

# WEEKLY REPORTS

Checklist

11/2/2012

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 Sarah)

Susan Bartlett

☒ Agency of Human Services – Doug Racine

Sarah London

☒ Department of Financial Regulation – Steve Kimbell

Jeb Spaulding

☒ Agency of Administration – Jeb Spaulding

Special Reports

☒ Additional Report: Education

☐ Additional Report: Lottery

☒ Additional Report: Irene Recovery Office

☐ Additional Report: Boards and Commissions

**To:** Governor Peter Shumlin  
**From:** Lawrence Miller, Secretary - Agency of Commerce and Community Development  
**Date:** November 2, 2012  
**Re:** Weekly Report

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Thanks to the generosity of 43 individuals from this agency, contributions to this year's **VtSHARES** campaign totaled \$11,258, nicely exceeding our goal of \$10,700, and exceeding last year's contributions of \$10,432.

A few of us are thinking about how to connect with Vermont's second home owners who were affected at their primary residence by **Sandy**. No firm ideas yet. Megan is communicating with the tourism industry and they are doing some things too. Stoweflake is offering vacant rooms to people in the disaster areas who need a break between now and November 20 for example.

**Bill and Lou** are generating nasty comments on the tourism website. They need to get this done sooner than later and we can help! I propose having NECI do a collaboration with some local producers for a great local and organic barbecue sauce the GPS can endorse and we get Chuck Lacy's seriously cool big-ass barbecue and have ourselves a nice little oxen roast on the top parking deck at the Hilton while the returns come in.

**Northeast Kingdom projects:** Pat MP convened a meeting last week to discuss the training and workforce needs for the various projects at Jay Peak, Newport and Burke Mountain. Representatives from the Department of Labor, state colleges, local education and commerce agency were there. Bill Stenger gave an overview of the skill needs and timeline. We are following up with working groups in various occupational categories do inventory available resources and develop a plan for short-term training and long-term educational needs to support the various manufacturing, hospitality, construction and bioscience jobs being created. This week we convened a meeting of all affected agencies to receive an overview of the various projects. Bill Stenger is developing a list of project managers who will work with the various state agencies. We will designate a point of contact at each appropriate agency. There were no major issues identified at this meeting although permitting remains a bit of a wildcard in terms of timeline. We keep getting questions regarding housing and transportation needs and other issues and interest outside of workforce and permitting. Pat MP will work with Noelle MacKay and Jen Hollar to develop working groups around these various significant issues. NVDA is asking for extra money (\$50,000) to increase regional planning assistance but we are leaning towards increasing municipal planning grants to the individual towns and they can contract with NVDA for the necessary services.

**Vermont Gas Expansion Project:** Scott conducted a site visit to one of the Native American sites recently found along the proposed Vermont Gas pipeline alignment in New Haven. The site is one of about 15 new sites found by the University of Vermont Consulting Archaeology Program (UVM CAP) during their review of the expansion. The archeological work has proceeded on schedule and will be on-going until the winter weather arrives, with completion next year once all landowner permission's have been obtained. The Vermont Gas strategy has been to use the archeological information to help finalize the pipeline location with the goal of avoiding as many significant archeological sites as possible to minimize cost. The Division will provide conditional recommendations to the Army Corps of Engineers and to the Public Service Board during the Certificate of Public Good proceedings this winter.

**WSOC Update:** One area of concern that came up for DHP is that some members of the design team are viewing the restoration of missing architectural features on the historic core as optional items, to be fit into the project if the budget allows. Restoration of these features, including the porte cochere, cupolas, and chimneys, is integral to the success of the overall project and their restoration was agreed upon by DHP and BGS in the 2PA and Act 250 process as mitigation for the demolition of thirteen historic structures on the WSOC campus.

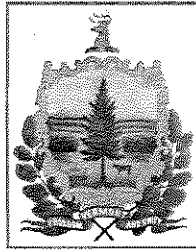
This year's 6th annual **Tech Jam** was a major success. The event was very well attended, and the OCE and the Department of Tourism and Marketing booth had a great deal of foot traffic and fielded numerous inquiries for various agency programs including the Procurement Technical Assistance Center (VT PTAC), STEM, and the "Make Vermont Home" initiative. The job fair and tech-expo showcased Vermont's most innovative tech and bio-science companies. The Tech Jam was an opportunity for young Vermonters to meet recruiting staff from various companies and learn about internship and employment opportunities.

Lisa Ryan is reviewing 3 CDBG- DR applications from the **Town of Waterbury**. The applications are all planning grants and address community needs that were identified through the long-term recovery planning. The projects are as follow:

- \$100,000 grant to Town to establish a local community development corporation. The funds will be used to hire a consultant who will create and launch the development corporation, will develop an economic development strategic plan and will offer immediate technical support and guidance to local business.
- \$100,000 grant to Town to plan for the development of a new municipal civic complex. The project will be carried out in two phases. Phase I includes preliminary drawings to assist the municipality in understanding the layout of two buildings at the State Complex that are being considered as well as conducting a review of other potential locations and suitable sites in Waterbury Village. Phase II work will include the preparation of a scope of work, permit review, budget preparations, building schematics, site planning and cost estimates.
- \$100,000 grant to Waterbury Community Energy, LLC to do a feasibility study and preliminary engineering and design for a district heating network. The study will determine the gross thermal demand of customers, plant capacity, district heat route map, pipe sizing, costs estimates and financial modeling.

At its monthly **board meeting**, VEPC Approved \$113,617 in VEGI incentives for Performa, LLC, a company that will re-employ many of the highly paid individuals left un- or under-employed when Dwight Asset Management was purchased and began consideration of a TIF District application for the City of South Burlington.

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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:** November 2, 2012

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**Secretary's Top Issues:**

Agency is working on an animal composting issue in Stowe. Composting animal mortalities on farms is an accepted practice if done correctly. Chuck Sanzone is a neighbor to the Paul Percy Farm (MFO) in Stowe. He has concerns about the farm's mortality pile which may be in violation of the AAP setbacks for mortality composting. Agency of Ag is conducting an inspection and will get back to Sanzone. Since the agency spoke with Mr. Sanzone, he sent an email and "cc'd" Governor Shumlin and the Stowe Reporter asking for tighter controls on composting animal mortalities on farms. Results of the inspection will be forwarded to the governor's office upon receipt.

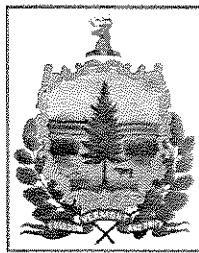
Drs. Haas & McNamara have begun the process with regional veterinarians, FDA & our Congressional Delegation to notify them of the potential food safety issues surrounding slaughter & consumption of alpaca meat. Currently, these animals are not consistently thought of as food animals, and owners do not have FDA-established drug withdrawal times or drug tolerances to follow when medicating animals that could end up in the food supply. There are not validated tests to detect violative residues in alpaca, & the practice of sending them to slaughter is becoming more common.

On Monday, the Agency is visiting a farm with a water quality violation with James Ehlers from Lake Champlain International. This farmer knows James made the original complaint & they would like to speak face to face. This particular incident is prompting James to question the confidentiality that he feels complainants should be allowed, which I am sure the Attorney General's office will hear about. This farm is also one that fits the model of the agricultural system he would like to see more of in Vermont & feels our regulations should promote it, a small grazing dairy.

This week a stakeholder meeting was held with the environmental advocacy groups to discuss agricultural policies & how to move forward in order to expedite lake water quality improvement. These groups are very frustrated, they are tired of the same old song & dance, & they feel there is a double standard held for farms. They offer very few solutions other than the notion of moving the regulatory authority of VAAFM to another agency such as DEC. DEC is very supportive of VAAFM regulating farms & David Mears has been working to relay that message to the environmental community. More debated expected during this year's legislative session where water quality is expected to be a primary focus in the Fish, Wildlife & Water Resources committee.

In re Zaremba – Dollar General #2S0699-3. Legal counsel negotiated, prepared, & filed settlement documents in this A250 case with the District #2 Environmental Commission. The issue was how the original 1986 permit & its conditions regarding primary agricultural soils, decided under a different 9(B) definition & standard, impacted the pending application for amendment under the present day 9(B) definition & standard in light of what is known as the "Stowe Club Highland" test from a Vermont Supreme Court case. It is estimated that 40 hours of the Agency's legal resources were consumed by this case. ACT 250 Criteria 9 (B) agricultural soil is becoming more complicated!!!!

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**Status of Governor's Priorities:**

**Press**

Dr. Haas was interviewed by VPR during the storm, Sandy, regarding steps that Vermonters can take to protect their companion animals and livestock during the storm.

**Communications & Marketing:**

This week, the Agency was consumed with the fall-out from Green Mountain College's decision to slaughter two oxen at the on-campus farm. On Monday, Sec. Ross issued a statement expressing support for the process by which the college reached this decision, as well as for sustainable farming as a whole.

Activists from across the globe have focused their attention on this issue and have launched an effort to stop the proceedings, which includes outreach to the Agency. We have received approximately 100 calls a day since the announcement, as well as a barrage of Facebook calls, all asking that the Agency "pardon" the animals.

We have captured the contact information of the callers, and have listened politely to their pleas. We have not responded to Facebook posts, as we've witnessed the unproductive back-and-forth which has resulted on Facebook in response to Green Mountain College's attempts to dialogue with activists. The BFP, VPR, NYT, USA Today, and HuffPo have all covered the issue, with more media expected in the coming week. We continue to closely monitor public sentiment on this issue and will update the Governor's office as it continues to develop.

**Significant Events/Meetings:**

Drs. Haas and McNamara have begun the process of communicating with regional veterinarians, FDA and our Congressional Delegation to notify them of some of the potential food safety issues surrounding slaughter and consumption of alpaca meat. Currently, these animals are not consistently thought of as food animals, and owners do not have FDA-established drug withdrawal times or drug tolerances to follow when medicating animals that could end up in the food supply. There are not validated tests to detect violative residues in alpaca, and the practice of sending them to slaughter is becoming more common. Veterinarians are concerned about their responsibility in these instances since medication administration in alpaca is done as extra-label drug use.

The Agency of Agriculture Management team participated in a day-long supervisory training on performance management conducted by HR Labor Relations Senior staff and the Agency's newly appointed HR team. Accountability, communication, recognition and performance goals were stressed. The Agency is committed to providing management tools to its team of supervisors/mgrs.

## **Evolving Issues:**

Agency is working on an animal composting issue in Stowe. Composting animal mortalities on farms is an accepted practice if done correctly. A neighbor has concerns about the farm's mortality pile which may be in violation of the AAP setbacks for mortality composting. Agency of Ag is conducting an inspection. Since the agency became involved, neighbor sent an email and "cc'd" Governor Shumlin and the Stowe Reporter asking for tighter controls on composting animal mortalities on farms.

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

### **Administration**

#### **Agricultural Development**

In re Zaremba – Dollar General #2S0699-3. Legal counsel negotiated, prepared, and filed settlement documents in this A250 case with the District #2 Environmental Commission. The issue was how the original 1986 permit and its conditions regarding primary agricultural soils, decided under a different 9(B) definition and standard, impacted the pending application for amendment under the present day 9(B) definition and standard in light of what is known as the "Stowe Club Highland" test from a Vermont Supreme Court case. It is estimated that 40 hours of the Agency's legal resources were consumed by this case.

Coventry Solar Project. Legal counsel received a new PSB petition filed by New England Waste Services of VT. Preliminary review indicates the solar projected is proposed for an open field in Coventry. Further review, supported by technical assistance and information provided by Agency staff, will be needed to determine Agency involvement in this matter.

Ag Innovation Center: The AIC board met as the initiative comes to a close, investing over 1.3 million federal dollars, matched by another \$2 million, into innovative agriculture projects supporting food hubs, workforce training, research into industry sectors including hops and meat, and critical market development. The board is considering a spring hands-on ag innovation workshop which would connect the lessons learned and progress to date on 52 projects to the work now underway by the Working Lands Enterprise Board.

### **Food Safety and Animal Health and Consumer Protection**

Animal Health (AH) tested pheasants at Peaceable Hill Pheasant Farm in Shoreham. Peaceable Hill is an NPIP participant and tests regularly for Avian Influenza and PT

Animal Health performed its compliance and weekly market report work at Addison Co Commission Sales. Addison County Commission Sales was inspected last week by USDA. The USDA inspector commented that Darryl Kuehne has done an excellent job of facilitating the establishment's compliance with traceability and record keeping requirements. Due to the activities of AH, the USDA inspection went quickly and smoothly.

Animal Health has scheduled a meeting with Fair Assn. representatives on drug testing of horse pulling events at fairs. Based on the experiences during the 2012 fair season, the methods by which drug testing is carried out at fairs needs to change before 2013.

AH performed poultry testing at Dresser Hill for maintaining export of hatching eggs to Canada

Jim Cameron has started reviewing Agricultural Fairs Capitol Grant Applications

The annual meetings of the North American Maple Syrup Council and the International Maple Syrup Institute were held in Groton, Connecticut on October 22 – 25. 300 representatives from all maple producing states and provinces were in attendance. Henry Marckres, Section Chief for Consumer Protection and Maple Expert, gave

two technical presentations, served as a judge for syrup and products, and attended the Maple Specialists meeting. Henry Marckres was honored by the NAMSC by being voted in as a life member of that organization.

The IMSI maple grading school was held in Brooklyn, Connecticut on October 26 and 27. Participants from as far away as California attended to receive two days of hands on training in grading and judging maple syrup and products. Kathy Hopkins and Beth Calder from the University of Maine and I were the instructors.

Syrup hydrometers are arriving for testing at our lab in Berlin. On Monday, another 2,000 were delivered. This is early for so many to come in, but helps with spacing out our workload.

#### Meat Inspection

Champlain Valley Meats issued a conditional license for a custom slaughterhouse based on additional requirements for operation. They have the ability to ask for a hearing or waive their rights.

### Agricultural Resource Management

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#### Plant Industry – Vector Management

The Agency has been working internally and also with the Vermont Department of Health (DOH) to design how the arbovirus surveillance program might look next year, depending on funding. Conference calls both internally and with the DOH have been productive. There will be joint (AGR DOH) evening informational town meetings held in Whiting (11/15), Brandon (11/28) and Sudbury (11/29).

Agency of Ag has distributed deer sera sampling kits to volunteers at 12-14 tagging stations to collect deer sera samples for antibody testing. Youth Weekend for the deer rifle season begins this weekend. Alan Graham, Liz Beeson (intern DOH) and Erica Berl (DOH) are staffing for the following weekend, the opening of rifle season.

Construction at the Berlin labs appears to be moving along nicely. Walls and floors are painted, doors are hung, and electric work continues.

This week a stakeholder meeting was held with the environmental advocacy groups to discuss agricultural policies and how to move forward in order to expedite lake water quality improvement. These groups are very frustrated, they are tired of the same old song and dance, and they feel there is a double standard held for farms. They offer very few solutions other than the notion of moving the regulatory authority of VAAFM to another agency such as DEC. DEC is very supportive of VAAFM regulating farms and David Mears has been working to relay that message to the environmental community. These conversations will continue with the environmental groups as they are highly motivated, charged by the TMDL and de-delegation processes and are gearing up for this year's legislative session where water quality is expected to be a primary focus in the Fish, Wildlife and Water Resources committee.

On Friday the Agency is presenting at the Annual Farm Bureau Meeting. The topic is water quality and after a brief presentation the attendees will be broken into small groups to gather feedback on regulatory, incentive and other approaches that are currently or could be used to promote water quality on Vermont farms.

This week there have been several agricultural water quality complaints related to manure applications. In the field investigations have not identified any violations of water quality regulations; however public frustration is clearly mounting even when sound management practices are utilized.

On Monday, the Agency is visiting a farm with a water quality violation with James Ehlers from Lake Champlain International. This is a farm that knows James made the original complaint and they would like to speak face to face. This particular incident is prompting James to question the confidentiality that he feels complainants should be allowed, which I am sure the Attorney General's office will hear about. This farm is

also one that fits the model of the agricultural system he would like to see more of in Vermont and feels our regulations should promote it, a small grazing dairy.

On Tuesday next week the Steering Committee (Vermont and Quebec) for Lake Memphremagog is meeting to follow up on water quality progress and the draft TMDL for the lake.

On Thursday, several employees from VAAFM are joining NRCS and NY agricultural partners in a discussion at Miner Institute about silage leachate treatment systems and tile drainage. The installation and management of silage leachate systems is very costly and may not be as effective as envisioned. This meeting is to learn how NY is dealing with similar installations and to identify areas where improvements can be made. Tile drainage is a very popular topic currently among the farm community and they have a strong desire to know if it is better or worse for water quality. This discussion is to continue to gather information about that question, which then answer really is, "it depends".

Finalized Structural pesticide applicators annual recertification credit meeting agenda. Meeting will be held in Montpelier on November 27th. More than 100 of Vermont certified structural pesticide applicators will be in attendance.

Agency personnel spent time designing an internal structure for an Agricultural Emergency response coordination in an effort to provide support for farms distressed by Hurricane Sandy. An Ag EOC was activated for that response from Monday afternoon until Tuesday afternoon. Activities included discussions of the Agencies COOP plan that identified needed modifications to that plan including a relocation site equipped with an alternate power supply. Our external partners in the response plan were contacted and put on alert, in the event that services were to be required. We are thankful that none of our farmers were impacted to the extent of needing assistance.

Mosquito control districts- Three evening meetings have been planned in coordination with the Vermont Department of Health in; Whiting - November 15, 6-8 PM - Town Hall, Brandon - November 28, 7-9 PM - Otter Valley High School auditorium and Sudbury - November 29, 7-9 PM - Town Hall. The draft agenda is attached. These meetings are designed to address public concerns about next year's eee and wnv survey and response.

Compost- Currently working with the Vermont DEC to coordinate discussions with Vermont's Compost industry to establish a path forward in the mitigation processes that would effect persistent herbicides in compost inputs. Also working very closely with the US EPA, Dow chemical and Dupont, and the US Compost council to address the issue collaboratively in an effort to design a US EPA registration process that involves designing a compostability standard for herbicides thought to be persistent.

Other pesticide related activity; Good for governor to know, maybe not part of the weekly for the staff...

Vermont Agency of Agriculture staff that work with the US EPA to manage the national level pesticide regulatory program through FIFRA (the Federal Insecticide, Fungicide & Rodenticide Act) are actively involved in a project that has direct impact on the regulation of biocides used as an ingredient in the drilling fluids related to hydraulic fracturing.



VAAFM staff have a long history of active involvement in AAPCO (Association of American Pesticide Control Officials) and SFIREG (State FIFRA Issues Research and Evaluation Group). AAPCO and SFIREG function as the national level professional association of state pesticide regulatory agencies and as the advisory liaison between state pesticide regulatory programs and the US EPA.

AAPCO & SFIREG have raised the question with US EPA that the chemicals used as biocides as a component of hydraulic fracturing fluids constitutes a “pesticidal use” as defined by FIFRA and therefore should be labeled for this purpose and registered US EPA. A review of the current list of compounds used as biocides for hydraulic fracturing indicates that a limited number of the compounds in active use have been registered and labeled by US EPA.

This impacts state regulatory agencies across the country in two ways. First, all states require that pesticide products be registered at the state level prior to use within a given state. This registration provides a funding source for state programs but more importantly, it provides a mechanism reporting an inventory of what chemicals are used and to conduct risk assessments based on the quantity of use. And secondly, state regulatory programs have a responsibility to conduct pesticide applicator use and safety training. These two essential functions of state regulatory programs cannot be implemented (triggered?) without a federal pesticide registration and product label in effect.

Note: An excellent resource on the legal and regulatory landscape related to this issue is the recently published GAO Report entitled Unconventional Oil and Gas Development – Key Environmental and Public Health Requirements (GAO-12-874) <http://www.gao.gov/products/GAO-12-874>

Of additional significance is the fact that the 2005 Energy Act established an exemption for oil and gas exploration and hydraulic fracturing in six of the eight major environmental statutes. The 2005 Energy Act contains no exemptions for FIFRA or TSCA (Toxic Substances Control Act). Additionally, the exemptions that apply to the Clean Air Act (CAA), the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA) specifically exempt requirements from the front-end preventive, sections of the laws. The back-end contamination response and remediation provisions of federal laws are still in place. The Energy is structured such that the regulatory review and risk assessment functions that are exempted from federal law are delegated to state programs for implementation.

There are two potential problems with this construct. First, state programs may lack the resources to conduct the preventive and permitting review otherwise required by the federal law and it is difficult for regulatory programs to identify, respond to and correct incidents of contamination if there is inadequate monitoring, evaluation and assessment prior to or during drilling activities.

In conclusion, the VAAFM through participation with AAPCO & SFIREG is focusing its' efforts only on the issues related to product registration status and the responsibility to conduct applicator certification and training. There are other potential enforcement questions to be resolved by US EPA at some later date but AAPCO and SFIREG is working to engage the oil & gas operators at the state level.

### Secretary's Comments

#### SANDY

Met with Staff numerous times in preparation for Sandy to help to staff the SEOC and prepare the Agency for its own emergency response.

#### MEETINGS

Ag Lab – met with staff to lay out time line and work agenda for advancing the work on finding a permanent home for the Agency's lab.

Maple – met with staff to review options on how to pursue maple branding and work yet to do. Included conversation with Bill Lofy to review Governor's perspective and to discuss arranging a meeting.

VHCB and VLT – Met with Gus Seelig and Gil Livingston to organize meeting with farmers to discuss the possible changes in stewardship cost associated with land conservation easements. A meeting is being organized for next Friday in western VT and another is planned in eastern VT.

Staff Development – attended day long meeting with all supervisory staff to do a management workshop led by the Department of Human Services. Well attended, great effort by HR and very helpful and informative for all involved.

VHCB – attended meeting to discuss conservation issues with the Conservation Committee. Agricultural energy became an important focus. All agreed there is great potential for ag energy and many conservation and land use implications. More discussion to be had.

#### EVENTS

Middlebury College – spoke to food system leadership and administrative leaders about how Middlebury College could further their efforts and investments in the local food system of Addison County and Vermont. Very productive meeting and conversation. Followed by speaking to class of 35 students about the food system in Vermont and beyond.

Farm Bureau – will attend annual meeting in Killington and speak at the luncheon. Agency will then conduct a workshop on water quality issues.

#### PRESS

Issued statement in support of Green Mountain College. Has generated many many calls to the Agency. No explicit threats to the Agency yet but threats are being made to the slaughter operators in VT and beyond. Spoke to Governor's office about emerging possible consequences for VT but agreed thus far that no additional actions or reactions are warranted at this time.



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**Executive Privilege**

**TO:** Governor Peter Shumlin  
**FROM:** Secretary Brian R. Searles  
**DATE:** Friday, November 2, 2012  
**SUBJECT:** VTrans - Confidential Report to the Governor

**Human Rights Commission v. Agency of Transportation**

In April 2010, the HRC sued VTrans alleging various employment law violations on behalf of former engineer Warren Vail. The trial court granted the State's motion to dismiss the claim as untimely; and the HRC appealed.

In a unanimous opinion to be released today, the Vermont Supreme Court has affirmed the trial court's decision and dismissed the suit against VTrans.

The HRC did not comply with the statutory requirement that imposes a mandatory time limit of six months on the Commission's authority to bring suit after it determines there are reasonable grounds for a discrimination case. (9 V.S.A., 4554). The appeal of underlying civil suit (Vail v. A.O.T.) in which the state was granted summary judgment is now scheduled for briefing.

**Act 250 Traffic Mitigation**

VTrans is beginning a study to examine the methodology for determining transportation mitigation payments by developers as part of an Act 250 application. We have extended invitations to Representatives Brennan and Botzow along with Senators Mazza and Ashe (Transportation and Economic Development Committees) to participate on the Steering Committee of the study which will convene a wide range of municipal, planning and development interests from Chambers of Commerce to RPCs. We believe that the current process doesn't work for anyone and is, in some cases, a detriment to economic development.

In a current case, we have taken a position that a "Fair Share" calculation, rather than a "last one in" charge should be utilized in the proposed Costco development at Exit 16. There has been some pushback on an application in front of the same District Commission concerning the same corridor from Myers Container Co. for a waste facility on Rathe Road in Colchester. We are reviewing that position since it appears that Myers trips will not contribute to the PM Peak traffic period which is what we are looking to

mitigate. Policy and Planning Manager Joe Segale is the point person on this study for VTrans.

### **Better Back Roads**

This program was one of many that changed under the new federal transportation law, MAP-21. It has been an important program to provide towns with technical and funding assistance to address water quality issues from local and rural transportation infrastructure. Heretofore, it has been administered by a non-profit called Northern Vermont Resource Conservation and Development Council.

The new law prohibits grant awards under the general category of "Transportation Alternatives" to non-profits and in response we have notified NVRCDC that we will be administering the program in conjunction with the Agency of Natural Resources. David Mears and Rich Tetreault have signed an operating agreement to ensure that the program remains strong. It will include coordination between and among ANR River Engineers and VTrans District Technicians and will continue to assist towns.

### **Hurricane Sandy**

The storm was not as serious for Vermont as other states but did involve sixteen separate responses from District staff for trees and/or power lines across state highways.

Staff conducted an "after action" review yesterday and determined the following:

#### **What was new?**

- District information officers were assigned earlier, during the planning phase to facilitate information from each region. As a result, email lists etc. were ready to go when the storm hit.
- Integrated social media in the communication plan early on resulting in a more up-to-date web presence for our *Twitter* feed.
- VTrans had two people at the State EOC at all times.

#### **Things that Worked Well:**

- Level of organization in districts allowed all costs to be captured early on in case there was a need for federal assistance.
- Information flow was excellent. *Twitter* and *Facebook* activity was high.
- IT staff were available ahead of time.
- TOC activated concurrently with the State EOC.
- Mapping data was out to districts in advance and districts were collaborating between regions.

#### **Things That Need Improvement (& who is responding):**

- Coding of time for purposes of pay (Finance and Administration).
- 511 Map was unable to handle the load placed on it (IT).
- GovNet can't handle 511 system; slowed down entire system (IT).
- Inadequate photo documentation of incidents (Technical Services).

### **Roxbury – Flint Brook Wall Replacement**

A wall was built by the railroad in the 1840's to redirect the current of the Third Branch of the White River (or Flint Brook). This wall was blown apart by the Flooding of T.S. Irene resulting in the flooding of the Roxbury Fish Hatchery and other downstream

issues. Our investigation concludes that the wall is owned by the town, although much of it is on private property, and neither the town nor adjoining landowners are interested in fixing the problem.

Enter VTrans, who in partnership with ANR has put in motion a small project to fix the wall temporarily. The short-term fix will help prevent smaller scale flooding and will cost approximately \$100,000. We are entering into a multi-party MOU that acknowledges we are doing the work but that we don't have the responsibility of ownership. In the meantime, we are doing a federally funded VT 12A corridor study to look at alternatives for several points on the road which was the subject of considerable damage during Irene including the loss of two state bridges.

#### **Burlington-Montreal Electric Vehicle Corridor**

Staff traveled to Montreal on October 26<sup>th</sup> with representatives of ACCD, PSD, ANR and GMP to meet with Hydro-Quebec regarding their electric vehicle charging program. HQ has done extensive research on the demand, equipment type, and other key factors and is now building out a network of fueling infrastructure through partnerships with private businesses such as restaurants and grocery stores in the Montreal region.

Meanwhile, VTrans is finalizing a scope of work necessary to identify optimum locations and fueling equipment type for facilities under VTrans purview such as Park & Rides, train stations, etc. There are also plans for the installation of a private charging facility at Exit 19 in St. Albans.

#### **Lamoille Valley Rail Trail – Act 250**

On October 25, the District 7 Environmental Commission in St. Johnsbury issued its long-awaited decision on the Act 250 application (#7C1321) filed on August 10, 2011 by the Vermont Association of Snow Travelers (VAST) and VTrans.

The Commission made partial, “master plan” findings as to the entire 93-mile-long project, along with full findings for Phase I, which consists of approximately 44 miles in three non-contiguous but independently useful segments: (a) St. Johnsbury to Danville, (b) Morristown to Cambridge, and (c) Sheldon to Swanton. The Commission also issued an actual construction permit for Phase I. As yet, there's no indication as to whether project opponents (most of whom live in the East Hardwick area) will seek judicial review in the Environmental Court. Because Phase I doesn't include the East Hardwick area, it's possible that the project opponents may choose to defer future challenges until VAST and VTrans seek Act 250 approval for construction of subsequent phases.

The project spans Act 250 Districts 5, 6 and 7. Because more of the project's mileage lies in District 7 (northeastern Vermont) than in any other district, the Chair of the Natural Resources Board assigned the application to District 7.

In 2005, then-Rep. Bernie Sanders got a \$4.94 million federal earmark to convert the old railroad bed into a four-season, multiuse recreational corridor. VAST committed to contributing the non-federal share. Because of the protracted Act 250 review, VAST has

had to spend more than originally planned on legal fees, as well as on engineering consultants needed to produce additional studies and reports for submission in the Act 250 case.

**Motor Vehicle Crash Statistics**

2012 Fatalities to date: 68

- 5 double fatality fatal crashes.
- 1 triple fatality crash.
- 38 fatalities; 32 (persons) unbelted.
- 4 motorcycle fatality not wearing helmet/DOT approved helmet.
- 21 operators suspected as driving under alcohol influence.
- 12 operators suspected as driving under the influence of drugs.
- 23 operators suspected to be speeding.
- 4 operators under suspended license.
- 1 person operating without a license.
- 4 Junior License operators involved in fatal crashes.
- Fatalities: 48 vehicle operators, 13 passengers, and 7 pedestrians. Fatal Crashes: 61

**VTStrong Report as of 10/29/12:**

Total VTStrong Plates Sold (payment collected)	33,081
Total amount of plates at vendors and DMV Offices	2,908
Current stock of VTStrong Plates @ VCI	3,900
Current stock of VTStrong Plates @ DMV Stockroom	650
Total VTStrong Plates Manufactured	<u>40, 539</u>

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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:** November 2, 2012  
**Subject:** ANR Weekly Report

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**Governor Level Issues:**

- **Sandy:** After much preparation, we were just as relieved to avoid major issues associated with this storm. Aside from minor flooding and tree damage, and a minor oil leak at a substation, we were spared any environmental issues. The preparation allowed us to apply some of the lessons we learned from Irene. As an agency and as a leadership team we were prepared and ready to respond.
- **Energy Siting Commission Kickoff Meeting:** The first meeting of the energy siting commission occurred on Wednesday. There was a full house and those who attended (even the anti-wind folks) seemed to be impressed by the commissioners and pleased about your charge to them to take a look at our process to see how it can be improved. Jan Eastman was selected as chair, and she did a great job managing the public comment period. Liz, Jan, Louise (vice chair) and I will be meeting to discuss how we think future meetings should be structured to best enable them to get the job done within the allotted timeframe.
- **Moretown Landfill:** A routine stormwater inspection at the landfill revealed some serious violations that will be resulting in enforcement actions. Staff who inspected the landfill discovered that MLI never constructed or attempted to manage the stormwater infrastructure as required in its permits. This is a serious issue. We authorized Moretown Landfill to extend operating hours over the past weekend in order to correct the problems and prepare for the impending storm. Staff met with them further yesterday. I will keep you in the loop.

On another note, the landfill has been meeting with neighbors. The meetings did not go well. MLI continues to push us to do something to "resolve this" without a public hearing or notice. We have reminded them that there is no path forward unless they can get the neighbors on board. We also



understand that Howard Dean is now working for the parent company of MLI. I will try to talk with him to give him an update on the status of the landfill.

Finally, I signed the groundwater reclassification decision yesterday. There has not yet been press on this – but I would expect it soon. I would also expect that the neighbors will decide whether to appeal this decision within the next couple of weeks.

- **Commonwealth Dairy:** We were pleased to have worked through the discharge volume and quality issues with Commonwealth over the past year that helped enable a smooth announcement of their expansion yesterday.
- **Natural Resource Map:** We held a staff breakfast today to introduce staff to the new natural resources map that we are calling the Biofinder. Candy Page and Andrew Nemethy were there and will be doing articles on it. The science and back end IT aspects of the project are complete, but we are still working on the public interface. It is going to be a great tool and have many applications – for identifying conservation priorities as well as helping developers get an idea of the best (and worst) places to build. We are meeting with the VSJF next week to discuss how best to integrate our datasets into the Vermont Energy Atlas so that it can work seamlessly for renewable energy developers. State statute requires us to be up and running by Mid-January. We are on target.
- **VASA:** We continue to work on a path forward and response to VASA on how best to implement the three trails they are seeking. We expect a response with a plan describing work to date to be completed next week.
- **EPA De-delegation Petition:** We are making good progress toward resolving all remaining issues on this de-delegation petition with the hope of finalizing an agreement with EPA before the end of the year. The successful testing of new technology at the Waterbury WWTF that can reliably achieve lower phosphorus levels is very helpful in getting us across the finish line, though it is likely CLF will still have issues with our approach, EPA seems to be increasingly satisfied.

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## **EVERYTHING ELSE:**

### **Legislative Issues:**

**Watershed Planner Position Complaint:** We responded to Rep. Cynthia Browning after learning that she is concerned about the loss of watershed planner Josh Gorman two years ago from southwest Vermont. The outcome is that Neil Kamman, who heads our watershed monitoring and assessment program, will meet with Rep. Browning and partners in that area in November.

### Press Issues/Releases:

**Moretown Landfill:** DEC staff members were contacted by a reporter from the Times Argus with questions regarding the reclassification of the groundwater under and around the Moretown Landfill. The decision on the reclassification was signed yesterday.

**SCORP:** The draft Statewide Comprehensive Outdoor Recreation Plan has been completed and a press release will be distributed encouraging the public to review and comment on the draft SCORP and to participate in the SCORP webinar on November 14.

**Fish and Wildlife related releases:** A variety of press releases went out regarding fish, wildlife and hunter safety issues, including:

- **Boaters Reminded to Wear Flotation Vests on Lake Champlain:** New York State boating law requires all persons aboard motorboats, canoes, kayaks, rowboats, and sailboats less than 21 feet in length to wear a personal flotation device (PFD) while on NY waters from November 1 to May 1.
- **Hunting:** Youth hunters can help provide critical data for Department Biologists by taking their deer to a biological check station this weekend; This year antlerless deer permits will be sent to by postcards mailed out in early November; Vermont's rifle season begins Saturday, November 10 and ends Sunday, November 25. One legal buck with at least one antler having two or more points may be taken anywhere in the state; Moose/Deer Violations: A 25-year old Starksboro man has been charged with taking a moose in closed season by Vermont State Game Wardens and a Poultney man is facing charges after poaching two deer in Fair Haven in October.
- **Watershed Grants Applications:** Applications are available for the 2013 Vermont Watershed Grants Program to fund projects that help Vermonters protect, restore and enjoy the state's watersheds. Applications are due to the Vermont Watershed Grants office by Friday, December 7.

### Significant Events/Meetings:

**Rutland City Public Meeting on Chloramines:** Staff was on a panel at a public informational meeting this week regarding the potential use of chloramine treatment at the City's water supply. The Department of Health was also on the panel. We received the following email from Evan Pilachowski, the City's engineer:

"The Mayor and I want to thank you all for taking the time out of your busy schedules to attend the water panel discussion last night. It was an extremely rational and educational discussion that would not have been possible without you. Throughout this whole process, all of your guidance and participation in the various discussions has been the key to thoroughly educating the public on the issues surrounding the use of monochloramine. Because of your assistance, we have now educated the public as best as possible so they can make an informed and rational decision in the election on November 6. Please let me know if I can ever do anything to return the favor."

**CEP public engagement.** Liz Miller and I attended the second in our series of public engagement meetings which was held in Rutland. These are sponsored by VNRC and the Vermont Climate Action Network which is the coalition of local energy committees. There were a lot of anti-wind folks there but

Liz is a pro and was able to answer questions about the energy plan and redirect the focus to what communities can do to help us achieve the state energy goals.

**Act 138 Report:** DEC held a meeting with the Islands Chamber of Commerce and Rep. Krebs to discuss the Act 138 report. This was the first of 6 focus group meetings to discuss the draft accountability framework pertaining to municipal stormwater/road infrastructure. The outcome of these focus group meetings is: (a) to help us answer Task 1 of the report (how to restore surface waters of the state); (b) to set the stage for future stakeholder meetings with EPA, and (c) ultimately to help meet the reasonable assurance provision of the Lake Champlain TMDL. We also began the set of 10 focus group meetings for the agricultural sector this week.

**2013 Watershed Grants Program:** DEC worked with the Department of Fish and Wildlife to finalize and publish notice of the 2013 Watershed Grants Program. A review committee will be formed in January 2013 and the committee's recommendation concerning funding awards will be directed to Fish and Wildlife's Commissioner in February.

**Stratton Mountain Corp:** The Stormwater Program facilitated a technical meeting between representatives for Stratton Mountain Corp and a homeowners association regarding conflicts in opinions on necessary stormwater improvements.

**CUTC:** The Current Use Tax Coalition met this week to continue discussions on proposed changes to the Use Value Appraisal program (UVA). Representative Alison Clarkson and Commissioner Michael Snyder both updated the group and a position will be crafted at the December meeting.

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## **SUMMARY OF KEY DEPARTMENT ACTIVITY**

### **Environmental Conservation**

**Electricity Markets Workshop:** Staff attended this two-day workshop presented by the *Northeast States for Coordinated Air Use Management* (NESCAUM) via webinar. Rutgers professor Frank Felder guided the class through a fast-paced overview of how electricity generation, transmission and distribution is planned and executed in the region. The trio will follow-up with staff from the VT Dept. of Public Service in the near future to further explore aspects of the electricity grid / markets that are specific &/or unique to Vermont. It is hoped that having a clearer understanding of the physical and economic workings of the regional electricity grid will help inform future environmental policy relative to renewable energy, smart-grid, electric vehicles, etc.

**Lamprey Treatment:** The Missisquoi lamprey treatment was tentatively scheduled for Wednesday. The water intake in Lake Champlain for Alburgh FD#1 will be closed for a period of time possibly 7-10 days until concentrations diminish at key test location in the lake. During that time the system will be receiving bulk water hauled from St. Albans' municipal water supply.

**Agri-Mark wastewater treatment proposal:** Agri-Mark (dba Cabot Creamery) is proposing a terraced disposal system (formerly referred to as "ridge and furrow") for disposal of a small percentage of their dairy processing wastewater. They would divert 5,000 – 10,000 gallons of wastewater to the terraced field which would be located in Cabot near the manufacturing facility. It appears, at this time, that the terraced

system would trigger the requirement for an underground injection control permit. A site visit with Agri-Mark and their consultants is planned.

**DEC Records Work and SharePoint Pilot:** The multi-agency team efforts to complete a MOSS 2010 pilot (that has been on hold for several weeks due to ACCD moves and other factors) has been resurrected and will restart next week. This team includes ACCD, DII, VSARA and ANR/DEC staff.

Our records staff are working with VSARA to prepare compliance files pursuant to the recently revised DEC Monitoring Records Procedure at the Records Center in Middlesex. Files will come from the Berlin Storage facility to Middlesex; be sorted/purged and organized. As appropriate, files that need to be retained will enter the records center. It is unlikely that many files will be returned to Berlin. This is a first step in proper preparation of files for scanning – but scanning will not occur at this time. This approach and location may be a model for other programs.

**Kent Pond Emergency Spillway Repairs, Killing, VT (Fish & Wildlife):** The corridor for this emergency spillway has been re-lined with stone and side slopes reformed and stabilized up to the dam structure. The footings for the wing wall and the wing walls of this structure have been cast, and the footings and cut-off wall are scheduled to be completed by week's end. This original portion of the structure was cantilevered following the flood event of August 28, 2011, and since removed to allow for safe working conditions to rebuild and re-stabilize the corridor. This FEMA related project should be completed by the first week of November.

**Chimney Point Access Ramp Replacement Project (Fish & Wildlife):** As part of a Vermont AOT project associated with site restoration and improvement at Chimney Point Historic Center in Addison, construction to rebuild the Fish & Wildlife boat access ramp to replace the demolition and reconstruction of the Chimney Point Bridge last year will begin shortly. With Lake Champlain levels at below normal and certainly lower than anticipated in the spring, the opportunity to complete this work now, is preferred. Work is tentatively scheduled to begin on November 9<sup>th</sup>. The access improvements will also include the construction and placement of two section dock system and associated handicap accessible approach, and improvements to the parking lot for boaters.

**Town of Bradford:** A loan amendment was approved for \$1,887,500.00 bringing the total loan to \$4,079,750.00 to fund water line replacement work, a storage tank, replacement booster pump station, well pump station improvements.

**Town of Sheldon:** A loan amendment was approved for \$396,813.83 bringing the total loan to \$2,545,881.83 to fund field work, surveys and mapping for the consolidation of the Sheldon Village and Sheldon Springs water systems. Source water for the consolidation system will be obtained from Sheldon Village's drilled. The project includes approximately 12,000 linear feet of transmission and distribution main, a new 75,000 gallon water storage tank and a booster pump station.

**Village of Essex Junction:** A loan amendment was approved for of \$4,000,000.00 increasing the loan value to \$8,828,200.00 for the refurbishment of the wastewater treatment facility. This action adds additional funding for the construction phase cost of the wastewater treatment facility upgrade.

**Upper Valley Landfill Site:** Staff attended the Greater Upper Valley Solid Waste Management District's Sustainability Park Visioning public meeting. The goal of the meeting was to bring together interstate and

inter-district stakeholders, and community members to discuss the future of 175 acre parcel of land currently permitted to build a landfill. While the initial intent 20 years ago was to use the property to host a landfill, the need has not presented because the Lebanon landfill in New Hampshire has exceeded its original life expectancy by 15 years and is anticipated to operate for up to another 15 to 18 years.

**Radiological Exercise:** A week long exercise was attended by DEC staff as well as others from other state and federal agencies. The exercise provided training for radiological releases in general and the tabletop exercise on Tuesday included a scenario related to a substantial release of Cobalt 60 due to a traffic accident and explosion. The full scale exercise on Thursday involved a simulated bomb resulting in a release of Cesium 137. The SEOC was activated and the plume tracking team and sampling team were deployed in different areas of the state, but employed much of the training received under the umbrella of Vermont Yankee response actions.

**Clean Water Draft Questionnaire:** Watershed Management completed a draft questionnaire on clean water – to be used for the purposes of surveying Vermonters' preferences about clean water – the results of this survey may be helpful in assessing public support for a statewide clean water trust fund. We received confirmation this week that UVM and St. Mike's College will partner with us (on a pro bono basis) to implement and analyze the survey. UVM and St. Mike's involvement is critical to ensure statistical significance of the results.

**Vermont Tissue Hydropower Project:** Streamflow Protection staff took part in a site visit and meeting at the Vermont Tissue Hydro project on the Walloomsac River to discuss aspects of project's recreation plan needed for the Water Quality Certification. After evaluation of the site, it was concluded that in order to move forward with proposed plan Vermont Tissue would need a letter from the Town of Bennington permitting the use of a park, directly downstream, as a put in point for paddlers portaging around the project. Work on the 401 is ongoing, with the goal of putting a draft on public notice in the next two or three weeks.

### **Fish and Wildlife**

**Vermont Gas pipeline:** Staff and consultants reviewed most of the length of the proposed 40+ mile pipeline from Colchester to Middlebury. The greatest natural community concern is likely an area of Pine-Oak-Heath Sandplain Forest (an S1 community) in Colchester and Essex that the pipeline will go through.

**Expediting development of small hydroelectric projects:** Staff met with personnel from DEC to discuss the implementation of S.148, an act relating to expediting development of small hydroelectric projects which became effective May 14, 2012. It directs the Public Service Department, in consultation with ANR, to seek to enter into a Memorandum of Understanding (MOU) with the Federal Energy Regulatory Commission (FERC) for a program to expedite the procedures for FERC's granting of approvals for small hydro and so-called conduit projects in Vermont.

**Turkey:** The majority of the shotgun turkey hunting season has closed. Wardens report participating hunters were very successful. Numerous violations were encountered normally centered around shooting from roadways or vehicles. There were several incidents involving hunters shooting more than their one turkey limit, some accidentally and some on purpose. Citations were issued when purposeful violations occurred.

**Deer:** The October archery season is now completed. The last week of the season continued to generate many illegal night-time “shots fired” complaints and several illegally shot deer were located. Last week wardens made arrests on 4 separate night-time deer hunting cases and several more arrest for night-time spotting and locating incidents with firearms present within the vehicles.

**Hammond Cove Shooting Range:** Fencing was completed at the Hammond Cove Shooting Range. All that remains is some access road improvements that need to be completed before the range can reopen to the public. The goal is to open the range by next weekend to allow some sighting-in prior to deer season.

**Bait Fish Hearings:** The official public comment period on these rules ends November 2 and the F&W Board will take their second vote on the rule at their December meeting. It is anticipated that any changes will be in effect by February 3, 2013.

### **Forest, Parks and Recreation**

**Commissioner’s Meetings:** Commissioner Snyder met this week with Sen. Ginny Lyons for a discussion about forestry issues in Act 170, the energy bill. Also this week, the Commissioner participated in meetings of the Current Use Tax Coalition and the Conservation Issues Committee of the Vermont Housing and Conservation Board.

**Storm Damage Assessment - Ski Areas:** Storm damage this week was minimal at Vermont’s seven ski areas that lease state forest land. Other than a couple of waterbars that were washed out and need to be restored, rainfall did not pose any serious concerns at any of these ski areas. Wind damage was of greater concern, but impacts were still slight and were largely limited to the higher elevations at Killington and Okemo ski areas.

**Lafreniere Property Update:** Lands Division staff met with Vermont Housing and Conservation Board staff this week to discuss the possibility of using a portion of the sale proceeds for stabilizing the historic barns on this property. Under the terms of the legislation that authorized the sale of this property, the sale proceeds are to go to the Vermont Housing and Conservation Board. Given that the estimated cost of barn restoration (approx. \$160,000) exceeds the appraised value of this parcel, VHCB staff felt that barn restoration would not be a priority use of these funds. Instead, they suggested that the Department explore the possibility of securing a future Barn Restoration grant through the Division for Historic Preservation to facilitate needed barn stabilization.

**Emergency Resource Preparation:** Forestry division staff updated the Storm Resource guide on the FPR website and established a clear link with ANR, Vermont Emergency Management and within the division through the Incident Command System on response for Hurricane Sandy. Chainsaw crews were prepared to be deployed but were not needed. While we were all relieved we did not need to deploy, we are now examining ways to improve both our outreach and contacts should they be needed in the future.

**US Forest Service Grant Preparation:** ‘Sandy’ interrupted the furious pace of work taking place on grant preparation for the Forest Service’s annual competitive grant program. We are submitting seven grants of our own, helping partners with four others and participating with surrounding states on one. This comes on the heels of grant writing for forest health.



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

**To:** Peter E. Shumlin, Governor  
**From:** Douglas A. Racine, Secretary of Human Services  
**Re:** AHS Weekly Report  
**Date:** November 2, 2012

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**Vermont Department of Health (VDH)**

Immunization Regulations: The VDH is currently reviewing public comments on the proposed regulation and we are working on making changes to the rule in response to those comments. We anticipate filing with LCAR in the next week or so.

Children with Special Health Needs (CSHN) Rule: The VDH is filing its final proposed rule with its administrative rules. All of the comments received opposed the change to the rule; however, the changes are necessary to meet the directive of our federal funding source for these services. While some families who have received a great deal of financial assistance from CSHN in the past will not receive that same level of assistance, we have worked to refer them to other agencies and programs. The changes that we are making to this program will allow us to serve more children with special health needs than we have in the past.

Physician Online Renewals Progressing: Progress continues as the Medical Practice Board works to get through the relicensing of approximately 3,500 physicians, for the first time using the new online system. In response to concerns expressed about the process for reporting malpractice events, the Board sent an email to all physicians on October 31<sup>st</sup>, and will work with the Medical Society and leaders of the physician community to coordinate communication.

Obesity: Recently, Commissioner Chen gave presentations to the School Board Association and VT Business Roundtable about the obesity epidemic, on what the VDH is doing and what they can do to address the problem.

**Department of Mental Health (DMH)**

DMH anticipates filing the emergency Certificate of Need (CON) for the 25 bed hospital on Friday the 2<sup>nd</sup>. This keeps the process on schedule, including holding the public hearing on November 16<sup>th</sup>.

Morrisville: There has been another complication at Morrisville. It involves setting up the necessary pharmacy services in collaboration with Copley Hospital. The pharmacy is not likely to be ready until right before Thanksgiving. The DMH now anticipates admitting the first patients the week of November 26<sup>th</sup>. In the meantime, the licensing division will be conducting



an inspection of the building on November 7<sup>th</sup>, and the Board of Health will be holding a licensing hearing on November 13<sup>th</sup>.

Secure residential: The nearest neighbor to the Middlesex property has appealed the project. The BGS attorney anticipates that with various legal maneuvers this could hold the project up for as much as 6 months. The DMH, the Department of Buildings and General Services (BGS) and key legislative chairs are discussing the possibility of taking the neighbor up on his offer to sell the property or look at other sites.

Citizens in Newark are voicing concerns with the town about the placement of two individuals at Eagle Eye Farm in that town. One is an individual who had been at Southern State Correctional Facility (SSCF) and the other had been a long stay patient at the Retreat, and is also a sex offender. Both are doing well in their new settings. The select board will be holding a meeting to discuss further. The DMH has been in touch with the select board chair.

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

#### **Ongoing Issues:**

Adult Protective Services (APS): No program updates. Litigation grinds on.

Despite plaintiffs request for mediation, the attorney continues to burden the unit with demands for more discovery.

#### **Emerging issues:**

No further information about Eagle Eye Farm.

I was interviewed by Wally Roberts who is writing an article on VT Nursing Homes for VT Digger. He has obtained a study of national rankings which purports to show poor performance by VT nursing homes. My basic talking points, after consulting with Alice Bonner at CMS as to her opinion about the study, were these: Regarding the data:

- State to state variability has been noted in a number of reports.
- There are a number of possible reasons for these differences:
  - a) actual differences in the quality of nursing home care
  - b) differences in the skills and training of state surveyors
  - c) differences in how states determine which tags to use to cite deficiencies
- Don't confuse the lack of a citation with good quality.
- In a small state like VT, a few increases or decreases in the number of deficiencies in a particular category could alter the state percentage significantly.

I met with Matthew McDonald from SEIU who alerted me to legislation he plans to introduce that would create the necessary legal frame allowing direct care workers to organize. I agreed to take a look and to have a follow-up discussion. He is respectful of the fact that I am not in a position to endorse or not endorse it.

## **Legislature**

I was contacted by Rep. Jim McCullough who requested to meet with me on behalf of a constituent who is under investigation for abuse. On advice of counsel, I am not able to do so. I will try to address some of his general questions about the APS in writing.

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

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

Grants to Burlington Police Department (BPD) and Rutland Police Department (RPD): As discussed during the close of SFY 2012, the DOC is moving forward with a partnership with both the BPD and RPD to enhance community supervision and ideally, lower crime. This is a pilot program and the DOC will use \$100,000 of one time, carry forward funds, for this effort.

Offenders walk away from Supervised Work Crew: On October 31, 2012, two offenders (Matthew Hinton and Christopher LaFlam) walked away from supervised work crew at the Hillside Cemetery in Norwich. Hinton is serving a sentence of 8 months 30 days to 10 years for Burglary, Grand Larceny, Forgery, Escape, and Pettit Larceny. LaFlam is serving a sentence of 1 year to 8 years for False Information to Police Officer and False Pretenses. The scene was secured and the Vermont State Police and local police responded to the incident. The community was notified using the Community Alert Notification System. They were captured in New Hampshire the same day and are now back in DOC custody.

### **Other:**

Hurricane Preparedness: The DOC spent time last week preparing for Hurricane Sandy, in the event it became an issue for Vermont. We tested systems, generators and filled fuel tanks in advance of the storm. None of these systems were required; however, it was a good opportunity for the DOC to sharpen its emergency preparedness systems.

### **Population:**

The department has maintained its overall incarcerated population under the 2,100 mark for the last week. This has been achieved by the reduction of the sentenced population in both the male and female sectors. The detention population has remained the same overall above the 400 person mark. The out of state population has remained at 509.

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

### **Evolving Issues:**

Bennington School Update: The U.S. Justice Department is moving forward with the fraud case against the Bennington School, a residential program for youth in DCF custody. As part of a negotiated settlement, the key management staff will be required to leave the school.

We have connected the Bennington School with Becket Family Services. Becket runs over twenty programs for disadvantaged youth in Maine, New Hampshire and Massachusetts and is currently negotiating to purchase the School. Increasing the presence of Becket Family Services in Vermont will greatly strengthen our system of care as they fully embrace and support the family based treatment model the DCF's residential programming is moving toward.

The DCF's residential programs have focused exclusively on the treatment of vulnerable youth in their care. Now, the DCF is focused on holistic family based care that serves youth and their parents. The DCF data show that 45% of teens served in residential programs are in prison within three years of discharge. To change the trajectory for these youth, treatment for the whole family will ensure the family's skills and supports are improved when the children return home.

Building Bright Futures (BBF) Council: At the request of Sen. Kitchel and Rep. Heath, the BBF Council plans to convene stakeholders this fall to discuss issues related to child care providers and collective bargaining. The BBF Council is consulting with legislators in the early planning stages to assure the process fully engages key stakeholders in the discussion of this highly volatile and contentious issue. The DCF is pleased an impartial group like the BBF Council is bringing together different view points, fully exploring the potential impact of early care and education providers having collective bargaining rights with the state. There is limited information available about the experiences of other states that have supported child care unions. Some studies claim that provider rates have increased as a result of collective bargaining, and providers have gained access to better training opportunities.

Vt. Parent Representation Center (VPRC): Trine Bech, a founding member of the VPRC, has been offering pro bono legal services to parents at significant risk of losing custody of their children. Trine is hoping to secure funding for the VPRC, an intervention model with proven effectiveness in other states. Parent Representation Centers provide legal, social work, and peer supports to families who are on the verge of losing their children to the state. Trine and VPRC board member Sara Kobylenski met with Commissioner Yacovone and Family Services' Field Operations and Child Protection Director Karen Shea to share the successes of her work with a half dozen Vermont families and asked the DCF to support a demonstration of the model. The DCF Family Services leadership believes implementing this model in one region and tracking the outcomes closely will result in fewer children coming into custody while supporting the creation of healthier families. The DCF will pursue conversations with private funders such as the A.D. Henderson Foundation and the Permanent Fund to fund a demonstration of the project.

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

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

Systems Integration Contracting: State staff continues to work with Oracle Consulting to negotiate a contract to serve as the system integrator for Vermont Health Connect. Contracting with a system integrator is an essential step for CMS to certify, by January 1<sup>st</sup>, that the state is prepared to run a state based exchange by October of 2013. Failure to be certified would be a

significant policy set back and would undermine the administration's credibility regarding its capacity to successfully deliver on broader health care reform goals.

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

Federal delegation: Commissioner Larson held a conference call with representatives of Senators Sanders and Leahy. Updates were provided about the state's comments on proposed federal rules related to multistate plans offered in the exchange, state premium and cost sharing assistance, and progress toward certification as a state based exchange.

#### **Press/Media Contacts:**

Press Release: On November 1<sup>st</sup>, the DVHA distributed a press release announcing a Request for Proposals (RFP) to invite health insurance organizations to formally express interest in selling Qualified Health Plans (QHP) on Vermont's health benefit exchange, Vermont Health Connect. Insurance issuers who respond to the RFP will submit QHP proposals to the State in January of 2013 and associated rates will be filed in Mid-March of 2013. The selected QHPs and rates will be available to the public in July of 2013.

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

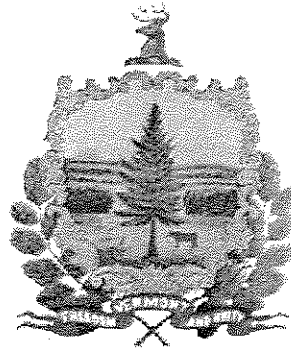
Stand Alone Dental/Northeast Delta Dental: Commissioner Larson, Robin Lunge and Steve Kimbell met with Theo Kennedy and Anthony Otis, on behalf of Northeast Delta Dental, about the decision not to offer separate pricing and offering of pediatric dental plans on Vermont Health Connect, the health benefit exchange. This decision is a disappointment to Delta Dental but precipitated by the administrative complexity of agreeing to this policy decision.

Stakeholder Engagement: The Exchange team hosted representatives from three health insurance carriers – Blue Cross Blue Shield of Vermont (BCBSVT), MVP and the COOP – for the first of many Exchange design workshops. This was a very successful meeting, with carriers expressing satisfaction on the work. BCBSVT has privately expressed strong reservations about the ability of the Exchange to be ready in time and is concerned that the current project status is a risk to their success as well.

Vermont Home Health: Commissioner Larson is meeting with representatives of home health agencies this week at their request to discuss a range of issues important to home health including reimbursement rates and telehealth.



# Memo



**TO:** Governor Peter Shumlin  
**FROM:** Keith W. Flynn, Commissioner  
**DATE:** November 2, 2012  
**SUBJECT:** Governor's Report

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Division Reports and Updates;

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Criminal Justice Services

## Marijuana Dispensaries

We received approval and proper instructions as to how to implement the proper codes for processing fingerprint supported record requests for dispensary employees. We hope to have this finalized by Friday and start receiving prints from the employees of the Burlington Dispensary.

We are still awaiting payment of the fee from the Waterbury Dispensary. Apparently they are having some problems signing their lease with the property owner. The property owner has raised the rent on them on two occasions. They are also considering moving to Montpelier if they cannot settle on a lease agreement with the Waterbury property.

We have conditionally approved the Mendon/Rutland dispensary which is located in the Town of Mendon. We have not heard anything more from them this week.

## Justice Information Sharing Program – E-Citation and VJISS

I processed payment this week of our first six months membership in the open justice broker consortium. We are joining the consortium starting January 1, 2013 through June 30, 2013 in the amount of \$42,500. The funding for this membership is coming out of an approved line item in one of our technology grants. We had received federal approval to join this consortium (\$85,000 yearly membership) and use \$85,000 to pay for the first years membership. We are using federal money to bridge the first 18 months of membership so that we will only need \$42,500 in general fund money in FY 14 instead of the whole \$85,000.

This consortium is part of information sharing strategy and part of the development of our open justice broker software.

### **Sex Offender Registry**

The Governor has recently received a letter advising that we are out of compliance with the SORNA regulations and as such our Bryne funding will be penalized by 10%. This penalty is being re-directed to improve our sex offender registry processes. Specifically we are going to use this funding to develop an interface between our sex offender registry database and the national crime information center.

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### **State Police**

- **A Troop** -Troopers responded to Hinesburg on Tuesday the 23rd to assist with the investigation of a confirmed methamphetamine lab. 19 year old suffered serious chemical burns to his face, torso, and legs as the result of a "one pot" lab blowing up in his face. VSP Clan Lab Team response along with DEA Clan Lab Team, and hazmat. Initial investigation was concerning as there was potential presence of anhydrous ammonia. Scene secured and all teams returned on the 24th for investigation and clean up. Results, 19 year old likely has permanent eye damage. US Attorney Office accepted Federal case with federal search warrant. Seven "one pot" systems found in the back yard with subject's chemicals and other material to make meth. Subject used a dangerous system in which he cooked the drug in metal and glass containers rather than plastic containers.
- A total of 138 cases and 14 arrests (21 charges) for the St. Albans Barracks in the last week, including eight DLS arrests. 10 thefts & 3 burglaries were reported, and four consent searches.

### **BCI**

- Interview with possible embezzlement case in Charlotte / Victim alleges past employee used company credit card for personal expenses / Total missing funds in excess of \$16,000.00
- Assigned drug case at CRCF / Inmate brought in a large amount of narcotics into facility / first thought to be cocaine
- Assist NIU with pill buy in Saint Albans

### **B Troop**

### **FF**

- Arrest for 2010 burglary and arrest for 2011 burglary
- Multiple arrests for possession/DUI and domestic assault

- Subject arrested and lodged after he rammed an off duty Newport PD officer in his personal vehicle.

#### BCI

- Assist to uniform on suicidal subject threatening to kill himself with knife
- Began investigation into Prison Assault. (Inmate vs. inmate)
- Assist uniform with Business burglary cases.
- Assist Sheriff's department with power substation that had been shot.
- Shooting West Charleston. Male got shot in hip/butt. 1 male subject lodged in regards to this case.
- Follow up with Hardwick PD on Bank Robbery

#### C Troop

##### FF

- DDACTS Patrols in Benson & Mt. Holly
- Community Forum held/ Feasibility Study

##### BCI

- Assist to Rutland PD with Fatal Accident, phone downloads.
- Researched information on male subject posting threats on VEM website.
- Clan Lab in Hinesburg, multiple one pot cooks and HCL generators.
- Pre-sentence investigation for Federal Case against armed robbery for Rite-Aid in West Rutland.
- Assisting uniform with burglaries. Both in Rutland and Shaftsbury
- Sex Offender Registry checks Rutland County.
- Violations of Sex Offender Registry Checks.
- Put together Sex Offender Registry Checks for Addison County

#### D Troop

##### FF

- Troops arrested John Zinn (numerous aliases) for Domestic Assault on I91 in Rockingham. Zinn is also wanted out of RI for multiple counts of Sexual Assault.
- Troopers responded to a juvenile drinking party reported in Grafton; several juveniles were cited for Title 7, VSA657 violations; one was cited for DUI.

##### BCI

- Assigned fraud investigation – Victim from Wisconsin forwarded money to a fictitious landlord in Boston, all bank records are in Vermont
- Interview at CAC for sex assault case. 14YO disclosed sexual relationship with 36YO male in Wardsboro.



- Barratt Homicide- follow up interviews with witnesses in Brattleboro area.
- CLAN Lab call out in Hinesburg

## **TOPS**

- CRT assisted Burlington PD (cruiser crash) and Barre City PD follow up with serious injury crash.
- Worked US 2 Marshfield area (high crash location)
- Multiple stops for speed resulting in MJ detection and paraphernalia

## **Arson**

- Worked on the Moretown fire, wrote the affidavit for a search warrant application and is hoping to get three search warrants signed in connection with the case.
- Fire investigation in Plainfield – fire to a garage , arson with a possible juvenile suspect
- Polygraph on the Royalton fire
- Clan Lab activation

## **ICAC**

- Completed 6 barracks destruction lists for drug room, updated database and pulled cases for destruction.
- Drug destruction run to Claremont incinerator w/6 barracks and NIU drugs
- Namus and NCIC entry of 3 new cases from Woodlawn cemetery (Irene)

## **Vermont Emergency Management**

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### **Issues/Updates:**

- a. All staff managed, and continues to monitor (EMAC) numerous aspects of Storm Sandy with EOC activation from 0700 Monday to 1500 Tuesday.
- b. Met with Deputy Secretary Clasen and IRO Minter to discuss staffing needs in advance of the IRO closing, Position Ratings as pertaining to earnings and possible budget implications.

### **General Information/Other:**

- a. Attended the Town of Brattleboro Emergency Planning meetings.
- b. Distributed for review the 2013 / 2018 Exercise Schedule for NRC Region I / FEMA Regions I, II, III
- c. Participated in the Staging Area training in Rutland with the State Guard.
- d. Completed online independent study on animals in disaster, FEMA IS-10 & IS-11
- e. Attended and participated in International Emergency Management Association (IAEM) training and annual conference; selected for and participated in the first IAEM-USA Leadership Symposium.

- f. Continued RFI follow-up for HMGP applications from the 1st two rounds; provided technical assistance to towns for HMGP 3rd round applications; received HMGP extension from FEMA R1.

**Legislative Contact:**

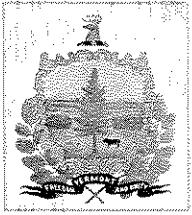
- a. Conference calls with numerous Legislators and elected officials during storm Sandy; particular discussions with Senator Campbell, Representative Manwaring and Rutland Mayor Lours.

**Division of Fire Safety**

**Issues / Updates:**

- The division reviewed \$4,250,000.00 in new construction valuation collecting \$23,500.00 in permit fee revenue. In 2011 same week we reviewed \$3,000,000.00 in new construction valuation collecting \$21,500.00 in fees.
- The annual fire prevention safety calendar judging is taking place today. The award ceremony as you know is scheduled for November 9, 2012.
- Haz-Mat team participated in full scale RADIOLOGICAL response exercise hosted by VEM for a table top drill. Team was responsible for site characterization, decontamination, and overall RAD response. Team's training and equipment proved effective as reviews from federal agencies were extremely positive.
- Haz-Mat team assisted VSP in dismantling a meth lab in Hinesburg.
- The updated building codes become effective November 5, 2012.





## ***State of Vermont...***

### **Department of Financial Regulation**

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.dfr.state.vt.us](http://www.dfr.state.vt.us)

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

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#### **CONFIDENTIAL AND PRIVILEGED – NO SHARING Report to the Governor for Week Ending Nov. 2, 2012**

#### **Governor's Priorities**

##### **Health Care Reform**

Commissioner Steve Kimbell presented information on the Health Benefit Exchange at the monthly meeting of the Regional Development Corporations held today at the Agency of Commerce and Community Development. The Commissioner made a similar presentation to the Vermont Independent Schools Association annual meeting on Wednesday.

#### **General Information**

##### **Banking and Securities Divisions:**

Vermont ranks second in the nation in its "credit condition," according to a survey done recently by [cardratings.com](http://cardratings.com) and reported on the [MSN.com](http://msn.com) money page. Second only to North Dakota, Vermont's high rating is due to its low number of foreclosures and bankruptcies and its consistent ranking among the top 10 in the country in low unemployment, average credit scores and credit card delinquency.

The entire story: [http://money.msn.com/credit-rating/c\\_gallerysidebyside.aspx?cp-documentid=250219787#scptid](http://money.msn.com/credit-rating/c_gallerysidebyside.aspx?cp-documentid=250219787#scptid) and the complete list of state's rankings: <http://www.cardratings.com/best-and-worst-states-for-credit-full-list.html>

##### **Captive Division:**

The Captive Division issued two new licenses this week: Transportation Services Insurance Co. Inc., a subsidiary of Celadon Trucking; and River Lake Insurance Company IX, a special purpose captive formed by Genworth Life. Those are captives number 23 and 24 for the year, which according to Deputy Commissioner David Provost, already qualifies 2012 as a good year for new business and he predicts more

in the coming months.

Insurance Division:

Deputy Commissioner Susan Donegan reported on the number of domestic property and casualty claims directly related to Hurricane Sandy. Union Mutual of Vermont has had 29 claims in Vermont, Vermont Mutual reported 29 claims and the Co-op has reported 65 claims in Vermont and New Hampshire with about half of those in Vermont. These domestic carriers also cover southern New England making their totals for storm-related claims much higher: Union Mutual, 200; Vermont Mutual, 700-800.

The Insurance Division has received no consumer complaints regarding storm damage.

Month-end totals will be reported at the end of November. At this time, there are no solvency concerns.



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*Jeb Spaulding, Secretary*

**PRIVILEGED AND CONFIDENTIAL  
MEMORANDUM TO THE GOVERNOR**

**TO: Governor Peter Shumlin**  
**FROM: Secretary Jeb Spaulding**  
**DATE: November 2, 2012**  
**SUBJECT: Confidential Report to the Governor**

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**CONNECT VT**

**VTEL Update:**

This week, the engineers opened up the full spectrum at the VTEL test site in Springfield, which yielded a speed test of 60 mbps down/ 14 mbps up (comparative FairPoint or EC Fiber at 5/1 or even 5/5 mbps speed levels). While the ultimate speed experience will be a function of users on the system. It is not unrealistic to think that we will see very high speeds from this LTE network. Above is also a table to site acquisition activity, currently 90% of the 186 sites are in negotiation, 49% are contracted. Next step for this 49% is into permitting for deminimus Act 248A applications.

**VTA:**

Significant Activity and Milestones this Week Include: Finalization and agreement by VTEL for the state wireless site lease for 3 wireless sites. The importance here is that this agreement was negotiated back and forth with DRM legal counsel who does a majority of ATT wireless permitting. It will serve as the template agreement for all wireless sites in the state.

**BMI/www.broadbandvt.org:**

We have finally reached an agreement between the BMI team, DPS and Connect VT on how to get the address level "future Provider" data into the look up function on the website. Currently, we struggle with census level data about the future provider versus address level data, due to the confidentiality parameters under which data is collected. We will be applying the most recent (June 30, 2012) data and look to relaunch/ make noise about this resource for unserved Vermonters before the end of the year.

The same dataset will resolve issues at CAPI with regard to accuracy when providing future provider information to consumers. We will essentially have one database of all 295,065 e 911 locations that tells us the disposition of the address and lists future service options that are known through all funded projects.

### **Other:**

Karen Marshall met with BJ Whittaker, a very nice gentleman. His home location is literally too far from each FairPoint remote terminal to either side of him to extend service. He'll be a great candidate for VTEL WOW service. He was very appreciative of time spent to discuss the mission.

DHVA- met with web development team for the health care exchange portal regarding the state of broadband and how that will impact website design and accessibility by the public. Using our data analysis, we will be able to provide them with a set of unserved addresses at any point in time that would allow their team to pinpoint the towns and locations where an alternate means/ strategy for access to health care exchange information should be deployed in the early phases of launch. Additionally, our data show where community centers and connections are that could be leveraged by citizens and the exchange team for on line access.

## **BUILDINGS AND GENERAL RESOURCES**

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

- Rep. Browning continued her questioning of the assumptions underlying the decision to rebuild the WSOC.

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

- Carr Lot parking lot on Taylor Street open for business.
- Met with Montpelier's Bill Fraser regarding future development of the Carr lot into info center and intermodal transportation center. Also discussed Carr lot agreement to vacate and Berlin VSH water supply letter.
- Tom Sandretto retired 10/31.

### **Evolving Issues:**

- Received letter from lawyers on the behalf of the Town of Pittsford regarding the further SOV commitment to financing an unused sewer capacity allotment.

## **FINANCE AND MANAGEMENT**

### **Issues Update:**

FY 2014 Governor's Recommended Budget: Commissioner Reardon, Budget Director Matt Riven and the appropriate budget analyst(s) continued meeting with individual departments or units of government on their FY 2014 budget needs and potential FY 2013 budget adjustment items. During the past week, Reardon met with: DII; Liquor Control; Auditor's Office; Criminal Justice Training Council; and the Green Mountain Care Board.

Spotlight.Vermont.gov: Content management training is scheduled for November 8, 2012, after which loading of content can begin.

Public Budget Forums: This week a press release announcing the two Public Budget Forum dates was issued by Commissioner Reardon. The two forums will be held in multiple locations across the State utilizing Vermont Interactive Technologies (formerly Television). Secretary Spaulding discussed the Forums on WDEV early this morning (November 1, 2012). Commissioner Reardon will discuss the Forums on WCAX-TV's "The :30" with Kristin Carlson at 5:30 PM on Monday, November 5, 2012. Deputy Zeller is working on a PowerPoint Presentation and at least one public participation "budget exercise" to be part of the forums.

### **Legislative Contacts:**

Meeting with Appropriation Committee Chairs: Commissioner Jim Reardon, Deputy Commissioner Sue Zeller and Budget Director Matt Riven met with Appropriation Committee Chairs Sen. Jane Kitchel and Rep. Martha Heath, and staff from the Joint Fiscal Office (Steve Klein, Stephanie Barrett and Maria Belliveau) to discuss the Chairs/JFO continuation of a programmatic budget exercise begun last year. The group discussed the next step which is for JFO to request sample programmatic outcomes and budget comparisons data from three departments/units: Agriculture, Treasurer's Office and the Office of the Chief Marketing Officer. The Budget Office will notify the three that the request from JFO will be coming. The Legislators were also interested in the C4C mapping effort explained by Zeller (see above).

## **HEALTH CARE REFORM**

Nothing to report.

## **HUMAN RESOURCES**

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

DHR staff met with Secretary Spaulding and Deputy Secretary Clasen to discuss the final revisions of the Agency and Statewide Strategic plans and reporting on the plans.

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

Commissioner Duffy met with Commissioner Obuchowski and representatives from BGS and AOT to discuss a report due to the Legislature on parking recommendations. Several ideas have been discussed. Commissioner Duffy will discuss the possible recommendations with Secretary Spaulding. Some recommendations may require bargaining with the VSEA and VTA.

Commissioner Flynn forwarded Commissioner Duffy a proposal that would create 24/7 employee coverage for VSP. Currently, there are only two shifts for VSP. The request requires vetting, and Commissioner Duffy will schedule a meeting with Secretary Spaulding and DPS representatives to discuss the proposal.



Commissioner Duffy attended a meeting with Deputy Secretary Clasen and representatives from AHS and AoA to discuss the health Exchange and the need to make additional efforts at DCF to ensure timely implementation. AHS staff indicated federal authorities have granted an extension of time that allays immediate concerns regarding the implementation of the Exchange.

## **INFORMATION AND INNOVATION**

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

Healthcare: Oracle responded to an ultimatum we presented on Friday with a revised proposal on Monday. Their proposal was responsive to our demand for a deliverable based proposal that hold Oracle responsible for the outcome within a fixed price amount. While this is one hurdle out of the way, the revised proposal still had the State as the middle man between Oracle professional services and Oracle on demand. It also did not move us any closer to agreement on terms and conditions. The team had an internal meeting this morning where we agreed to present Oracle with an additional ultimatum around terms and conditions. Hopefully, this ultimatum will result in a follow-up meeting with Oracle where we can reach agreement.

Darwin, Angela and Justin were the primary reviewers of Oracle's Monday proposals that included outlining scope, approach and price for design, construction and deployment of the Health Services Enterprise (HSE), Health Benefits Exchange (HBE), and Eligibility Automation Foundation (EAF). The proposals were deliverables-based, which is an improvement over previous proposals, but we are still concerned with integration across projects and *within* Oracle, i.e. between the systems integrator and Oracle on Demand. The Oracle systems integrator (SI) would be installing applications on the infrastructure provided by Oracle on Demand (OOD).

Total proposed cost is \$105,727,000 broken out as follows:

- HBE - \$63,295,000
- HSE - \$22,153,000
- EAF - \$20,279,000

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

Richard Boes talked with the Representative Heath, Chair of House Appropriations about Information Technology (IT), recent project difficulties, and our seeming inability to consistently produce solid contracts. He briefly outlined an approach to improving contract writing and quality assurance, and indicated he is working with the office of the Secretary of Administration and within DII to create and implement improved processes.

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

EPMO staff compiled and submitted summary information on Independent Reviews from 2006 now in response to Public Records Request from VT Digger regarding IT projects in excess of \$500k.

### **Significant Events/Meetings**

- Commissioner Boes met with the senior IT leaders from the agencies and departments and briefed them on current discussions linking the goals from the IT strategic plan, the \$100K

activities list and a timeline to create a roadmap for the legislature. He also talked about the need to identify IT spending and compare to benchmarks from peer states. During the same meeting, Tom Jenny provided some process for how we expect to gather information for the \$100K list.

- DII Mainframe group and the bulk of AHS IT located in Montpelier have moved to Vermont State College. This is the first in a series of moves to get most people out of flood prone areas in the basement of 133 State and to free up space at National Life. The 5<sup>th</sup> floor of 133 State remains at/over capacity.
- Networking had four WAN sites with extended outages due to "SANDY." All are now back online.

### **Evolving Issues**

- Began process with AGO that will include F&M, other agencies & DII EPMO to evaluate and align our processes regarding RFP's and related procurement, contracting and project management/oversight. We're looking at providing guidance/review by several key areas (AGO, CTO, EPMO, CIO, etc) as RFP's are being developed to ensure they're going to accomplish the goals we're seeking and meet certain key criteria (legally, technically, project management/oversight, etc). We see this as a key component of capturing these activities within a "standard project process" that ensures better organization of activities and "gate reviews" by the appropriate stakeholders of critical milestones before proceeding to the next step.

## **LIBRARIES**

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

Elected to Executive Board of COSLA (Chief Officers of State Library Agencies): The new COSLA Board was elected at the October meeting in Lexington, KY, and Marty Reid is now a Director on the Board. Their first Board leadership meeting will be in Seattle in January, slated to coincide with a conference of state library agency personnel that will be sponsored (and funded) by the Bill & Melinda Gates Foundation.

COSLA issues cover broad territory, but these issues have import for Vermont:

- Digital Literacy – how to support libraries in their work to train citizens on use of computers/digital technology
- Disaster planning for libraries
- Public Computing Centers – new national benchmarks for assessing and improving service
- Pew Center for Research reports on ebooks and reading
- Statewide Integrated Library Systems (such as our Catamount Project)

Vermont Library Trustee Association (VLTA) – Annual conference, VT Technical College: The VLTA (a section of the Vermont Library Association) and our Department (VTLIB) sponsor this conference each October and we have some 80 trustees and library directors registered to attend. Keynote speaker: Sally Gardner Reed, Executive Director of United for Libraries, the national organization (part of the American Library Association) for Library Trustees and Library Friends.

Library Service in Vermont Prisons: Asst. State Librarian Christine Friese and Law Librarian Paul Donovan made a visit to Springfield prison, the final visit to tour facilities and discuss current library

and literacy activities in our state's correctional institutions, including the Community High School of Vermont.

## **TAXES**

### **Legislation:**

Education Tax Rate: JFO staff, DOE staff and Susan Mesner continue to wrestle with all of the moving pieces that go into the Ed Fund Outlook for FY 14, which in turn inform the recommendation that the Commissioner is required to make to the legislature on Dec. 1 with respect to the tax rate. The current numbers show a possible 4 cent increase, however Deb Brighton is still massaging data.

Vermont Yankee: As we wait to see VY's next step in the tax litigation, the Tax legal team has highlighted a potential issue. Generally a taxpayer gets statutory interest on payments starting 45-90 days after a request for a refund is made. As was made clear in the initial filings in this case however, our generating taxes are in a special chapter of Title 32, that does not explicitly incorporate all of the procedural rules set out in the other chapters on income tax. If VY ultimately seeks a refund, Tax likely would maintain that the general corporate interest rule should be imputed – other arguments would be that there is no interest due, or interest due from the time of payment. Worth noting only because VY's predecessor actually tried on an income tax refund to recoup over 10 years of interest, although they lost at the VT Supreme Court.

TIF: The Commissioner met with Secretary Miller, Bill Talbott and staff from the AG and Treasurer's Office regarding possible action on the TIF findings, following up on our earlier meeting with Tanya Morehouse. The consensus was that towns should be held accountable to some extent to repay Ed Fund money that essentially was misused, but that given the lack of statutory remedy and the litigious stance already assumed by Milton, perhaps the most expedient course would be for Jeb and Lawrence to meet with officials from each town and try to find some common ground.

With respect to possible legislative changes to the program to provide for oversight and enforcement, we still await the auditor's capstone report. This group contemplated that the Auditor should continue to perform regular audits, and that the Tax might be given the statutory authority to issue assessments based on the findings. In meetings, the auditor's staff has made some noise that Tax should have more robust oversight (in addition to the audits) – given the complexity of TIFs, this would require additional staff and again, some sort of enforcement mechanism. Currently towns frequently ignore Tax interpretations, for example, when it comes to exempting properties within a TIF (there are ongoing disputes about whether certain parking garages qualify as municipally owned and operated).

Finally, the consensus of this group is that TIFs are an unwieldy tool in Vermont, particularly given our statewide education funding and the administrative complexity that is ill suited to our small towns. Staff from ACCD and Tax will be meeting to consider possible alternatives for municipal infrastructure funding (keeping the TIF program at its current cap of 11 towns).

Tax Computer System Modernization Fund: The Commissioner met with Steve Klein, outlining the plan at Tax to re-assess its integrated tax system investment, and the need to amend the Fund language to broaden the permissible uses, move the sunset to FY 16, and increase the appropriation amount to cover all the anticipated enhanced revenue from the current data warehouse project. Steve was amenable. He suggested emphasizing that the data warehouse in fact is a successful IT project, and that

we have a detailed plan anticipating all costs associated with installing a successful processing system. The Commissioner is meeting with Rep. Heath next week.

Legislator Boot Camp: The Commissioner also got a favorable reaction from Steve on our idea of utilizing the POLA crew to put on a legislator tax boot camp at the beginning of the session. Topics would include how to handle constituent concerns about an audit or other dispute with the tax department, important dates including those for property tax adjustments, and appropriate contacts for frequently asked questions.

### **Operations:**

South Carolina Data Breach: Federal authorities discovered a massive breach in the South Carolina Department of Revenue involving millions of social security numbers. Our IT Department participated in a call with SC to ascertain the cause of the breach, which appears to be a key logger installed when an employee opened an email attachment. As a first mode of defense, our IT Director has warned employees anew to be vigilant about email. We are working with DII on other possible steps, including scanning our systems and encrypting data at rest (currently Tax only encrypts data in transit; it appears a growing number of states are taking the next step, which would involve cost and performance loss, but would avoid a SC type breach).



**CONFIDENTIAL AND PRIVILEGED: NO SHARING  
MEMORANDUM**

TO: Governor Shumlin  
FROM: Armando Vilaseca, Commissioner  
DATE: November 2, 2012

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**UVM:** I started the week off with a breakfast meeting with UVM President, Tom Sullivan. It was a good conversation and I am encouraged to have his support for dual enrollment and his understanding and appreciation for the work that we undertake daily with the K-12 system.

**"Education – Join the Conversation":** On Monday I recorded my first in a series of monthly messages to the public in an effort to keep them informed and engaged in education issues. These messages will be shared via public access TV. This first session gave an overview of the purpose of this communication and was an opportunity for me to share some of the topics I plan to address in the months ahead. These topics include Nutrition, Teacher of the Year, the Department to Agency transition, NECAP/Common Core/Smarter Balanced, and Education Funding. A more detailed list was provided last week to Susan Allen. You can view this discussion [here](#) . The Department will post the videos on our website and YouTube channel, as well as share via social media.

**Career-Readiness:** Wednesday we issued a press release announcing Vermont's alignment with the Career Readiness Partner Council's definition of "career ready." This council represents a variety of education, business, philanthropic, and policy groups, who underscore the importance of developing innovative and flexible learning programs that prepare students for the global economy. The Council's career-readiness statement is aligned with Common Core State Standards and endorsed by SBAC and supports defining the degree of career-readiness through multiple measures of proficiency. To read the press release in its entirety, please click [here](#) .

**Challenger Learning Center of Vermont (CLC):** Tuesday evening I met with the Board of Directors for the CLC, whose mission is to prepare learners for opportunities in the field of science, technology, engineering and mathematic (STEM). This proposed center will be one of 48 CLCs nationwide and will be strategically located just off the highway in Swanton – to take advantage of its proximity to NY, NH and Quebec. This center will provide hands-on learning opportunities in the STEM field for more than 10,000 middle and high school students each year, in addition to providing professional development for educators and serving as an interactive tourist attraction. Students and other visitors will become active members of a space crew and participate in simulated missions. CLC's goal is to provide a skilled 21<sup>st</sup> century workforce and support the development of a scientifically literate talent pool in Vermont and surrounding communities. I am very excited about this program as it will provide a unique and valuable opportunity for STEM education and will potentially have a great impact on business, industry, and tourism in the state. More information can be found by clicking [here](#) .

**Reading Skills:** Wednesday department staff and I met with Susan Bartlett, representatives for the Department of Libraries, Dr. Mary Beth Monahan, (lead researcher for school improvement work) Vermont Reads Institute (VRI), and Janna Osman, Stern Center, to discuss how to improve reading skills and interest across the state of Vermont. There is a lot of valuable work happening throughout Vermont that is focused on improving literacy instruction. This group will continue to meet and work on creating statewide guidelines for reading instruction that are consistent and research-based.

**All-Staff Meeting:** This Friday I will hold a mandatory meeting for all DOE staff at the Pavilion. We will discuss our transition from a department to an agency, our continued shift to focus on school effectiveness, the eventual move to Barre, and climate issues as we adapt to changes and anticipate more to come. I also wanted to give the DOE folks a chance to ask questions or share any concerns they have.

## Irene Recovery Office

### 1) **Waterbury Office Complex (WSOC)- FEMA moving forward with incomplete PWs**

FEMA has now completed initial versions of nearly all of the 100+ Project Worksheets (PWs) for WSOC. In spite of our lack of concurrence on several critical policy issues, FEMA is intent on pushing through its system many PWs which do not contain what we believe to be the full costs of repair, and intends to obligate them without waiting for state approval. While FEMA maintains that we may have the ability to correct and add to them in subsequent "version", on the basis of our experience with Town PWs, this may be a very difficult process. Our major disagreement with FEMA centers around FEMA's current unwillingness to include the allocation within PWs of the cleanup and stabilization work done on the complex, and is not awaiting our building assessments that include the full costs of damage to the buildings. Both of these factors, if included, will get us to the threshold of the 50% rule, to enable replacement value for several strategic buildings, including VSH (& setting the stage for permanent relocation). We will continue to try to convince the FEMA in Vermont that their policy interpretations are wrong, but fear that we will have to appeal all of these PWs beyond Region I in order to prevail. At this time it seems clear that we will not resolve these proactively, that the burden of proof is upon the state to argue what costs, ultimately, need to be included. My view is that this will need to be an all out push on multiple fronts: the legal arguments (FEMA precedent, law and policy), as well as the political front – with GPS & Delegation pushing our case at FEMA HQ.

### 1) **FEMA Officially reverses position on Debris Management – Effective Date October 2012 – No clarity yet on how this helps our towns**

For the second time post Irene, our advocacy has resulted in a change in federal policy (the first being FHWA's inclusion of National Guard costs as reimbursable). Yesterday we received the official notification of the amended policy that clarifies it is FEMA's responsibility to reimburse debris removal, and that this is not solely the jurisdiction of NRCS – which has been their reason for not reimbursing our towns with this challenge (Bennington, Rockingham, Woodford).

However, the effective date for this new policy is Oct. 2012. So we still have no clarification on how debris removal for Irene will be impacted. Pushing for clarification on this with FCO, as well as having our Delegation pursue with FEMA HQ in Washington. (Once again, a sense of winning the war, but losing the battle...)

### 2) **Bridges & Culverts: VTrans, ANR & Towns working toward 2<sup>nd</sup> Appeal; Continued discussions with FEMA on "Problem PWs"**

We are preparing our case for rebuttal to FEMA's recent denial on the Townshend Dam road culvert, which is the precedent case for the overall dispute about FEMA eligibility determinations for many culverts and bridge "upsizing". The state is working together to argue the case, but it must begin with the town of Townshend (the actual applicant to FEMA on the PW – which is the only thing we can rightly appeal). When the timing is right we may consider a public media push on this issue & process. Our Congressional Delegation are monitoring as well.

We are also having internal discussions with FEMA about a subset of affected projects (blown out, though intact culverts that were required to be replaced rather than upgraded) in the hopes that we can get some smaller "wins" for some towns.

### 3) **Town Support and FEMA Public Assistance PA**

Meanwhile, our Public Assistance Office (Ben Rose & team) continues to try to support towns "caught in the middle" who now need to appeal their PW, which is a significant administrative



challenge (for both towns and state) and to advocate, on a case by case basis, for all towns affected by FEMA's PWs. We do achieve small victories for towns along the way. But this is a real slog through a highly bureaucratic maze where the routes keep changing (I am reminded of Harry Potter IV – or perhaps the Hunger Games is more appropriate analogy?)

We are also **working with the Auditor's office to host a workshop for towns**, preparing them for upcoming FEMA Audits, as well as to offer more support for towns in various stages of the FEMA PA process.

#### 4) Individual Recovery: needs ongoing

- **HMGP Buy Outs:** Progress continues. FEMA has approved 74 properties, with 34 still under review from round 1&2. 5+ properties may be ultimately deemed as ineligible (considering utilizing CDBG funds for these, although this resources is tapped). 28 new applications to consider for Round 3, and funds available for a 4<sup>th</sup> Round.
- **Long Term Recovery Committees (LTRCs):** Participated in LTRC Chairs meeting. Still strong and growing need for support – both for sustaining these organizations and meeting the needs of Irene survivors. Increasing burnout among recovery volunteers. We are working to enhance the LTRC network and strength through improved communications. Supported (CVCAC) application for FEMA grant to help this are of need.
- **CDBG Disaster Relief Fund:** Applications being received & funds now being rolled out to successful applicants. My role is to ensure these funds (particularly for Home Ownership Centers) are well coordinated with LTRCs and Case Management program.
- **Recovery Summit** for all Irene Recovery workers set for early January at Norwich U.
- **Starting Over Strong/ Crisis Counseling** has now ended, as FEMA grant completed. Reports of growing demand for case managers with particular concern for mold issues.

#### 5) Transition Planning:

- Working to both assess ongoing needs & articulate a strategy for Irene Recovery post January

# Memorandum

Vermont Public Service Department

*Privileged and Confidential*

To: Hon. Peter Shumlin, Governor & Sarah London, Governor's Counsel  
From: Sarah Hofmann, Deputy Commissioner  
Subject: Weekly Report – Priorities Version  
Date: November 3, 2012

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**Status of Priorities and Cases of Interest:**

- Vermont Yankee Operations - In preparation for Hurricane Sandy, ISO New England ordered VY to defer their scheduled rod pattern adjustment (scheduled for 11/29) and reduce power to 88% for grid stability throughout the storm duration. The Vermont Yankee nuclear station was not impacted by the storm and operated with no issues. Vermont Yankee's contract with their security staff will expire at midnight on November 19, 2012. Entergy is developing a strike contingency plan which describes how it intends to continue to meet NRC requirements in the absence of the Union security guards. Both NRC and PSD are to see the plans soon.
- NRC related – NRC made public on October 31, 2012 its third quarter inspection report for Vermont Yankee. There were two "Green" findings noted in the inspection report. There was a self-revealing Green violation because Entergy failed to implement a preventive maintenance procedure, which resulted in a missed opportunity to replace degraded components that caused the "A" recirculation pump to trip and an unplanned entry into single recirculation loop operation. The inspectors determined that the finding had a cross-cutting aspect in the Human Performance cross-cutting area, Work Practices component, because Entergy did not sufficiently define and effectively communicate expectations regarding procedural compliance for the selecting of the discovery status code and personnel did not follow procedures. The other item was a Green non-cited violation where a dedicated operator assigned to perform manual operator actions during RHR (residual heat remover) surveillance left the area. This action was not in compliance with NRC expectations for an operator performing a dedicated action. The inspectors determined that this finding had a cross-cutting aspect in the Human Performance cross-cutting area, Resources component, because the training of personnel did not describe specific requirements of dedicated operators, including the definition of immediate vicinity. Corrective actions for both of these NRC findings have been implemented by Vermont Yankee.
- The PSD submitted comments to the NRC on a draft guidance document for nuclear power stations to perform a reevaluation of impacts from flood hazards. The Department consulted with DEC to gather comments. The primary thrust of the comments was that the Guidance document requires more specifics for the calculation of probable maximum precipitation and flood.
- NRC is holding a meeting on November 13<sup>th</sup> in Rockville, MD re Entergy's forthcoming presubmittal on its inability as of Sept 2013 (because of a change in ISO-NE rules) to use the Vernon Hydro Station as its black start emergency source. Entergy is proposing an

onsite diesel generator. Entergy has also petitioned the Board for a CPG for the project. Sarah will attend the meeting since she will already be in Baltimore on other business.

- Georgia Mountain Community Wind –The Department, GMCW, the intervenors and ANR have come to an all-encompassing agreement in principle in resolving the outstanding issues surrounding CPG violations, as well as additional concerns of the neighbors. GMCW and the intervenors have arrived at a confidential agreement independent of any stipulation the Department intends to execute with GMCW. The parties notified the Board of the agreement in principle on October 26, and requested an additional two weeks to finalize and memorialize the respective agreements. The Department is currently negotiating terms of the stipulation with regard to facts and recommended penalties.

GMCW has also moved to amend the CPG to allow for extended construction hours – including hours on Sunday – for limited construction activities for the remainder of the year. The motion was prompted by a six week delay in GMCW's receipt of turbine components. The Department supported the motion after confirmation that neighbor-intervenors were satisfied with the terms of GMCW's request.

- VPPSA PPA with NextEra – The Board approved the power purchase agreement and issued a certificate of public good. The PSD had opposed the contract because its costs were higher than market prices. The Board found other benefits to the contract.
- Establishment of a Standard-Offer Price for Baseload Renewable Power under SPEED /Ryegate –The Board issued an Order in this docket significantly changing the conclusions contained in the Proposal for Decision, resulting in a levelized standard-offer price of \$0.100 per kWh. The Board agreed with Ryegate's arguments, in their briefs and at oral argument that: Ryegate should be permitted to recover depreciation expenses associated with 2011 capital expenditures; Ryegate's payment of Royalty Fees Direct should be not be excluded from project costs when calculating the standard-offer price; and that Income Tax was incorrectly calculated by the Board's Independent expert (who was given an opportunity to review his calculation and conceded the error) such that for this price analysis and going forward that it was proper to treat future Capex as a deductible cost for purposes of calculating the pre-tax margin component of the income tax calculation. Ryegate will be entitled to the new standard-offer price for energy and capacity generated by the facility effective November 1, 2012. We believe that this will mean that Ryegate continues to operate.

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

- We received Jim Reardon's request for submissions regarding agency/department proposals for increased taxes. We did not submit any such information in our budget request, because we do not have any proposal for such increase related to routine expenses/current programs. To the extent any such proposal may be made or supported by us, it would be either for a new initiative (such as thermal efficiency) or for a current initiative with uncertain or curtailed funding (such as CEDF). In neither case did I think that you would want a written proposal now and in the budget papers; we of course would work closely with Tax and F&M/Governor's Office on any such proposal but did not find it appropriate to include such speculative material in the budget papers. I am concerned regarding compliance with Jim's memo sent on Thursday to leaders and staff at all agencies, departments, and other state entities - I don't plan to comply, but

purposefully. I presume others may do the same on similarly non-routine possible requests. If you actually want us to comply on these non-routine but nevertheless possible/likely revenue requests, of course let me know and we'll put something together; some of these would probably be better for a strategy session I'd guess, rather than staff memo.

- In a similar vein, we have a legislative meeting set up with some key dept/agencies that we routinely interact with, including Tax. We are meeting on Tuesday (election day) in the late afternoon. If you would like Aly Richards or someone else to attend, that would be welcome. The purpose is to start the "hey what is on the books for the legislative session?" conversation, which has begun on an individual agency/dept level already but has not yet had a group think that we've been involved in. Following that we'd expect to meet with Gov's office and Finance and Management etc. as needed... We know we need specific advice and help on the thermal efficiency funding proposals that our department Task Force is working on, and that we understand a number of legislators are interested in pressing - we could use that help this month (November) because the Task Force is finalizing recommendations.
- Liz and Porter had lunch with Tony Klein to discuss the upcoming session and everything else in the world.

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

- We fielded questions about the Energy Generation Siting Commission.
- We have had additional calls re the proposal by Louise Hart for 200 MWs of solar in the NE Kingdom. (This project seems highly speculative.)

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

- Energy Generation Siting Commission - The EGSC had its first meeting. It was the basics of energy generation siting and siting under Act 250. It was determined that Jan Eastman would chair the Commission with Louise McCarren as the vice- chair. The meeting was a good first outing for the Commission.
- The PSD and VCAN continue to do the outreach meetings on the Comprehensive Energy Plan. This week it was in Rutland. Next week it is in Windsor.
- Liz attended the meeting organized by ACCD re the NE Kingdom project overview.

#### **Evolving Issues:**

- This coming week will be the third VSNAP meeting of the year. This one is primarily a dialogue among the panel members on the annual report and what future issues it wishes to explore.
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