survey was sent out to 22 sub-state food groups/centers in Vermont to collect information that will inform the AIC funding decisions. We received responses from 12. Data is now being collated.

Calls are starting to come in from dairy farms to apply for Dairy of Distinction

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

The Agency convened a pre-hearing settlement discussion with Nelson Farms, Inc, d/b/a Big Back Ridge, AAFM#2010-12-06 AH. This is an administrative enforcement action alleging non-compliance with certain provisions of Act 156 (2009 Adj. Sess.) and the Rules for Captive Cervidae. Hearing on the merits is scheduled for mid-March.

Animal Health Field personnel –

- Attended 2 livestock sales at Addison County Commission Sales
- Performed scanner inspections and weights and measures duties – cross utilization of employees to balance work load
- Conducted 2 FDA Tissue Residue Violation Inspections and write-ups
- Conducted 4 animal welfare field investigations
- Collected samples from elk for CWD monitoring at the Nelson Farm
- Inspected 2 pet merchants and 1 animal rescue
- Performed Cooperative Agreement duties at Dresser Hill poultry and a pheasant farm in Orwell

Assistant State Veterinarian- Dr. Joel Russo

- Participated in a conference call with the Medical Surge/Mass Care (MS/MC) Planning Group in regards to companion animal planning at MS/MC sites.
- Received a call from a local feed representative in regards to animal husbandry issues at one of her client's farms. Scheduled a site visit to the farm with Field Inspector Kuehne.
- Represented the Vermont Agency of Agriculture Animal Health Section at a Regional Foot and Mouth Disease (FMD) Workshop sponsored by the New England States Animal Agriculture Security Alliance (NESAAASA). Coordinated with New England State Veterinarians and Federal Officials on establishing rules for a Secure Milk Supply (SMS) during an outbreak of FMD.
- Provided education and outreach to a producer interested in starting a bison farm in Vermont
- Assisted Dr. Sara Coburn, USDA, with a Veterinary Accreditation Session. Three Vermont veterinarians received Category II accreditation which allows them to perform federally accredited duties on all species of animals in Vermont
- Participated in a conference call on USDA/APHIS/VS 2012 budgetary issues

Meat Inspection Points of Interest

- Set up meeting with Robin Morris of the Waitsfield area to discuss possibility of food processing incubator kitchen for that area
- Several contacts with individuals for information mobile poultry slaughter services for individuals raising poultry in numbers that qualify for the 1000 bird exemption
- Discussed compliance issues with representatives of Sterling collage for the slaughter of pigs as an animal science product with resulting product to be offered as samples with clear distinction that product was produced without the benefit of inspection

### **Compliance and Enforcement:**

Investigated complaint received concerning the conditions at a rabbitry in Underhill and temporarily suspended approved source designation for sale of rabbits to restaurants as part of MOU with VT Health Dept. Also coordinated efforts with animal health for other issues identified at the farm.

### **Agriculture Resource Management**

The Vermont Legislative Research Service from UVM has been requested by Senate Agriculture to determine the water quality impacts on Lake Champlain if all conventional dairy farms were converted to organic. This week the students interviewed the Agency staff about this topic. The general discussion focused on

management as a key factor, poor management on any farm can lead to environmental concerns. Both farming types manage phosphorus in feed, manure and fertilizers and though the quantities may vary depending on size, the land base has to be able to recycle those nutrients and those nutrients managed appropriately according to state law. The group does not intend on discussing the economic impacts of this transition, which would be substantial from the production area infrastructure on a conventional farm to the field equipment.

Agency is drafting amendments to the Noxious Weed Rule in anticipation of legislative activity in this area. There is pressure from some groups to ban the sale and distribution of certain invasive species such as Norway maple, burning bush and barberry. The Agency has the authority to accomplish this by rule and intends to have a rule ready for discussion when, and if, the legislature brings it up. In any event, we intend on pursuing rulemaking on this subject this year.

**Enforcement Actions:**

Both the Michaud Farm (\$4,000 administrative penalty) and the Bourbeau Farm (Corrective Action Letter) have received their respective enforcement actions. Mr. Michaud will be requesting a hearing on the matter.

**Secretary's Commentary:**

Secretary Ross undertook the following activities:

**Major Themes of week:**

## CONFIDENTIAL AND PRIVILEGED

To: Honorable Governor Peter Shumlin

From: Commissioner Annie Noonan, Vermont Dept of Labor

Re: Weekly Report, Week Ending February 18, 2011

### DOL's Critical Concern

The reports coming from Washington and our regional advisor at USDOL in Boston regarding Workforce Employment and Training and Workforce Investment Act are greatly alarming to VDOL. Here are some highlights of the discussion on the cuts: Rescind money that has been provided to the states but is yet unspent; reduce training and employment services grants by \$1.4 billion; rescinding all WIA monies effective March 4; enacting a continuing resolution but only for a short-term; Trade Adjustment Act monies were already cut back to 2002 funding levels this week; cut workforce data quality initiative by \$12 million. The list is endless. **VDOL's Budget, as well as our Workforce Development Division and WD Council, would suffer devastating cuts in our own staff and in program funding to our grantees.**

### Legislative

Jobs Bill: Continued to work on the Jobs bill, including testimony in House Commerce. DOL has been working on the edits to the Long-Term Unemployed Hiring and Vermont Internship programs, as well as fielding questions on the Veterans Hiring sections. Ways and Means has advised me that they do not favor the Veterans proposal as a tax credit; and I have advised Alex of their comment.

I presented DOL's budget in Senate Appropriations and House Appropriations. House General is continuing with testimony on H.41, Mandatory Rest Breaks, and DOL has questioned the mechanism for investigation, enforcement and/or penalty. DOL is also monitoring H.42. Rep. Weston has asked me to review the baby bonding bill. Senator Illuzzi's committee issued two draft bills yesterday, one on unemployment and one on workers compensation. We have been doing research and have asked to testify. I will be doing bill review on these to provide to Alex later today. If the UI and WC statutes are to be amended, DOL has clean up issue we would like to present, but will work with Alex and Bill before proceeding.

One particularly positive note: I think we've been able to provide a good 'definition' for the "prevailing wage" language that the Jobs bill utilizes, focusing it on Average Wage by Industry by Vermont County. The numbers look quite reasonable. I have shared this with Commerce, and their reaction was favorable.

Steve Monahan, WC Division Director, and I met with Anya Radar Wallach this week to discuss the integration of Workers' Comp issues into the Health Care Reform bill. We are poised to assist Anya as requested, and will begin some preliminary investigation into issues. I think it helped Anya to have some information from Steve Monahan who is well-versed in the subject matter of WC.

### UI Division

**UI Trust Fund: DOL has not needed to borrow funds in February.** The total amount borrowed remains unchanged at \$50,191,494.07.

For the week ending 02/12/11 the Claim Center took 3,784 calls, with an average wait time was about 6.43 minutes. During the week the Claim Center processed 1212 initial and additional claims (last week the number was 1,549), and paid 14,902 claimants.

We were notified yesterday that if the interest payments for the UI borrowing from the feds is waived (forgiven) for the 2 years, states may still have to pay the interest loan that is due in September and then the feds will return the money. This would require Vermont to pay the approximately \$3.4 - 3.6 million dollar interest payment, which cannot be paid from UI monies. We are attempting to verify that information.

### Legal Division

In researching the question of whether it would be permissible for the department to allow a retroactive claim by an employee of a school district who is given reasonable assurances of reemployment in new school year that then does not materialize, we believe the answer is "yes". This might assist with the concerns raised by Senator Illuzzi relating to the disadvantaged situation that school district employees face if they failed to file for UI based upon a "reasonable assurance of employment in the fall" that never materializes.

We are meeting today with Legal Aid to go over our proposed revisions on Employment Security Rules. Legal Aid and Attorney Michael Sirotkin have sent preliminary comments and we are working to incorporate their constructive points.

### Workers Comp and Safety Division

DOL is continuing the lead on the work to finalize the MOU with BISHCA, BGS and AOT on misclassification debarment. We have yet to fill the 4<sup>th</sup> Investigator position, but I am working on making this happen. This position was funded by an additional fee assessment (.055% on the WC premiums written), so having the position vacant is not well-received at the Statehouse.

I am suggesting more cross-training of DOL staff on misclassification. To date, DOL has issued only about \$230,000 in fines and collected less than 10%. Our process and performance in this area has to be completely overhauled and upgraded. The WC Division met again with the consultant on WC's business process and mapping process, which has the potential for great streamlining of process with eventual savings, but will require some infrastructure (computers and software); more updates to follow.

### Information Technology and Fiscal Interface:

It is becoming obvious to me that DOL's IT situation is both complex and precarious. I am trying to get a handle on the conversations that have occurred with DII, as well as with the Feds, and the impact of pending retirements of our current IT team. We are apparently having problems with meeting federal reports (just called to my attention this morning). My initial impression is that IT and Fiscal at DOL are not integrating effectively; that we have IT divided internally which may be problematic; and that our system's ability to integrate or be taken over by DII is questionable. I hope to review the situation and report more in the next few weeks.

### Workforce Issues

Obviously, the big news is the possible cuts to Workforce Development and Training monies, as outlined above. I have also attached a spreadsheet from Washington DC on some of the cuts that are being proposed, below.

The Workforce Development Council WDC is meeting this afternoon to discuss how to divide up the Next Generation money. John O'Kane is coming in early to meet with me and Pat Moulton Powden. He has sent a preliminary memo that seems to indicate some objections to funding some of the parts of the Jobs bill initiatives. I have shared these memos with Jeb.

DOL PROGRAMS				
	(\$ in thousands)		Rescissions	Participants
			from FY 2010	Not Served
DISCRETIONARY	FY 2010 Enacted	Proposal	Unobligated Bal.	Under Proposal
YES	3,828,530	221,699	-175,000	8,408,511
Total WIA Adults Formula	861,540	0		6,950,148
Adults (7/1/2011 Funds 1st Qtr PY 11)	149,540	0		
Adult Advance (10/1/2011 funds last 3 Qtrs PY 11)	712,000	0		
Total WIA Dislocated Workers Formula	1,183,840	0	-65,000	1,158,537
DW (7/1/2011 Funds 1st Qtr PY 11)	323,840	0		
DW Advance (10/1/2011 funds last 3 Qtrs PY 11)	860,000	0		
Total Dislocated Workers National Reserve	229,160	29,160	-100,000	
DWNR (7/1/2011 Funds 1st Qtr PY 11)	29,160	29,160		
DWNR Advance (10/1/2011 funds last 3 Qtrs PY 11)	200,000	0		
Career Pathways/ Comm Based Job Trng Gts	125,000	0		
Workforce Data Quality Initiative	12,500	0		
Youth Activities (25% of DW PY 10 funds may be used)	924,069	0		263,456
Green Jobs	40,000	0		6,640
Reintegration of Ex-Offenders	108,493	0		23,355
YouthBuild	102,500	0		6,375
Native Americans	52,758	52,758		
Migrants & Seasonal Farmworkers	84,620	84,620		
Pilots, Demonstrations & Research	93,450	44,561		
Evaluation	9,600	9,600	-10,000	
Denial Commission	0	0		
Women in Apprenticeship	1,000	1,000		
CSEOA	825,425	300,425		
Job Corps	1,708,205	1,708,205	-300,000	
Job Corps Operations	1,574,015	1,574,015		
Job Corps Construction	105,000	105,000		
Job Corps Administration	29,190	29,190		



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Deborah L. Markowitz  
Agency Secretary

Christopher Recchia  
Deputy Secretary

**State of Vermont  
Agency of Natural Resources**

**CONFIDENTIAL and PRIVILEGED**

**To: Governor Peter Shumlin**  
**From: Deborah Markowitz, Secretary, Agency of Natural Resources**  
**Date: February 18, 2011**  
**Subject: ANR Weekly Report**

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**Status of Governor's Priorities:**

- We are working with Green Mountain Power to complete the stipulated agreement on the bear/fragmentation/restoration issues associated with Kingdom Community Wind based on the framework agreement last week. We have suggested that testimony before PSB next week be postponed, as it will be awkward to proceed without the stipulation. It is important for the Governor to understand the agreement will only cover the issues above – which are significant but not all encompassing. ANR still must process its regulatory permits without pre-judging them. We are working hard to ensure GMP's applications meet our requirements
- Vermont Yankee – We are evaluating our options for enforcement of state groundwater and discharge rules, and the merits of taking action. Dept of Health is providing daily updates on the tritium matter. We are considering whether it makes sense to move forward on the renewal application for its thermal discharge permit.
- Lake Champlain Water Quality – We met with the Lake Champlain Chamber of Commerce and Greater Burlington Industrial Corporation on Friday and brought them up to speed on the impact and process of EPA's decision..

**Legislative Issues/Contacts:**

- **Private Well Testing:** Senator Lyons held a session of the Senate Natural Resources and Energy Committee on Feb 9 to hear about a Middlebury College environmental seminar study of "Arsenic Contamination in Vermont's Private Wells." Senator Lyon is planning to submit a bill that includes testing of private wells and new wells; as a condition of contract for sale. Arsenic, lead, uranium, gross alpha radiation and chloroform bacteria are to be considered. The State Toxicologist was in attendance

and asked that manganese and fluoride also be considered as additional naturally-occurring contaminants of concern.

- **Product stewardship bills.** There are a variety of product stewardship bills under consideration in the Legislature: An amended version of S. 24 (regulation of toxics in children's products), bottle bill expansion proposals in both houses (H.74 and S.21), ban of plastic bags (H.19) and paint stewardship (H.158), Mercury lamps (S.34), proposing fees on disposable bags (H.145) to name most. ANR is working on a proposal for more comprehensive Extended Product Stewardship. Several Division Directors have been requested to testify next week on H.11, related to a pharmaceutical take back program at House F&W&WR.
- **Budget:** House Appropriations FY12 budget testimony went smoothly. We are in the process of scheduling with Senate Appropriations and House Natural Resources for next week. Senate Appropriations is scheduled for the week of March 7.
- **The Stormwater Program** was in contact with legislative counsel regarding the Senate Committee on Economic Development, Housing, and General Affairs' interest in expanding "wind rule" guidelines to apply to telecom facilities. We have not been asked to testify.
- **Fish & Wildlife** - F&W department staff, including the commissioner, spent time testifying before the Legislature this last week regarding H.13 (deer -- and now turkey -- doing damage) and H.91 (captive hunt bill).
- **H.56 – Energy:** We are working with the HNRE Committee to address several issues in the bill, but have not testified on it at this stage. We will coordinate with DPS at any point testimony is needed/requested
- **Telecommunications Bill** – We are working with Alex on aspects of the telecommunications bill as it comes out of the Econ. Dev., Housing and Gen. Affairs Committee and expect further changes will be needed in Senate NRE Committee.

#### Press Issues/Releases/Contacts:

- A press release is being drafted for release this week regarding the April 1<sup>st</sup> ban on felt-soled waders.
- There was press contact related to the Connecticut River Watershed Alliance petition for ANR to either reject or issue a new thermal discharge permit for Vermont Yankee.
- Press interviews were given to VPR regarding the legislation on a ban on phosphorus fertilizer and on "Bloom" the movie relating to the condition of Lake Champlain. We are discussing with the administration the pros and cons of ANR and Agency of Agriculture participating through interviews in the next movies in the series.

### Significant Events/Meetings:

- **IBM** – ANR representatives met with representatives of IBM on February 9<sup>th</sup> to discuss recent air pollution regulatory amendments related to Greenhouse Gases (GHG).
- **Environmental Ticketing Rule** – A Public hearing was held in Rutland 2/9/11. There were approximately 20 attendees with 14 making comments on the rule.
- **Fish & Wildlife Board:** The Fish & Wildlife Board will meet on February 16 to take a second vote on the moose and deer regulations. The Board will also take a first vote on a proposal to change the boundaries of Vermont's waterfowl zones.
- **Ag's Authority:** Staff met with Agency of Agriculture (AOA) staff regarding AOA's authority over captive cervid facilities and the inventory methods within facility.

### Evolving Issues:

- **Budget** – We are very concerned about the impact of the FY11 and FY12 federal budget proposals on federal funds received by the Agency, and on which we are counting to make current and next year's budgets work. We will follow and report on progress, but significant cuts to state support would be very serious. We are meeting next month with commissioners and secretaries of other states (Environmental Council of States) to discuss status and coordinate appropriate responses. For a related issue – see Vermont Bond Bank bullet below.
- 

## SUMMARY OF KEY DEPARTMENT ACTIVITY

### Environmental Conservation

- **Thermal Storage Solutions (St.J)** is a new company looking to co-locate at the Fairbanks Scales site. They will manufacture insulated hot water storage devices such as those needed for solar systems. We are reviewing the proposed volumes of materials to be used and the emission control filters to determine the need for a permit.
- **General Dynamics (Industrial Parkway Bldg 41)** – GD has previously stopped all manufacturing at this facility but is now proposing to restart some spray coating operations with a single spray booth. The coating to be used will contain hexavalent chromium and will require high efficiency filters. A permit will be required to address the chromium issues as well as federal requirements for Aerospace facilities.
- **E-Waste update:**
  - The Standard Plan with attachments and the responsiveness summary are final and posted.
  - The RFP has been posted for bids. The final date to submit bids is March 28.
  - Staff are preparing a response summary to all the comments received on the draft Procedure for Sound Environmental Management of Electronic Waste.
- **DEC Lab Emergency Permit:** On 2/9/11 the sodium azide waste was treated without mishap. The stabilized waste is on-site awaiting disposal as part of a larger shipment.

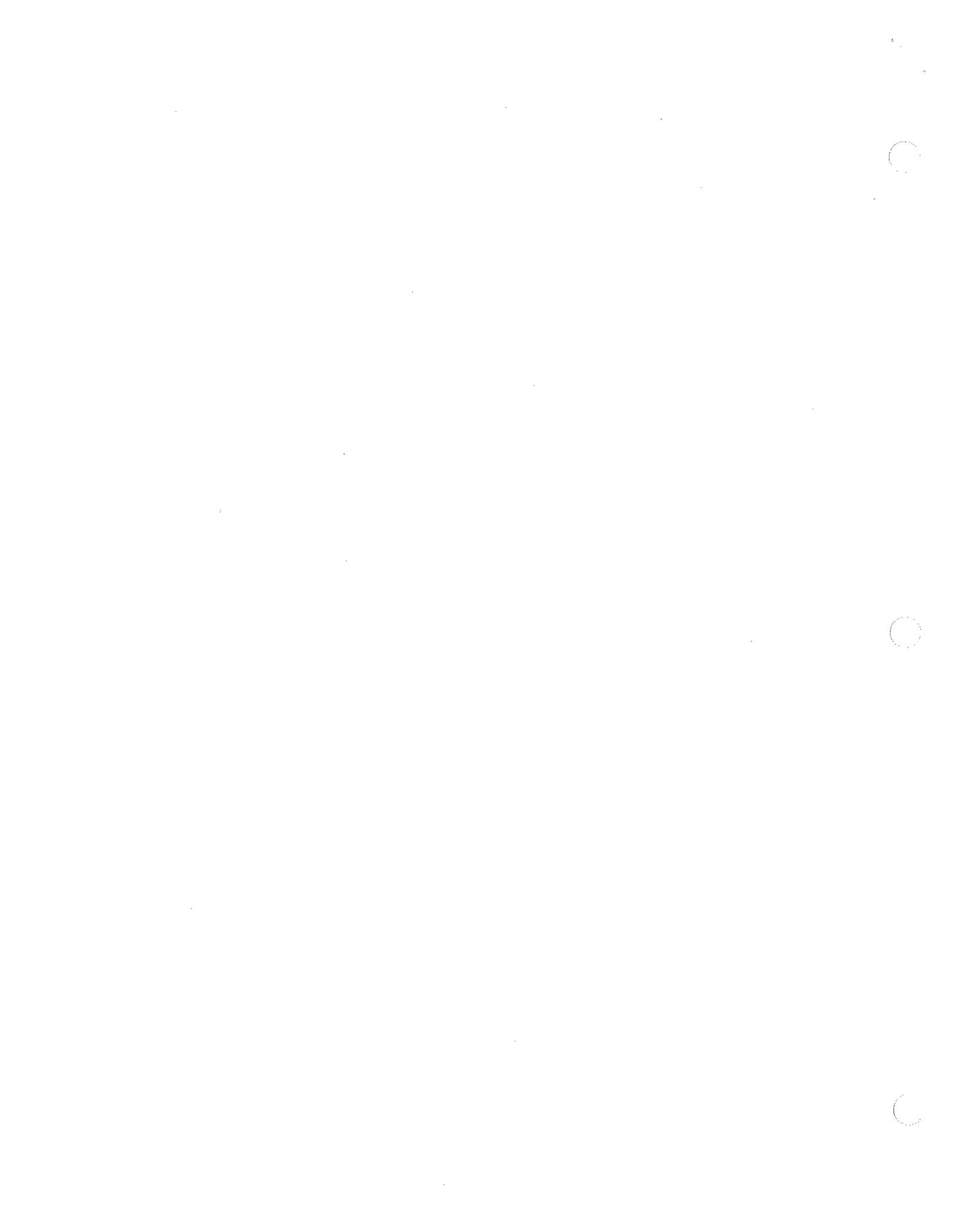
- **UST Self-Certification:** After one last outreach effort (calls and emails) we will be issuing Notices of Alleged Violation (NOAVs) to owners who have not submitted a self-certification of compliance for 2010. Right now it appears that up to 40 NOAVs will need to go out. While it is disappointing that we have this many non-filers after 4 years of the program, it is gratifying to note this is only .04% of the regulated community! Between this requirement and the heavy dose of facility inspections, we have achieved a consistent 80+% compliance rate for the entire industry.
- **Pollution Prevention/Recognition Programs** – We received and approved the final paperwork for Champlain Marina on Mallets Bay to be our third “Clean Marina” in the Vermont Business Environmental Partnership.
- **Vermont Bond Bank** e-mailed us that they are hearing that EPA will be sending out a message soon urging states to submit their FY 10 federal State Revolving Loan Fund grant applications immediately. The word is that Congress may take some action that would put unobligated funds at risk. We will get our request out next Monday. We will not have the state funds to match the entire federal grant until the Capital Bill passes (it is effective upon passage and signing), but that does not preclude us from applying.

### Forest, Parks and Recreation

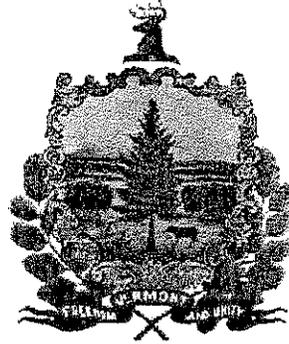
- **Telecommunications MOU** - State agencies met last Friday and again this week to continue to work on finalizing the terms of the MOU and the process for marketing and licensing telecom facilities on state lands with VTA and DII. VTA has identified 18 sites on state lands that they wish to move forward on marketing and have requested site specific license terms and conditions for all affected agencies by March 15. Concerns are: the lack of specific proposals and ANR’s inability to provide all terms and conditions absent detailed information from a provider.
- **Plum Creek Timberlands-** Plum Creek filed a supplemental memorandum to the Department of Taxes, Property Valuation and Review supporting the Plum Creek appeal. This memo raises an argument claiming that the penalty of discontinuance of all Plum Creek lands unconstitutionally exceeds the act or alleged offense of Plum Creek. This argument was not raised to FPR.
- **Chimney Point** - A meeting is being scheduled for next week among DHP, DFW, VTRANS and FPR to consider possibilities for expanding the parking at the DFW fishing access at Chimney Point. This is a continuation of discussions but has been prompted by introduction of H-159 which suggests using part of the temporary ferry access drive for that purpose. This would not be desirable for a number of reasons. Better alternatives exist.
- **State Park updates.** Bids for the 20 campground solar water heating systems are to be out by March 1. A new partnership has been formed with Find and Go Seek.net, a web based scavenger hunt site to encourage State park visits. Season vehicle passes are being used as give away prizes.
- **Emerald Ash Borer.** FPR foresters will travel to Kingston, NY soon to help with the evaluation of a newly-discovered infestation of emerald ash borer there. This pest is very close to our borders, so everything we can learn about detection and evaluation is important.

## Fish and Wildlife

- **Anderson Parcel/Addison:** Staff prepared the necessary documents for the Governor's approval for this acquisition. This acquisition will need Joint Fiscal Office review and approval due to the \$15,000 difference between the appraisal and the selling price (selling price is lower).
- **Card Room – March 9:** The Department has the Card Room in the State House reserved for March 9. Plans are underway to have a staffed display that will focus on hunter education and shooting safety.
- **Bat Listings:** Staff briefed Secretary Markowitz on the proposed bat listings. The Secretary indicated she would list the species but first wanted to resolve the need to allow for some "takings" by homeowners for the purposes of public health. She also asked for a public outreach plan and some narrative on the implications of listing on potential wind energy facilities.
- **Raven Ridge:** Staff reviewed, edited, and helped to complete the final habitat management plan for the Raven Ridge project in coordination with The Nature Conservancy. Staff also reviewed and approved the final report to USFWS for the recovery land acquisition grant for this project.
- **Search & Rescue:** Wardens participated in another lost skier search and rescue operation in Killington. The skier spent the night in the woods but was successfully located.
- **Miscellaneous:** Another suspected brainworm moose was euthanized in Somerset near a snowmobile trail. It was in terrible physical condition and was continually frequenting the snowmobile trail.



# Memo



**TO:** Governor Peter Shumlin  
**FROM:** Keith W. Flynn, Commissioner  
**DATE:** 02/18/11  
**SUBJECT:** Governor's Report

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## Status of the Governor's Priorities

**Public Record Disclosure-** H. 73- DPS- concerned that a law enforcement representative is not included on the proposed Public Records Act Review Committee. We are examining ways to maximize access while at the same time protecting the privacy rights of the public. We recognize that openness discourages abuses within government and are attempting to balance this need with our department goal of protecting the rights of all citizens.

**Marijuana decriminalization-** Marijuana decriminalization legislation- I met with Rep. Jason Lorber and Legislative regarding DPS comment. The goal of the Department is to vitalize its resources in a manner that addresses the most serious issues facing the public. In this spirit the Department has requested the statute contain a provision for the money to go to a special fund to support 2 additional officers for the Drug Task to combat prescription abuse and heroin abuse and trafficking. Additionally, the Department has requested the presumptive test be the officers field test to relieve stress on our forensic lab. have been actively seeking law enforcement and prosecutor buying in to the general concept of decriminalization and am making progress. The selling point to law enforcement is that the decriminalization of marijuana in some amount is going to happen, so why not use this as an opportunity to legislatively seek better access to investigative tools to combat inappropriate use of prescription drugs and heroin.

The Department of Public Safety continues in its efforts to recognize cost savings by becoming more efficient while at the same time producing better outcomes. For instance, we are continuing discussions with various stakeholders in the Vermont Police Academy regarding what role leadership role the Department can play in improving outcomes and it fiscal accountability. Also, we are examining the merger of 2 regional offices within the Division of Fire Safety to again recognize cost savings without negatively affecting the services we provide to those communities. Likewise,

within Criminal Justice Services we are reviewing the structure to determine where the public would be best served regarding the Governor's Highway Safety Program.

### Issue Update

#### **Marijuana Dispensaries-** met with drafters of bill

Marijuana Dispensaries - met with Sen. White and expressed the Departments concerns regarding this proposal. Essentially, I communicated that we do not have enough information to determine the full impact. Other States such as Colorado, California, New Mexico and Montana have not had good experiences with dispensaries. For instance, the # of new registrations on the marijuana registries substantially increased.

### Evolving Issues

**Vermont Police Academy structure-** I have received many questions from members of the Legislature regarding the accountability of the Vermont Criminal Justice Training Counsel and management of the Academy. This is an issue that needs to be addressed. The Sheriffs and many Municipal Departments are not in favor of DPS serving in an administrative role at the Academy. The savings realized at the Academy by DPS officers serving in the administrative capacity are in excess of \$200K. That does not include other collateral savings that would be realized.

A detailed report regarding cost savings, efficiencies and re-structuring was sent to Jeb Spaulding. I met with Jeb and Reardon on this.

A modified version of this report was sent to Jeb Spaulding that would still recognize cost savings but have the Department exercising primarily an administrative role. The Departments would suggest that our involvement in the Police Academy Administration would result in immediate cost savings and provide better servers to the consumers, ie, the public, by better trained and prepared officers. This is facing significant push back from some local and county law enforcement departments. This an opportunity to move the Academy in a new direction away from a Training Council run model that clearly has not been effective. Although this is a tough choice to make in the face of the opposition it is facing, it is in the best interest of public safety delivery in the State.

I also met with Sheriff Benard, the Chair of the Vermont Criminal Justice Training Council and he opposes this course of action.

## Department week in review

### Emergency Management

VT Yankee continues to experience issues, however communication is improving. Division still monitoring progress regarding steam leak at the plant

Monitoring snowmelt/runoff - PSA's issued

### State Police

TOPS Unit TOPS assisted NIU with RX pill investigation, targets en-route to Boston for large amount of Percocet pills, vehicle stopped, 2 arrested and 420 Percocet 30mg pills seized, federal prosecution; Sgt. Albright & Tpr. Perkins assisted with controlled delivery of 62lbs marijuana w/NIU in Williamstown from Illinois SP stop on 02/10/11, 3 warrants executed (1 residence / 2 storage units) 155K in currency seized and additional 55lbs of marijuana, 700 Percocet (30mg), 4 guns, 2 arrested and charged by NIU and lodged

Special Investigations Unit (SIU) New Case: 11D200401- Voyeurism investigation at Marlboro College. A student in a dorm discovered a camera that was set up to record video in the co-ed bathroom (targeted at the shower stall). After interviewing the accused he indicated that this was his third recording of fellow resident students. The two video clips he told us about were downloaded to his personal laptop computer and used for his own sexual gratification. Investigation is on-going with an arrest forthcoming. Completed an investigation surrounding a sex offender registry violation. The male was arrested for failing to comply with the registry, as he did not update his address within 10 days of his birth date.

### Division of Fire Safety

Rutland/Springfield merger continues to evolve I sent a letter to the City Mayor, copies went to you and Secretary of Administration Jeb Spaulding.

Director John Wood plans to meet with the Division Directors to discuss purchasing and IT policies and procedures. The current process is not working. A process needs to be developed with input from them all.

Legislative Issues:

S-39 Introduced by Senator Giard the bill proposes to exclude condominiums from the State Statutes. We oppose the bill and will be submitting a bill review.

Robert Howe testified by phone on 02/16/11 at the request of the House Committee on Natural Resources & Energy in regards to H 56, sec 20. Sec 20 would increase the permitted size of biomass boilers designed to the European Committee for Standardization (EN 303-5) from 250,000 BTU to 1 million BTU and deletes the cap on the water jacket size of 60 gallons for these units. These criteria were just placed in statute last year. Prior to that all boilers were required to be manufactured to the American Society of Mechanical Engineers (ASME) standards.

Director Wood testified that Fire Safety will not support these changes and that we should stay with the limitations placed on these boilers that were just passed last year. Our concerns are based on review of various reports and studies on the EN 303-5 standard with recommendations from BGS mechanical engineer Teigh Southworth including:

- \* the factor of safety under EN 303-5 is only 1/2 of the factor of safety under ASME
- \* some materials used under EN 303-5 are less than the minimums allowed under ASME
- \* the carbon content and other differences in materials under EN 303-5 will affect welding for repairs
- \* none of the standard organizations that develops codes adopted by the division of fire safety uses or recognizes the EN 303-5 standard, including the National Fire Protection Association, the International Code Council or the National Board of Boiler & pressure Vessel Inspectors

The National Board is currently researching the EN 303-5 standard. It is important that one or more of these nationally recognized code writing organizations accepts the EN 303-5 before Vermont extends the use of boilers designed to these standards. Vermont does not have the resources or capacity to further study or evaluate these boilers.

As it stands now a boiler designed to the EN 303-5 standard is permitted to be used in one of four ways:

1. Can be used in owner occupied single family dwellings and certain agricultural buildings that are not under the jurisdiction of the Vermont Fire & Building Safety Code
2. Can be used if meets current law (not greater than 250,000 BTU, maximum water jacket of 60 gallons, maximum pressure relief valve setting of 30 psig).

3. Can be used as an open loop so it is not pressurized (St. Albans barracks for VSP has this design)
4. Can be used above 250,000 BTU in size if approved per variance process.

A bill review has been submitted.

H161 a bill relating to LP Gas Tanks which would allow the filling of tanks regardless who owns them as long as the owner has a certification that the tank was installed properly. We will follow the bill it could become an issue with the LPG industry.

Jim Litevich testified on the Capital bill this morning there paving for the fire academy and purchase of equipment in the bill. Police academy issues came up regarding building a new administration building and renovating the current space. The committee asked BGS to update the master plan and come back.

### **Criminal Justice Services**

#### **CJ Administration:**

- Francis Aumand (Paco) had a meeting this week with Jim Ryan, NHTSA, and he advised that the OIG report is completed. The report indicates that no criminal wrongdoing has occurred at the highway safety office. He did indicate that the report said that NHTSA should assume a greater auditing role in the immediate future over Vermont's highway safety office. A letter from the regional administrator providing official results will be forthcoming in a couple of weeks. This letter will also recommend that the Governor's Highway Safety Program stay in the Department of Public Safety.

#### **GHSP – as submitted by Doug Hoyt**

- A. Preparation and delivery of at least 20 equipment grants to law enforcement agencies
- B. Developed 2012 Grant Allocation Process and outline of duties for training and presentations
- C. Continued work on 405 certification which will require signature of Commissioner Flynn on the 10<sup>th</sup> or 14<sup>th</sup>.
- D. Final steps in hiring process of part time fill in person. Annie Paumgarten will start on the 14<sup>th</sup>. She brings wide ranging experience in research and evaluation which will be wonderful asset for GHSP to have.

- E. Met with LT Flannigan (VSP and Ted Minhal (region I contractor) regarding DRE funding. Expressed support for the program but reminded the parties that grant process had to be followed.
- F. Crash and DUI books arrived this week and material has already been put up on GHSP web site
- G. Grant Management of seat belt surveys has been assigned.
- H. We also learned along the way that the regular yearly GHSP contract (compilation and analysis of crash data which is used by DPS, the legislature and many others) has not been addressed. NSAI had already started work on that but have stopped because the contract never materialized. We need to review and see what the past held and what can be done on such short notice.
- I. Staff had another meeting this week to review "workload" and begin the process of a more equitable distribution of assignments. Having a temporary fill in will mean a great deal. Arriving at a better understanding of GHSP mission and duties will be equally beneficial.

#### **VCIC**

- Jeff Wallin, Bruce Parizo and Paco Aumand met this week to discuss and finalize a plan to come into compliance with the new FBI CJIS security compliance training requirements that will take effect later this year. This requirement entails more training than has been done in the past and includes the need to train personnel that may come in contact with FBI NCIC information such as janitors. Many local agencies are concerned with how we will comply with this new FBI mandate. The plan will be implemented.
  - VCIC will take the lead in providing the training. However, the responsibility for training will reside with each agency.
  - VCIC will purchase a web based program to facilitate the training. The cost for this will be approximately \$10,000 for startup costs and \$7500 annual costs.
  - Start up costs will be funded through our NCHIP 2011 application first. If this request fails we will look to our information sharing grants to fund this request. If this fails we will look towards our FY 12 operating budget.
  - Ongoing costs for this training will be passed along to the law enforcement agencies as part of their annual IT bills.
  - VCIC will take the lead in conducting an informal bid process for the purchase.

## Forensic Laboratory:

- A number of grant reports were written this week
  - COPS grant report update
  - NIJ draft final report on Research and Development award in the DNA area; the report will be reviewed by NIJ and was over 80 pages in length
  - Report for two BJA grants one concerning a drug chemist position the other for a CODIS position.
- ***Yearly stats for CODIS were tabulated. We entered 62 DNA cases with profiles into CODIS where there were no-suspects for the cases. Over the year we had 35 hits in the system where a crime scene sample hit either a suspect or linked cases together.***
- Eric Buel is coordinating a mediation meeting for the examiners in latent prints. This is a follow up to a personnel matter that was previously resolved.
- We are awaiting a safety report concerning the firearms section. The initial testing was for hearing and questions concerning lead abatement are also being discussed.
- ***The new instrument for performing the analysis on all arraignee samples arrived and will be installed during the week of February 7<sup>th</sup>.***

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## Legislative Contacts

Weekly Legislative Re-Cap – 2/14

**Tuesday – 2/15**

**House Judiciary – Jeff Wallin**

S.37 - expungement of nonviolent misdemeanor criminal history records

**Wednesday – 2/15**

**Senate Judiciary – Colonel L'Esperance**

Attempting to Elude Law Enforcement

**House Judiciary** – Paco Aumand  
DUI issues (Act 117)

**House Transportation** – Doug Hoyt, Michele LaBerge  
Governor's Highway Safety

Highway safety issues- Specifically, they will be asking them about the closure of rest areas in the context of unsafe drivers due to being too tired to drive.

**Thursday – 2/17/11**

**Senate Transportation – Commissioner Flynn**  
Committee recommends confirmation to Senate

**House Corrections/Institutions** – Major Bill Sheets, John Wood, Jim Litevich  
Capital Budget DPS/Bratt/Rockingham Barracks/DFS equipment/paving road DFS to Training Academy

Major Sheets – Bratt/Rockingham Barracks  
John Wood, Jim Litevich – DFS equipment/road paving

**House Human Services Committee** – Lt John Flannigan  
H.68 & H.116 – Prohibiting smoking in MV when child is present/  
Smoking in MV w/child under 14

### Ideas

The creation of a template, as a starting point, for strategic planning that is consistent across state agencies and departments.

I am in the process of planning 2 summer projects for the Department of Public Safety:

1. The development of a 3 to 5 year management plan; and Malcolm Baldeine Management Plan to be utilized.
2. Obtaining an indirect cost rate from the Federal Govt. so instead of merely passing grants through we can retain the indirect costs the Department incurs and thereby decrease our reliance on General Fund dollars. Essentially, ways to leverage our federal funds more efficiently.

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

**To:** Peter E. Shumlin, Governor  
**From:** Douglas A. Racine, Secretary of Human Services  
**Re:** AHS Weekly Report  
**Date:** February 18, 2011

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**Vermont Department of Health (VDH)**

**Status of Governor's Priorities:**

Vermont Yankee Entergy. Health Department staff participated in a tabletop exercise of the Vermont Yankee Radiological Emergency Response Plan on February 9<sup>th</sup>, along with representatives from the towns and state agencies in Vermont, New Hampshire and Massachusetts.

Health Department staff also attended a hydrogeological briefing at Vermont Yankee on February 10<sup>th</sup>. The briefing helped health physicists and geologists better understand potential sources of new tritium contamination and some of the details of the Site Conceptual Model for groundwater. From the information presented, it appears that the new leak may not be as large or as hazardous as the leak detected in January 2010. Vermont Yankee's hydrogeological contractor, which is due to release the Site Conceptual Model in mid-March, did not attend. The Health Department has requested a copy of the report, and has been invited to review it jointly with the other two states and the NRC in mid-April. More detailed information is always updated at the Health Department's website:

<http://www.healthvermont.gov/enviro/rad/yankee/tritium.aspx>

Wind Turbines and Smart Meters. Radiological Health Chief Bill Irwin is scheduled to testify at hearings of the Public Service Board on wind turbine sound effects on February 24<sup>th</sup>. This is on the Lowell Wind Turbine docket. Also at the request of the Public Service Department, he is researching the possible health effects of another emerging technology, radiofrequency radiation used in "smart meters." Smart meters are a tool being developed in the electricity industry to monitor residential and commercial electricity use in the "smart grid."

**Legislative Issues/Contacts:**

H.99 Vital Records Bill: House Government Operations. Principal Assistant Dixie Henry and Public Health Statistics Manager Rich McCoy explained the purpose of the bill to protect birth and death certificates from being used for fraud and identity theft. Town clerks have been supportive of the bill. VDH is working with Vermont title attorneys to remove any potential barriers relating to use of vital records in the land records and is working with Legislative Counsel on a few other amendments.

House Judiciary Committee. Deputy Commissioner Cimaglio and Dick Keane, Project CRASH Director, gave an overview of substance abuse treatment services and an in depth presentation

about the Drinking Driver Rehabilitation Program (Project CRASH), managed by VDH for drivers who have been civilly suspended or criminally convicted of operating a motor vehicle under the influence of alcohol or drugs.

**Press Issues/Releases/Contacts:**

Obesity. Health Commissioner Harry Chen, MD is scheduled for Vermont Edition on Feb. 22<sup>nd</sup> with Attorney General Bill Sorrell for a program on obesity and Sorrell's "Vermont Healthy Weight Initiative" report.

EMS. Ken Picard, Seven Days, asked if there are plans to move the Emergency Medical Services (EMS) into Public safety. There is no plan for such a move.

Radon. Lori Cragin, environmental health epidemiologist, did an on-camera interview with Natalie Patterson, Fox 44, about radon, to air Feb. 18<sup>th</sup> at 10 p.m. The Health Department promotes home testing and offers free test kits.

Vermont Yankee. Radiological Health Chief Bill Irwin talked with Susan Smallheer, Rutland Herald, and John Dillon, VPR about the newest leak of tritium at Vermont Yankee following our web update of Feb. 14. He talked with Olga Peters, The Commons, about the hydrogeological briefing for tri-state health physicists and geologists.

"Gut Feelings" Tobacco Counter marketing Campaign. Yvonne Zietlow, Tobacco Control, was a guest on Mark Johnson's Morning Drive show on WDEV. She also talked with Kelsey LaPlante, Free Press, Mary Morin, WPTZ (on camera) and Rachel Kent, Fox News (on camera) about our efforts to further reduce the percentage of teen smoking.

Wireless Electric Meters. Radiological Health Chief Bill Irwin talked with Bruce Edwards, Rutland Herald, about "smart meters" in the electric grid. Irwin was asked by the Public Service Department to look into potential health effects from radiation they emit because Vermont now has a grant to employ these devices.

Vermont Prescription Monitoring System (VPMS). Deputy Commissioner Barbara Cimaglio talked with Brent Curtis, Rutland Herald, about the VPMS. Curtis is working on a series of articles about VPMS and its effectiveness in IDing people who are "doctor shopping" to get prescriptions for illicit drug use.

Protective Custody. Shay Totten, Seven Days, requested data for a story he is researching on intoxicated Vermonters who are placed in protective custody.

Cortina Inn. Molly Smith, WCAX, contacted the Health Department as one of a number of state agencies that play a part in approving re-opening the Cortina Inn in Killington, after being closed for two years as a result of Legionnaire's disease outbreak connected to it in 2008.

## **Evolving Issues:**

Project START Grant Application Released for Community Law Enforcement – Underage Drinking. The Health Department released a non-competitive grant application funded by the Department of Justice for the Stop Teen Alcohol Risk Teams (START) programs. Thirteen grants are provided to law enforcement organizations targeting all 14 Vermont counties to support: (1) coordination of local and state law enforcement and the Department of Liquor Control and Court Diversion; (2) enhanced enforcement of the minimum drinking age through both proactive and reactive patrols; and (3) community education with prevention and treatment partners.

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

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

Representative Stevens. Rep. Stevens toured VSH and then Commissioner Oliver met with him to discuss:

- Plans for the replacement of VSH. He understands the need to put a hold on the secure facility and to consider building a new state hospital. Overall he is concerned about VSH patients but also has an interest in Waterbury in general. Commissioner Oliver advised him that it may be necessary to co-locate a replacement hospital on the campus of a general hospital. He appeared to understand the rationale.
- Concerns about the leadership of VSH. Rep. Stevens hears from his constituents concerns about the management of VHS. Commissioner Oliver advised that she is still evaluating the leadership but to date has been pleased with what she is seeing. She also agreed to meet with the particular constituents (VSH employees) that Rep. Stevens is hearing from. That meeting is being scheduled.

Senator Ashe. At Senator Ashe's request, Commissioner Oliver spoke to his constituent (Deb Flanders) whose sister is currently a patient at VSH. Ms. Flanders wanted to share the story of her sister's wait for medication. It currently takes several months to obtain an order for involuntary medication. This is an issue DMH hopes to address in the next legislative session. Ms. Flanders offered to testify (with her sister) in favor of efforts to reduce the amount of time it takes to obtain an involuntary medication order. Her sister is doing much better now that she is receiving medication

Representatives Donahue and Batchelor. Commissioner Oliver met with Representatives Donahue and Batchelor to review DMH's budget in greater detail. DMH will provide a written follow-up to their specific questions. The questions generally focused on:

- The 5% reduction to the Designated Agencies;
- The Adult Re-Design Report;
  - The report was issued on Tuesday but does not address all items required by the statute because the work group spent considerable time reaching consensus on a

core set of values, expected outcomes and elements that were determined essential for a re-designed system of care.

- Rep. Donahue sees this as a failure of DMH (under the prior administration).
- VSH practice of discharging patients with a supply of medication;
  - VSH has reduced the amount of medication that an individual is supplied upon discharge but there are safeguards in place to assist the patient in obtaining additional medication once in the community.
- Recertification and the percentage of VSH patients who would be eligible for Medicare or Medicaid.

### **Governor's Priorities**

Commissioner Oliver had a conference call with CMS officials in Boston and Baltimore about the potential for VSH recertification. There appears to be confusion as to the process on CMS' end (its financial division). Once that is resolved, we will be on track as anticipated to request CMS start the survey process in April/May. In order to resolve the process issues and obtain a better read on CMS' position with respect to VSH in general, Commissioner Oliver will attempt to meet with CMS officials in D.C.

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

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

Health Care reform. Deputy Commissioner Camille George is working with Governor's Office to disseminate a letter to (elderly) Medicare recipients in effort to allay fears about how benefits would be affected. AAA's making noise that they were informed about the letter rather than consulted but Camille is calming the waters.

#### **Press Issues**

Families USA is doing a full court press on (National) Proposed Budget Cuts to Services for Seniors and Family Caregivers. Our AAAs have sent a copy of the pdf (Five Good Reasons Why States Shouldn't Cut Home- and Community-Based Services in Medicaid) to all legislators. We're preparing response to each of 5 points. Here's the link:  
<http://familiesusa2.org/assets/pdfs/long-term-care/Five-Good-Reasons.pdf>

#### **Significant events/Meetings**

The NEK Long Term Care Coalition held a public forum on the budget February 14<sup>th</sup> to build a grass roots effort to fight off the proposal to reduce certain services in the Medicaid Choices for Care Program. Independent Activities of Daily Living (IADL's) and respite reductions concern them the most.

Recommend you watch this 2:25 minute video on You Tube. It captures the flavor of the discourse. [http://www.youtube.com/watch?v=YsayGOiOiRo&feature=player\\_profilepage](http://www.youtube.com/watch?v=YsayGOiOiRo&feature=player_profilepage)

## **Evolving issues**

Still sorting out VT Home Health Association's assertion that we are "over-interpreting" our regulations regarding non-medical services provided by home health agencies.

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

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

On February 15<sup>th</sup>, Commissioner Pallito met with Peter Mallery regarding the Barre City project. This initial visit was information for Peter and DOC has agreed to provide Peter with any information that he needs relating to the project.

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

On February 15<sup>th</sup>, Restorative Justice Executive David Peebles testified before the House Committee on Corrections and Institutions regarding the SFY12 Capital Bill request for transition housing for Human Service clients.

On February 16<sup>th</sup> Commissioner Pallito testified before the House Committee on Corrections and Institutions on Capital Bill – Section 4 relating to the transition of the Northwest and Chittenden Correctional Facilities. In addition, we are also testifying before the Senate Committee on Institutions regarding the Capital Construction and State bonding – Master Plan for Corrections. Commissioner Pallito also had his confirmation of Governor's appointment as Commissioner of Corrections. (Thank you to all for your support!)

### **Other:**

Population. The total female population for the Department has reduced from 175 on February 8<sup>th</sup> to 162 on February 16<sup>th</sup>. The transition of roles for the Southeast State Correctional Facility has begun. Ten inmates under the age of 28 have moved into the facility. A progression of 10 inmates a week is expected until the projected ratio of 60 youthful inmates and 40 work camp inmates is reached. The out of state population on February 16, 2010 was 678 this number has been reduced to 560 on February 16, 2011. The combined field population has reduced by 385 individuals in that same one year time frame.

Vermont Correctional Industries - Going Green. Vermont Correctional Industries commissioned a business plan to help determine the direction of the program for the next five years. As a result of the business plan, we hope to relocate the Print Shop currently located at Northwest State Correctional Facility in St Albans to the Northern State Facility in Newport where it will employ up to 25 more offenders.

The focus of the Northwest Correctional Facility Industries will become green industries. We are investigating a relationship with The CorrectPac Industries Program with a focus on janitorial

portion control and green cleaning products. We anticipate that there will be several green industries at the Northwest State Facility that will employ up to 50 workers over the next two years.

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

**Status of Governor's Priorities:**

Expansion of 3SquaresVT. Federal SNAP law and regulations governing broad-based categorical eligibility allow us to increase our gross income eligibility for 3SquaresVT to as high as 200% of the federal poverty level (FPL), which in turn allows us to exclude assets such as bank accounts and other liquid resources. In 2009, DCF implemented broad-based categorical eligibility by increasing the gross income level to 185% of FPL. DCF is now considering taking the next step to increase the gross income level to the federal cap of 200% of FPL.

Since 3Squares VT benefits are 100 percent federally funded, there is no direct cost to Vermont to increase these benefits. However we are analyzing how this change might affect indirect administrative costs and the impact on our eligibility systems to accommodate the large increase in applications that would result.

The benefits to Vermonters are numerous. Aside from the obvious increase of Vermonters who will receive assistance with their food bills, any Vermont child who is part of a family that is granted a 3SquaresVT benefit, regardless how small, becomes eligible for 100% free school meals and summer feeding programs. Also, this will allow us to disregard assets for more senior citizens, who often won't apply because of a mistaken belief that they must spend down their life savings to be eligible.

Crisis Fuel Assistance. Record high crisis fuel benefit expenditures at all five community action agencies (CAPs) have more than doubled during January versus December. As a result, four agencies reported over-expending their budgets. DCF will audit each agency's expenditure management systems for improved accountability.

After covering the over-expenditure the remaining balance available is projected to maintain the program until no later than February 25. The AHS Secretary and DCF Commissioner agreed to allocate an additional \$700,000 for crisis benefits out of the projected Fuel Program reserve of \$2.3 million to maintain the program into early April.

This decision will leave approximately \$1.5 million in reserves for next year.

Prior Year's Crisis Fuel Grant Expenditures

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

## **Significant Events/Meetings:**

Outstanding Initial Accuracy by Disability Determination Services. The Vermont Disability Determination Services continues to provide disabled Vermonters with the highest quality of public service. For the three month period ending in January 2011, the Vermont DDS's performance accuracy on initial claims, as measured by the Social Security Administration, was 100%. In addition, Vermont's initial accuracy rate for the first four months of the current federal fiscal year was 99.4%. Both of these achievements place Vermont as #1 in the nation for performance accuracy on initial disability claims.

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

### **Press Issues**

Susan Besio was interviewed on February 17<sup>th</sup> by Kevin Kelly from the Vermont Business Magazine for a story in their March issue on moving Catamount to VHAP and the questions focused on the provider reimbursement rate, especially in response to Paul Harrington's comments about this change causing providers to move out of state. Susan responded that this move will only affect 12,000 people and if that is going to cause providers to move out state, the system is much more fragile than we expected and we need to move to a single payer system as quickly as we can. Susan also said that a single payer system will not reimburse at our existing Medicaid rates. Overall it seemed like Kevin's story may be balanced reporting of the issues.

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

2/15 Susan Besio testified in the Senate Health & Welfare Committee on DVHA's legislative initiatives and Provider Assessments.

2/17 Susan Besio testified in the House Ways and Means Committee on the Provider Assessment.

2/18, DVHA staff will be at SHW and HHC discussions of the Act 128 Report on Health System Design with Dr. Hsiao and Jonathan Gruber, et. al.

Provider Assessment. Testimony by Susan Besio on the SFY'12 Budget Proposal testimony in House Appropriations, House Health Care, House Ways and Means, Senate Finance and Senate Health and Welfare within the past two weeks has yielded a number of questions from legislators regarding the provider assessment, as well as many other topics. A joint memo capturing all of these queries and synthesized responses will be sent to the committees and JFO staff by the close of business Friday 2/18. Senate Finance has scheduled today's to hear from various providers, including Home Health and Hospice Agencies, Visiting Nurse Associations, private insurers, the Vermont Dental Society and Vermont hospitals regarding the current provider assessment methodology and the Governor-proposed methodology. DVHA staff will be monitoring the testimony to capture additional questions and concerns of the provider community and legislators. Discussion of the provider assessment proposals continues next week when Susan returns to Senate Health and Welfare for additional testimony on the topic.

Legislative reaction ranges broadly from questioning why we aren't taxing all the eligible classes of providers to concerns that the provider tax increase will cause providers to leave the state. However, we believe most legislators understand how important this funding is to support our Medicaid program.

Catamount to VHAP proposals. Susan Besio has also testified in multiple committees on the Catamount to VHAP proposal and the biggest concern continues to be the reduced reimbursement rate to providers, which seems to be getting more attention than the \$1200 deductible aspect of the proposal.

Other legislative issues. DVHA staff has been monitoring the discussion of H.202 in House Health Care and Senate Health and Welfare committee meetings that have also been scheduled jointly with House Government Operations, according to the topics of jurisdiction.

# Memorandum

Vermont Department of Public Service

Privileged and Confidential

To: Hon. Peter Shumlin  
From: Elizabeth H. Miller, Commissioner  
Subject: Weekly Report  
Date: February 18, 2011

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**Status of Governor Priorities:**

VY:

- Representation letter likely signed by utilities, apparently contingent upon new owner.
- VY regulatory counsel has indicated that VY plans to introduce bill at legislature to move PSB Certificate of Public Good process forward.
- NRC sent responses to all questions asked at 2/4 meeting; those have been shared separately. Chairman Jackzo has requested a conference call with Governor Shumlin on 2/18.
- I suggest a meeting to discuss the current posture of VY issues at your earliest convenience.
- VY is planning an additional op-ed entitled "The Company I Work For" – we would be happy to assist with fact checking and response.
- As previously reported, VY had a steam leak in its HPCI system on Wednesday 2/16. A root cause analysis will be performed.
- VY is apparently testing the COB drinking well next week; we will keep you informed of developments.

Telecom:

- The Department has revised the 2010 Telecommunications Plan, never actually adopted and approved by the prior administration. Karen Marshall is reviewing our revisions prior to wider release and indicated that we would receive comments in a few days. As previously indicated, I believe a renewed public hearing on the Plan may be wise, because our revisions are substantive though not extensive.
- FairPoint: Our meeting with FairPoint regarding alternative regulation is this coming week. As previously discussed, we plan to negotiate an alternative regulation plan that significantly reduces FairPoint's regulatory burden while maintaining regulatory control and consumer protections. Whether the Board will agree with this approach is an open issue. Meanwhile, FairPoint deregulation legislation is pending.
- The Department hosted a pole attachment meeting 2/17; thank you for attending and providing opening comments. The meeting went very well; we agreed to form follow up committees to address uniform project management processes and attachment techniques within the NESC/safety rules. Karen Marshall made her

role very clear and all companies present expressed a willingness to help with the efforts, although it will remain a challenge moving forward.

- We have been staffing SED closely, assisting with the evolving telecom bill and the issues it raises regarding the VTA, permitting, and other issues.

#### Gas:

- The Board allowed the accounting fund to be initiated for VT Gas's expansion but did not approve the use or mechanism going forward, instead calling for a proceeding to investigate the matter. The first procedural hearing will be 2/25. This is a good outcome, frankly, because the Board did allow an immediate set aside to capture the benefit from the upcoming rate change, even though the Board expressed some skepticism regarding current ratepayers footing the bill (or a portion of the bill) for the expansion. We have a meeting scheduled with Don Gilbert to hear about VT Gas's progress next Tuesday, 2/22.

#### Energy

- Timeline for Energy Plan completion by October 15, 2011 created and plan underway. Letter to cabinet members sent this week regarding representation in process.
- CVPS new CEO/President named, Larry Reilly.

#### Legislative Issues/Contacts:

- Senate NR regarding Energy Plan
- House NR regarding H.56 – we have briefed Alex MacLean thoroughly on the moving pieces in this bill and have examined the potential rate impact of the biomass baseload renewable provision and the solar standard offer provision.
- Senate ED regarding telecom bill.

#### Significant Meetings/Events:

- Attended QC meetings Monday – Wednesday.
- Entergy regarding status as described above.
- Pole attachments – all utilities and several telecom providers
- Peter Bradford, Dick Saudek, and Michael Dworkin regarding Texas Compact and Department issues.

#### Evolving Issues:

- Discussion of further long term contract opportunities with utilities
- State Energy Plan – it would be ideal to hire a consultant for some modeling work related to the Plan and I may need some advice and support in that regard in the coming weeks.
- Vermont Universal Service Fund – VTA has expressed an interest in using this fund as a backstop to its bonding authority. PEG/community access groups will likely be opposed, as will small independent telephone companies that may wish to seek VUSF money given the change in Federal USF rules. In addition E-911 and other interests may not be pleased with VTA usage of the fund. I will have a meeting with Chris Campbell at the VTA, and will include Karen Marshall and

the AOA – while support for bonding authority is a priority, I believe we should consider the likely positions of other parties before we proceed.

- I am compiling some electricity pricing rules of thumb for your use – I hope to have them for you next week.

### **Summary of Key Department Activity, By Division:**

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

Summary of Key Public Advocacy Activity: Public Advocacy has been assisting the AG's office with getting information necessary to combat a possible preemption claim by Entergy Nuclear Vermont Yankee. Currently there is plan to also discuss the issue with counsel for CLF. CLF has some ideas it would like to share. Another major activity of PA this week is responding to a public records request from the village of Craftsbury re information on the Lowell Mountain project and agency communications with GMP. Lowell Mountain technical hearings resume next week. The transmission issue that has been outstanding between the Department and GMP is close to resolution after GMP has produced much needed information on the issue to DPS engineers. It is hoped that this will all be resolved before the DPS engineering witness takes the stand on the 23<sup>rd</sup>. Our main witness will take the stand on the 25<sup>th</sup>.

Tritium investigation at VY – Docket 7600 – Initial Briefs were submitted on Feb 16<sup>th</sup>. Reply briefs are due on March 2, 2010. The DPS position was for the Board to require Entergy to fulfill all requirements of the Buried Pipe and Tank Inspection Program (BPTIP), the Ground Water Protection Initiative and the recommendations of the SR CRA. NEC in its Initial Brief asked for more inspections. CLF continues to call for the closure of the plant. Entergy claims preemption on it all. Entergy has filed its first bi-weekly report to the Board on the new tritium investigation. Parties may comment on any of these reports within 10 days of their filing.

Kingdom Community Wind – Docket 7628 –Our attorneys this week are working on a response to a public records request from the village of Craftsbury re information on the Lowell Mountain project and agency communications with GMP. Lowell Mountain technical hearings resume next week. The transmission issue that has been outstanding between the Department and GMP is close to resolution after GMP has produced much needed information on the issue to DPS engineers. It is hoped that this will all be resolved before the DPS engineering witness takes the stand on the 23<sup>rd</sup>. Our main witness will take the stand on the 25<sup>th</sup>.

HQ PPA Contract – Docket 7670 – Initial Briefs are due Feb 18<sup>th</sup>. The Department continues to support the contract except for the WEC suballocation agreement and Swanton's need for the power. The Department will not support the request for enduring rate recovery because it is counter to past board precedent and traditional ratemaking principles that protect ratepayers. We will, however, carefully consider the arguments that Petitioners put forward in their briefs on 2/18 and decide if we will make any changes on this issue in our reply brief.

FairPoint Alt Reg Successor Plan – No Docket No– FairPoint's AFOR expires March 31, 2011. We have been negotiating with FairPoint on a successor plan. The focus at this point is on the service quality compensation points at risk, some billing metrics, and service quality guarantees

to customers. A meeting is scheduled for February 21. The Department seeks to have a successor plan filed with the Board as soon as possible, in part, to possibly obviate the need for Senator Illuzi's deregulation bill.

Beaver Wood Energy Biomass Plants- Fair Haven/Pownal --Dockets 7878/7679 - Beaver Wood filed a reply brief reiterating its position that the Board can and should take jurisdiction over the wood pellet manufacturing facilities pursuant to Section 248. The Board has continued to rule on intervention motions granting intervention to the Vermont Agency of Agriculture, Southern Vermont Citizens for Environmental Conservation & Sustainable Energy, the Vermont Agency of Transportation, , the Bennington County Regional Commission, the Town of Pownal, Central Vermont Public Service Corporation, Pamela Lyttle, Williams College, Williamstown and the Berkshire Regional Planning Commission . Of note is the fact that the Board granted these last three entities permissive intervention despite the fact that they are out of state entities (from Massachusetts) but limited their intervention to in state impacts. In Docket 7679 (Fair Haven) the Board granted intervention to the Vermont Agency of Agriculture, the Rutland Regional Planning Commission and to Central Vermont Public Service Corporation. The parties await a ruling on the Board on the jurisdictional issue. There is no schedule for future proceedings in the dockets at this time.

Critical Energy Infrastructure Information (CEII) – No Docket - The Board held a third workshop on CEII. Participants of the working group reviewed proposed standard Protective Agreement and Protective Orders, and proposed averments, along with a hypothetical CEII filing, and the current CEII policies of VELCO and CVPS. Participants expressed support for a Board rule that addressed CEII in the context of matters not before the Board in Dockets, and also supported the notion of a plenary rule that would obviate the need for individual protective orders to be issued in each docket on CEII matters. The Board intends to issue a memorandum indicating the Board's position on any proposed rule.

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

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

Electric EE Resource Track – Efficiency Potential Assessment – The DPS presented the Draft Energy Efficiency Potential Report conducted by GDS Associates to the Public Service Board. The report estimates that the maximum achievable energy efficiency potential is approximately 26% of Vermont's statewide 2031 energy consumption. Investigation continues to determine differences with VEIC's estimate of approximately 33%. The differences lie largely in the commercial sector potential and are likely due to differences in how forecasted electric consumption was allocated across building types and end uses.

#### EEU- Technical Advisory Group (TAG) and Technical Reference Manual (TRM):

Technical Advisory Group issues addressed this week include the following:

- EVT notified the DPS that they will be claiming snowmaking savings using a freerider rate that the Department disagrees with. EVT has proposed a change that the DPS feels is unsubstantiated. This issue will be addressed again through the savings verification process.

- The DPS responded to the EVT proposal regarding Injection Molding Machines – EVT and DPS are in agreement that, in the short term, a consensus freerider rate should be developed.
- DPS responded to EVT ‘retro-commissioning’ proposal regarding the appropriate process to claim savings from this measure. EVT agreed to create procedural guidelines for DPS review.
- DPS provided response to EVT’s proposal regarding claiming savings for “Lean Manufacturing” measures. There is an open question as to whether EVT should claim savings on a facility level or on an individual measures.

Staff met with EVT to discuss proposal to allow self-certification to meet low-income eligibility guidelines for certain programs. The DPS agreed to the following process – participants who have participated in other low-income programs (such as LIHEAP, Three SquaresVT, etc.) automatically qualify. Those who don’t meet that criteria will be requested to provide information to self-certify. If proper information is provided, they will be treated as low-income customer. If not, then they will still be served, however EVT will not count spending as low-income spending (thus those participants with uncertain status would not limit the funding available for low-income customers with certain status).

#### Comprehensive Energy Plan:

- Completed inter-departmental memo on CEP process on behalf of Commissioner; final revisions to draft goals & objectives, roadmap for public engagement process
- Staff continued work to review & revise assigned sections of plan (including Biomass, CEDF).
- Staff met with CEDF Director to review outline for the Commercial Wind section, gain updates on current development projects, and gain suggestions for recommendations on policies and goals.
- Updating Natural Gas section of the Comprehensive Energy Plan.

#### Clean Energy Development Fund:

- CEDF Director compiled data of all CEDF activity since inception for a report that Tom Kavet is going to do for the CED Board.
- Reviewed and provided comments on the Group Net Metering final report, which we want to distribute publicly as soon as possible.
- Reviewed a loan application for a farm greenhouse operation that wants to heat their greenhouses with geothermal and install heat recovery units on their greenhouses.
- Finalized work on the Budget Adjustment Act and the recovery of CEDF funds.
- We paid approximately \$25,186 for the Nathaniel Group’s (Vergennes) strobe light LED project – they are designing an energy efficient light to be used in the machine vision industry.
- Two projects closed this week: the Caledonia Kiln biomass heating system study (St Johnsbury) and the Nathaniel Group’s Concentrated Solar design project – The Nathaniel project closed early having decided, for both financial and fit reasons, they did not want to take the project further – they had completed design and testing of two concentrated solar PV models.

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

- Issued Request for Proposals for Energy Code Education, Outreach, and Training. Proposals are due March 3<sup>rd</sup>.
- We requested and received a DOE determination on EECBG charges for abatement activities for Town of Jericho, Calais Elem School, and Town of Westford. Abatement (moisture, lead, asbestos...) can only be charged under EECBG up to 25% of the underlying energy efficiency measure and the abatement is required by law. (For example, if SHPO requires moisture abatement for air sealing a basement).
- We paid about \$13,240 for three Regional Planning Commission grantees for planning and weatherization tasks.
- Submitted revised plan for Middlesex Financial Incentive Program to DOE for review.
- Grant agreements were completed for the following projects:
  - \$50,000 grant to Randolph Union High School for interior lighting retrofits
  - \$43,380 grant to the Town of Middlebury for energy efficiency retrofits at Middlebury Town Office
  - \$11,063 grant to the Town of Burke for lighting retrofits at the Burke Town Office
- 206 EECBG and SEP grant recipient contacts were sent a "Save the Date" request for the DPS Davis-Bacon Act webinar to be held March 15 from 9:30 to 11:30 a.m.
- Staff worked with the Town of East Montpelier on the scope of their proposed street lighting project with the goal to execute their grant agreement next week
- Staff continues to receive final invoices, narratives and property close-out certifications for EECBG projects that are 100% completed.

### State Energy Program (SEP):

- We paid about \$50,914 for Middlebury College's insulation project under the PSI (Public Serving Institutions) program
- Cancelled the Town of Norwich's \$220,000 grant for solar PV as they decided the overall project financials didn't work well for them.
- Finalized invoice for Springfield High School Exterior Lighting project for \$30,837.83.

### Sustainable Energy For Homes & Business Project (Sanders DOE Earmark):

- Processed invoice for Castleton State College for sub-meter program for \$2,820.00.
- Continued efforts to get DOE approval for VT Technical College invoice.

### **Finance and Management:**

Significant Events/Meetings: The Division has prepared a proposal for review and approval for the Commissioner and Administration to join Massachusetts in filing a complaint with the Federal Energy Regulatory Commission (FERC) that the return on equity granted to New England transmission service providers (11%) is too high and should be lower.

The Division coordinated the filing of comments with the Public Service Board regarding Vermont Gas Systems proposal for an "accounting order" to establish a rate payer funded "fund"

that will be used to support their expansion plans into Middlebury. The Public Service Board this week denied the “accounting order” request but approved the creation of the fund by adopting a modification to VGS’s Alternative Regulation Plan. They also ordered that an investigation be opened to resolve open items with the proposal.

Existing Issues: Smart Grid---Participated in the Rates Sub Group weekly conference call. Human Resource---Hiring Freeze Waivers, Vacancies and Additions...Consistent with existing guidelines the Division has prepared a package for presentation to the Secretary of Administration and HR seeking approval to fill 9 potential vacancies.

Alternative Regulation Plans:

Vermont Gas will resume working with Fin and Econ in developing a renewal or modification of their existing Alternative Regulation Plan.

FairPoint Alternative Regulation-The Division continues to work with FairPoint to develop an acceptable Alternative Regulation Plan in lieu of legislation—a substantive meeting has been scheduled for next week.

**Engineering:**

VT-NH Needs Assessment Study-ISO-NE released their final draft of the VT needs assessment which was driven by the potential retirement of the Entergy VY nuclear plant. The PAC (Planning Advisory Committee) was given the report to critique on 2/17/2011.

This study assesses the reliability of the transmission system in Vermont and New Hampshire through the year 2020. It examines the steady-state thermal and voltage performance of the system under a number of different dispatches and transfer scenarios, intended to stress the system as it might be stressed at summer peak load conditions.

The study identifies the areas of the system that fail to meet North American Electric Reliability Corporation (NERC), Northeast Power Coordinating Council (NPCC), ISO-NE, NU, VELCO, and NGRID standards and criteria.

Results of the steady state and voltage analysis identify that by the year 2020, the Vermont and New Hampshire transmission system will need additional resources and/or transmission to reliably serve the forecasted electric demands. The analysis performed shows many reliability violations including the following areas:

- The Vermont transmission system: The Vermont transmission system requires additional local reactive support to help maintain voltage within criteria. In addition, following the outage of major 345 kV lines which serve the area, the remaining 115 kV lines serving the state become loaded above emergency limits, indicating the need for additional resources to be located within that area or additional transmission capacity to maintain reliable operation following these contingencies.
- Multiple 345 kV line outages: The combination of the 379 (Vernon-Fitzwilliam) and 381 (Northfield-Vernon) line contingencies, as well as the combination of the 381 and 380 (Amherst-Scobie Pond) lines, causes some thermal overloads and many low voltage violations on the underlying 115 kV system.

- Source loss contingencies: Upon contingencies that result in a major source loss within New England (such as VY), the study area experiences widespread thermal and voltage violations.

Highgate Converter Station Cooling & Control System Refurbishment-VELCO submitted their proposed refurbishment project to the ISO Reliability Committee for review. Currently, the estimated project cost is \$38.4 million. The RC members raised a number of issues including:

- VELCO has not completed a Need Assessment as required by §4.1.a and 4.1.b of Attachment K to support their request.
- Further, a Solution Study should follow and inform the RC whether:
  - There are there advantages to building a new source-voltage converter rather than upgrading the existing 1985 technology.

Vermont Yankee Operation-The Vermont Yankee nuclear station continues to operate at 100% power.

On February 2, 2011, NRC reported on the examination results for 11 applicants for reactor operator licenses at VY. All were awarded licenses. NRC regulations require a minimum number of licensed operators are on site and Vermont Yankee has met this requirement.



## *State of Vermont...*

### **Department of Banking, Insurance, Securities & Health Care Administration (BISHCA)**

89 Main St. Drawer 20 Montpelier, VT 05620-3101 Main Number: 802-828-3301

Divisions: Banking, Insurance, Captive Insurance, Securities, and Health Care Administration

[www.bishca.state.vt.us](http://www.bishca.state.vt.us)

### **Memo from Commissioner Steve Kimbell**

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## **CONFIDENTIAL AND PRIVILEGED – NO SHARING** **Report to the Governor for Week Ending 02/18/2011**

### **Governor's Priorities**

#### **Health Care Initiative**

General Counsel testified before the House Committee on Health Care regarding health insurance and federal ACA. Continuing to provide legal support on the Health Care Initiative.

### **Issue Updates**

#### **(Securities) City of Burlington v. Morgan Stanley**

Burlington has filed a Statement of Claim with FINRA. This is first step in an arbitration proceeding. The Claim sets forth that there are approximately 1,500 participants and retirees that may have been harmed by Morgan Stanley's conduct. They claim damages in excess of \$21million and seek other remedies as well, many pursuant to Vermont law.

#### **(Securities) Steve Berry**

The Division has opened an investigation into the activities of Mr. Berry as they relate to seeking investors for a book. John Reese is heading this up for the Division.

#### **(Captives) US Rail RRG**

The Department petitioned the court for an order of rehabilitation for this previously seized captive, with a view toward paying all claims in full.

### **Legislative**

#### **(BISHCA) House Keeping Bill**

Submitted this week.

#### **(Banking) H.155**

Testimony given this week on this bill addressing property-assessed clean energy districts.

**General Information****(Captives) Licensing Update**

No licenses signed this week, though the division met with several prospective captives.

**(HCA) Blueprint**

The division is coordinating with Blueprint to seek approval from CMS to provide us with timely access to Medicare claims data. BISHCA will support the integration of this data into the VHCURES data warehouse in a compatible format by August 2011.



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*Jeb Spaulding, Secretary*

**PRIVILEGED AND CONFIDENTIAL  
MEMORANDUM TO THE GOVERNOR**

**TO: Governor Peter Shumlin**  
**FROM: Secretary Jeb Spaulding**  
**DATE: February 18, 2011**  
**SUBJECT: Confidential Report to the Governor**

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**SECRETARY'S OFFICE**

Don't forget you are scheduled to meet with rating agencies in NYC on Friday, March 18. You may want to schedule personal activities Thursday or Friday evening.

Contrary to the message in the news report the hiring freeze announced on January 10, 2011 is still in effect. As outlined in my February 2, 2011 Memorandum, we modified our approach with respect to the process we are utilizing in working with Agencies and Departments to achieve the required savings. This change in process was as a result of the Agency of Natural Resources and the Department of Taxes both taking a comprehensive look at all vacant positions with the end result of identifying significant savings that are sustainable beginning with the 2012 budget year. We have since met with a number of Agencies and Departments employing this same approach and to date have achieved savings totaling \$2,920,000. For the departments where we have reached agreements, they no longer are required to submit requests to fill vacant positions.

UVM is planning to publicly announce a plan to contain the costs of their retiree health plans in March in a manner not dissimilar to what the State has done for teachers and state employees in recent years. There may be some reaction to this announcement and they did not want the Governor to be surprised. If asked to comment, I suggest saying this is the beginning of a process.

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

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

At this point the Governor's priorities are intact in the Capital Bill.

Challenges include: Concept of how to organize two year bill. BGS is working on a model to help HCI committee make decisions and build a contingency comfort fund.

The Department of Corrections reorganization proposal. Concerns expressed relate to impact of space for programs and services, not recommended funding.

Rest area language. Desire to approve long range plan, strategy and Private Public Partnership agreements.

Proper amount to invest in VTA-Connect Vermont and investment in Information Technology. Not convinced that the \$13,000,000 is appropriate amount.

IT funding is somewhat contingent on House Appropriations support of Governor's proposal. If Appropriations does not support, IT falls to capital bill.

Wanda Minoli will submit a weekly report to Secretary Spaulding on Capital Bill progress on Fridays.

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

BGS held weekly meetings with chairs of House Corrections and Institutions, and Senate Institutions. They testified in House Corrections and Institutions on Rest Area language proposal in Capital Bill. BGS met with energy efficiency group including Lt. Governor Scott, Reps. Hooper and Klein and Sen. Mazza.

BGS staff testified to House Corrections and Institutions and Senate Institutions Committees on Waterbury ARRA window replacement energy projects, property transactions, language and DOC master plan.

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

BGS met with AOT Deputy Secretary Sue Minter regarding rest areas and information center's long term plan and strategy. Staff from Tourism, Historic Preservation, AOT and BGS are tasked with producing draft report in two weeks; followed by public comment before presentation to legislature.

### **Evolving Issues:**

BGS met with Paul Bruhn, Preservation Trust, regarding proposed Randolph Private Public Partnership Rest Area.

Stumbled upon draft of the fourth biennial climate neutral working group report and working to convene group to approve staff drafted report. The executive summary of Recommendations follows:

## Executive Summary

In accordance with the directives outlined in Executive Order #14-03, this Fourth Biennial Report of the Climate Neutral Working Group (CNWG) provides an update regarding the state of the science of responding to climate change; efforts to meet the goals of the Executive Order; and future planned steps and their anticipated impacts, expected challenges, and opportunities

Also summarized within this report are a number of related ongoing efforts within state government that will facilitate an expanded and coordinated campaign to reduce greenhouse gas (GHG) emissions.

The following recommended actions for continued GHG emissions reductions are presented in this report to be considered for implementation during 2011 – 2012 by Vermont State Government. These recommendations are outlined in more detail in Chapter IV. The major recommendations of this report include:

**RECOMMENDATION #1:** Remain vigilant with regard to continued evaluation and implementation of energy efficiency improvements within state buildings.

**RECOMMENDATION #2:** Implement a teleworking program for Vermont state employees as a GHG emission-reduction, emergency-management, and cost-savings strategy

**RECOMMENDATION #3:** Vermont State Government should rely more heavily on the Department of Information and Innovation's (DII) iLinc service and other telephone and web-based conferencing services

**RECOMMENDATION #4:** Promote stronger synergy between the Climate Neutral Working Group (CNWG), the State Agency Energy Plan (SAEP), and individual Agency Energy Implementation Plans (AEIP)

**RECOMMENDATION #5:** Collaborate with VTrans, CCTA, GMTA, CATMA and other transit providers to improve and expand bus / shuttle routes

## **DEPARTMENT OF FINANCE & MANAGEMENT**

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

The FY 2011 Budget Adjustment Act (H.65) has been passed and the Bill Review has been completed by Finance & Management, with no issues. The Governor will sign the Bill today.

The Budget Analysts continue to monitor agencies' and departments' FY 2012 Budget testimony before both Appropriations Committees and committees of jurisdiction, such as Transportation and Institutions. This monitoring will continue throughout the legislative session.

### **Evolving Issues:**

Commissioner Reardon, Deputy Commissioner Zeller, Budget Director Matt Riven, Commissioner Kate Duffy and Deputy Secretary Michael Clasen attended a meeting with the VSEA's Jes Krauss and Connor Casey hosted by Secretary of Administration Jeb Spaulding. The meeting subject was "personal service contracts" and how we might reduce the number of contracts written to outside vendors. Several large contracts were specifically discussed (APS, VABIR and CCS) and future recommendations were made by the VSEA about the State Hospital and a secure forensic psychiatric

unit. The VSEA is concerned that many contracts are let or renewed "on auto-pilot" and are not being reviewed to determine if the work could be brought in-house and done by state employees. The VSEA believes that closer scrutiny will reveal other contracts that are in violation of the "privatization" statutes 3 VSA Sec. 341-344. The VSEA also felt that many large contractors are overcharging and that at a minimum the State should be looking for cost savings on these large contracts. The Administration will begin to look at the largest contracts for service to determine likely contracts to look for savings on with the contractors.

A related meeting is scheduled for next week between Deputy Secretary Clasen, Deputy Commission Zeller and VSEA's Rebecca McBroom to review the records to be provided from a public information request from the VSEA on VABIR contacts and payments.

Last April (2010) US PIRG released a report grading states on their Spending Transparency website; Vermont's grade was "F". Last week Finance received a request for comments on their report prior to their updating the report. Their rating seems to have been based on the fact that we had no "Spending Transparency" or "Procurement" website(s). In fact, much of the information they thought should be on one or the other of websites is in fact available on the websites for Finance & Management (F&M), the Department of Taxes, and those of other departments. We responded by providing the appropriate links to the web locations of spending, contract, budget, other financial information, and reported on the work in progress currently underway on new transparency reports that will soon become available on F&M's websites. We also reported the increased focus on transparency by the Governor, Speaker of the House, and the Senate President Pro-Tem. Whether this will be enough to change the grade is not yet known. U.S. PIRG, the federation of state Public Interest Research Groups (PIRGs); VPIRG is not one of the 26 members listed on the website.

## **DEPARTMENT OF HUMAN RESOURCES**

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

DHR's General Counsel Steve Collier testified before House Government Operations about the Public Records Act. Collier described the type of public records requests DHR receives and the significant time and effort required to respond to public records requests.

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

Shay Totten asked Commissioner Duffy whether she had received a request to increase the salaries of four attorneys working for Legislative Counsel to compensate them for duties they would absorb as a result of the departure of Emily Bergquist. Commissioner Duffy stated DHR had not received such a request, but noted that some legislative staff attorneys had received salary increases in January 2011. Commissioner Duffy advised Mr. Totten that the Governor does not approve or control salaries for legislative or judicial branch employees, so she is unaware of the rationale for any increased salaries for legislative staff.

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

Secretary Spaulding, Deputy Secretary Clasen, and representatives from Finance and DHR met with VSEA representatives Jes Kraus and Connor Casey to discuss methods of reducing costs incurred on personal service contracts. See Finance & Management write up on this meeting.

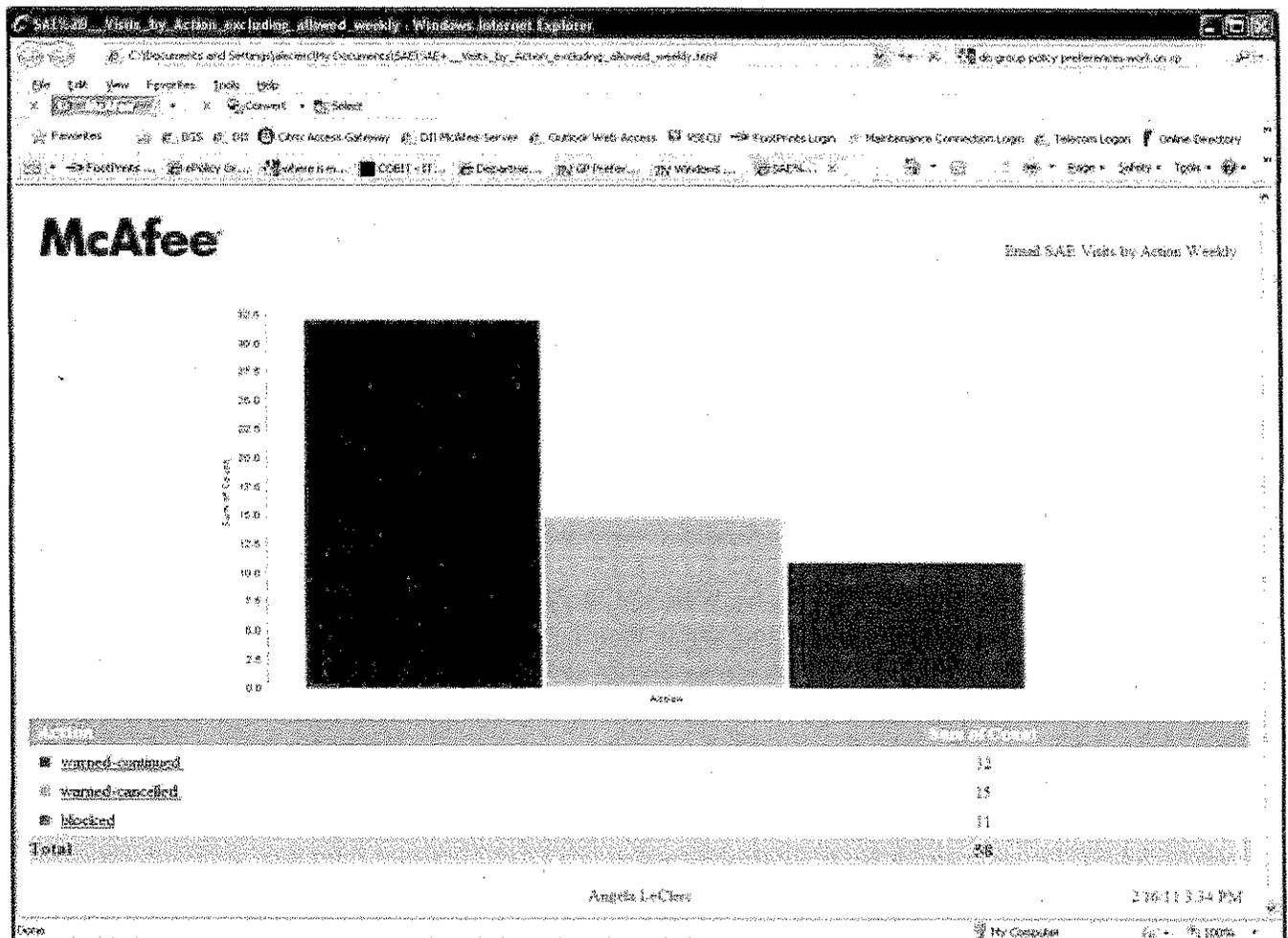
**Evolving Issues:**

Secretary Spaulding approved DHR’s recommendation to retain Susan Gilfillan with the firm of McNeil, Leddy & Sheehan to act as the State’s Chief Negotiator in bargaining with the VTA. DHR is in the process of negotiating a contract with Gilfillan. In preparation for bargaining, DHR has analyzed the financial impact of certain potential bargaining positions and shared this information with Secretary Spaulding. Secretary Spaulding will discuss the information with the Governor and work with the Governor to develop the State’s overall bargaining strategy.

**DEPARTMENT OF INFORMATION AND INNOVATION**

**Significant Events/Meetings:**

McAfee Site Advisor rollout– Received approval from DHR to block sites alerting to malicious code (RED) via McAfee’s security rating. Already this morning over 700 successful installations (as long as computers are hooked up to the network). The screenshot below shows in just a few hours after installation, the state has protected 11 desktop computers from accessing malicious web sites and gave information to our employees in order to make an educated decision before deciding to cancel traversing to a website that may have malicious code. The link to the information regarding the tool is [http://dii.vermont.gov/DII\\_Divisions/Customer/Customer\\_Support/Hardware\\_Software/McAfee\\_Site\\_A\\_dvisor](http://dii.vermont.gov/DII_Divisions/Customer/Customer_Support/Hardware_Software/McAfee_Site_A_dvisor)



## DEPARTMENT OF TAXES

### Status of Governor's Priorities:

Unemployed Veteran's Credit (House 275): Passed out of House Commerce, anticipated that Ways & Means will vote out on Tuesday. Commerce version primarily changes parameters on length of deployment, length of unemployment and availability for hire of non-resident who served in Vermont reserve unit. The Tax Department is estimating the cost based on changes.

The Commissioner spoke to the Veteran's Advisory Council. Members expressed interest in extending the credit for earlier era veterans, non-residents and the homeless who had not been deployed in the past 24 months. The Council appeared satisfied that there would be a report to the legislature on the effectiveness of the bill (providing an opportunity to forward such ideas), and voted to support the effort.

Blue Ribbon Tax Commission: The Department continues to support House Ways & Means and Senate Finance in their consideration of the recommendations, particularly the AGI proposal - which Ways & Means intends to have a position on by Town Meeting Break. Currently, there is work to model a fourth bracket together with a small credit available to middle class filers who itemize on their federal return.

Entertainment Tickets: The Commissioner is testifying to Ways & Means on February 17 on the Administration's position to clarify the law that is set to go into effect on April 1 with a technical bulletin rather than the proposal to redefine the prior joint production rule. The Commissioner will testify that it has become apparent that any joint production rule will continue to cause the type of confusion and compliance issues that were the impetus for a change. The Department will circulate for comment a draft technical bulletin on the \$50,000 threshold provision, to make even clearer that it will be applied as a look through to the presenting organization without respect to the use of ticket agents. This would appear to allay many of the expressed concerns with the impending change.

Netting of Business Loss on Household Income: The Commissioner has communicated to legislative leaders that she could exercise her discretion to abate penalties and interest if that would resolve the continuing concern for the numerous erroneous returns. There appears to be some movement in this direction.

Amazon Bill: Ways & Means is poised to pass a bill modeled on NY's law - which requires an online vendor to collect and remit sales taxes if they contract with affiliate sellers (known as "click through" entities) within a state. Basically, the law would define the affiliate contracts as creating "nexus" to defeat federal pre-emption under the Quill decision.

The Commissioner spoke with Tasha Wallis of the Vermont Retailers, who stated that she testified generally in favor of the bill with the caveat that the committee consider the impact on affiliates. (Apparently, some of these affiliates may be shy about advertising that they conduct national business - Scott Makay is a good resource however).

Informal research by the Department has shown that in the few states besides NY that have passed such a bill, no new revenue has been booked and in some instances, a revenue loss has been experienced. It is believed that everywhere except NY the large online vendors (Amazon, Overstock) have cut their contracts with in-state affiliates rather than comply and collect the tax. In NY, Amazon is remitting the tax but also has sued the state to recover it back. Amazon recently announced it was abandoning a distribution center in Texas rather than collect tax there. In short, there are risks to a bill such as this

that the Administration should be considering in messaging its support. The Tax Department is working on pulling together materials for a more detailed briefing.

On a related note, the Commissioner participated in a Federation of Tax Administrators conference call on general “nexus” issues. There is some sentiment in Congress to assert pre-emption against the states on the basis of insufficient nexus for the collection of other revenue, such as corporate income tax, in some circumstances. The multi state tax organizations long have been working to head off such efforts by coming up with a consensus “floor” of activity that states would abide by in asserting nexus. Obviously it is not easy to get states to agree to anything, but just an FYI that at some point Vermont may be asked to formally weigh in, and a context for the Amazon bill.

Education Funding Suite of Proposals: The Department has been working with JFO and the Education Department, as well as testifying to Ways & Means on a number of Education Funding proposals. The Tax Department held an extended senior staff meeting to start to quantify the resource needs, in terms of money, staff and time, to implement these changes, and that work is ongoing. The Department wants to be sure that the Legislature understands possible impacts and interplay of these changes on other major initiatives, particularly scheduled modernization of front end and back end processes.

AGI for Household Income: The Tax Department believes that this would greatly enhance simplicity and compliance. It may be appropriate to consider two to three add-ins of taxable income, and then consider how to limit the parameters to best apportion the Education Fund liabilities. Although this proposal would require a large implementation project, it might achieve significant long term efficiencies.

Education Department proposal on yield or “capacity” instead of rate: Instead of setting a rate, each year Districts would be informed as to the amount per pupil that \$1 raised statewide – the local spending rate would vary in proportion to the spending approved over this “capacity”. The Tax Department does not see any problems with this proposal, although it would require that there be a new mechanism to determine the income sensitized and non-residential rates – the policy risks need to be assessed.

Education Department proposal to adjust application of the CLA: Currently the CLA is applied to the local rate; the initial proposal was to apply the CLA to household value. The Tax Department foresaw several problems with this approach, which the Commissioner discussed with Deputy Commissioner Talbott. The Tax Department does not see any problem if all three elements (rate, household value and CLA) are expressed separately on the bill to derive tax liability for the household.

Tax Department “Administration” of the education property tax: Currently the Department is due to deliver a feasibility study to the Legislature on July 1 on such “administration.” There seems to be a great deal of legislative interest in having the Tax Department at least bill and collect the tax; broadly “administration” also could encompass assessments and appeals. Michael Costa is busy talking with folks within and without the Department to develop a comprehensive analysis of this issue; he is set to testify to Ways & Means next week. The Commissioner will discuss the complexities with the Secretary at our weekly meeting so that the Administration can decide if it wants to take any position(s) if this gathers steam. Considerations would include goals, interplay with modernization efforts, increased state workforce, public perception, priorities on collection.

Scaled Property Tax: There would need to be significant analysis to determine the impact of this proposal as compared to the present system. Implementation issues largely would appear to be linked to outreach and education.

## Richards, Alyson

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**From:** Gaidys, Maureen  
**Sent:** Friday, February 18, 2011 10:20 AM  
**To:** Richards, Alyson  
**Cc:** 'sbe@list.education.state.vt.us'  
**Subject:** Commissioner Vilaseca's Weekly Report

**To:** Governor Peter Shumlin  
**Cc:** State Board of Education  
**From:** Armando Vilaseca, Commissioner  
**Re:** Commissioner's Weekly Report  
**Date:** February 18, 2011

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**Restraint & Seclusion Rules:** At its meeting this week, the State Board approved proposed rules governing the appropriate use of restraint and seclusion (Rule 4500) in schools. Currently there is no statute or rule regulating their use. This is the culmination of a year's long process involving advocacy groups, Department and school district staff. The process was overseen by Susan Marks, Assistant Director, General Supervision & Monitoring Team. It is anticipated that LCAR will act on these rules within the next month.

**High Low Spending (Special Education) Report:** Act 82 of 2007 requires the Department to provide an annual report to the State Board on the status of high/low spending special education costs. Department staff prepared the information and presented it to the Board. In general, the report indicates: that the rate of increase in formula spending continues to level off and that the number of high spending districts continues to decrease.

If you would like to see the report, it can be viewed at:

[http://education.vermont.gov/new/pdfdoc/board/packet\\_archives/2011/02-15/EDU-SBE\\_Item\\_I\\_High\\_Low\\_Special\\_Education\\_Funding\\_Report\\_February\\_15\\_2011.pdf](http://education.vermont.gov/new/pdfdoc/board/packet_archives/2011/02-15/EDU-SBE_Item_I_High_Low_Special_Education_Funding_Report_February_15_2011.pdf)

**Legislative Testimony:** DOE staff members continue to testify and follow several education related bills. Topics this week included statewide governance, changing the appointment of the commissioner and the State Board, the FY2012 Budget, school nutrition programs, early education, pre-K caps, public funding for independent schools, educator professional development, Educational Service Agencies, and more. If you would like further information, please do not hesitate to contact our office at 828-3135.

**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).

