

**From:** Miller, Elizabeth [Elizabeth.Miller@state.vt.us]

**Sent:** Saturday, November 02, 2013 1:38 PM

**To:** GPS

**CC:** Allen, Susan; Porter, Louis; Coriell, Scott; London, Sarah; Richards, Alyson

**Subject:** Weekly Reports - Executive Privilege 11 01 2013.pdf

**Attachments:** Weekly Reports - Executive Privilege 11 01 2013.pdf; ATT00001.txt

Boss here are highlights. I suggest reading in particular PGs 41&42 from Mary Peterson re ed prop tax rates data and issues.

# WEEKLY REPORTS

Checklist  
11/01/2013

Elizabeth Miller/Aly Richards

- Agency of Commerce and Community Development – Lawrence Miller
- Department of Labor – Annie Noonan
- Department of Financial Regulation – Susan Donegan
- Agency of Education – Armando Vilaseca
- VT Commission on Lottery – Greg Smith

Louis Porter

- Agency of Transportation – Brian Searles
- Agency of Human Services – Doug Racine

Sue Allen

- Agency of Agriculture – Chuck Ross
- Agency of Natural Resources – Deb Markowitz
- Public Service Department – Chris Recchia

Sarah London/Carolyn Wesley

- Department of Public Safety – Keith Flynn
- Agency of Administration – Jeb Spaulding

Susan Spaulding

- Boards and Commissions (**no report this week**)
- Department of Liquor Control

**To:** Governor Peter Shumlin

**From:** Lawrence Miller, Secretary - Agency of Commerce and Community Development

**Date:** November 1, 2013

**Re:** Weekly Report

- **Northeast Kingdom:** Deputy Secretary Leriche met with the principals of a Canadian maple sugaring business about expanding their business in Vermont. They have leased an industrial building in Island Pond and are working with two large landowners on leasing 6,000 acres of land in Essex County. They supply large supermarket chains including Walmart and Costco and see enormous growth potential in Vermont. They are enthusiastic about the quantity of maple trees, and the friendly regulatory environment.
- **Good News of the Week:** Vermont ranks No. 1 for the third year in a row in the national Opportunity Index produced by a consortium of non-profits to indicate how well a state can help with upward mobility. A cover story in *Washington Monthly* titled “How Well is Your State Helping You Succeed?” compares Texas’ business-focused metrics with broad-based success in Vermont, which ranks first in the nation for education, civic and community life and health and second for jobs and opportunity.  
[http://www.washingtonmonthly.com/magazine/november\\_december\\_2013/features/the\\_2013\\_opportunity\\_index047357.php?page=all](http://www.washingtonmonthly.com/magazine/november_december_2013/features/the_2013_opportunity_index047357.php?page=all)
- **High Mowing Seeds – Wolcott:** The company had sales of \$4.2 million last year expected to grow to \$7 million this year. Employment is growing as well. The company is seeking a new site to consolidate operations in Lamoille County. They currently have 4 acres of greenhouses and some 54 acres of growing fields in a variety of locations in the area.
- **Leader Evaporator – Swanton:** Since 2006 the company had doubled employment to 73 full time today. They still struggle to find qualified workers, and held a job fair in July that had 85 attendees resulting in 5 new hires. They have expanded welding stations from 17 to 28 to keep up with customer demand. Average crop yields used to average 400 - 500 lbs./year and are now over 1,000 lbs. They have increased sales in Canada and have established a new dealer in New Brunswick.
- Vermont Global Trade Partnership has received notice that it has been awarded a Northern Border Regional Commission (NBRC) grant to provide companies in the NEK, Franklin County and Grand Isle Export Tech training and coaching. Ken Horseman will be working with VGTP to ensure the grant is administered and marketed successfully with VT Manufacturing Extension Center (VMEC), SBA, DOC, Ex/Im Bank and other partners.
- Brent has been continuing to work with Secretary Miller and John Kessler to research and recommend standards, policies and procedures to strengthen VT EB-5 Regional Center policies and procedures in a changing SEC and FINRA regulatory and competitive environment. Multiple covenants have been added to the MOU used for approving those projects that pass the RC's approval process, strengthening our ability to manage, monitor and enforce proper operation and conduct of projects.

- **Branding Vermont 11/5:** Looking forward to a great first in an evolving series of brown bag talks at ACCD; the first will feature Matt Dodds of Brandthropology who will discuss ways to bring harmony to the three brands of Vermont.

### **Commissioner MacKay**

- Dealing with blood sucking vampires and will get back to you next week.
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- **Sunset Farm Mobile Home Park:** Jen coordinated a call between the Department of Environmental Conservation, the Town of Bennington, DHCD staff and Shires Housing. Shires is willing to serve as a receiver if liability and cost issues can be resolved. The local housing nonprofit is working out the details with DEC in advance of its filing an enforcement action. Shires plans to apply for VCDP funds to assist with the relocation of residents. Staying in close communication with DEC Deputy Commissioner Schuren.
- **Salisbury Church Parsonage:** Laura spoke with Wanda Minoli of BGS regarding the Salisbury Church parsonage. Having obtained the deed and other related documents, she will review the information with BGS to determine if any solutions can be found about ownership of the non-historic building and how its potential sale could help in the restoration of the Ammi B. Young church. **Willem Jewett** issue.
- **Hubbardton Battlefield Possible NHL Listing:** Laura has been in contact with the National Park Service regarding the procedure for the nomination of Hubbardton Battlefield as a National Historic Landmark. Vermont Fish & Wildlife, which manages a portion of the land to be included in this honorific nomination, is exploring the steps from their end. Laura is outlining the steps required by the National Park Service to make a preliminary determination of eligibility. Several local residents have contacted her to voice their support and inquire of the listing implications and procedures. The current National Register nomination for the property was sent to those requesting this documentation. An advocate, Don Sondergeld has been unhappy with everyone, Carolyn has been handling at Pavilion. Done reports that he is doing very well in his bridge league, less well in tennis, and is very happy with the Red Sox.

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Memorandum

To: Honorable Governor Peter Shumlin

From: Commissioner Annie Noonan

Re: Weekly Report - Week Ending November 1, 2013

Unemployment Compensation: Vermont and other states have prevailed on allowing withdrawal of UI claims from federal workers. We are contacting those claimants directly to advise them. This was a victory for the states and furloughed federal workers. The minimum wage rate was released this week, with minimal media coverage; one story on fox44 about how the ski industry would be troubled by the 13-cent increase.

UI Call Center Stats: For the week ending 10/26/13 we took 2414 calls. This is an increase of 291 calls from the week ending 10/19/13. We processed 444 initial and 470 additional claims. This is an increase of 87 initial claims and an increase of 98 Add claims from the week ending 10/19/13. 2 claimants exhausted all tiers of benefits with the week ending 10/26/13. 3 claimants exhausted Tier 1 benefits. We paid 4,021 claimants during the week ending 10/26/13 compared to 4,033 for the week ending 10/19/13. By year's end, Vermont will have almost no claimants on UI extended benefits, except a straggling payment in adjudication.

UI Computer Modernization: UI Director Tracy Phillips has filed the request for the limited service position approval consistent with our federal grant award for the UI modernization system. These positions are absolutely time limited, and were discussed with Jeb.

Other Meetings:

VDOL General Counsel Dirk Anderson presented VDOL's report on our use of hearing officers at the legislative study committee on hearing officers.

Vermont Child Poverty Council Meeting: I attended as a member, and am assigned with Secretary Vilaseca and Senator McCormack to examine the workforce issues. I submitted VDOL's report to the Committee ahead of time.

Prevailing Wage Study Committee this week: Business and Labor 'squared off' on some issues. Jeb and I spoke earlier today. It appears that the bottom line for labor would be adoption of a mini-DBA/federal PW. Adoption of the industry collective bargaining agreement was firmly shot down by the businesses in the room. Another idea that gained no traction, but which I think is workable is using the State PW and adding a 30% fringe rate to it, but labor rejected that idea.

Social Network Privacy study committee meeting was a weird mix of opinions. AG, Legal Aid, and HRC seemed to line up against VSP and DHR. They acknowledged that this is essentially how it lined up at the statehouse during last session. I think the whole issue of the NSA spying will overshadow any ability for VSP or other groups to hold onto an 'exemption' if a bill goes forward.

Chairman Bill Botzow came to meet with me on VDOL issues.

NEK Project meeting on Monday was productive. Alex Maclean and I discussed issues beforehand, which was helpful to getting the group to focus. We are planning a meeting of all stakeholders in November.

Commissioner Hogan and some of his staff came over to meet with me and Steve Monahan on Workers Comp and how the system works and what are employer rights and obligations. I think this would be a great presentation for all secretaries and commissioners, as they were able to get a lot of their questions answered.

WC and Safety is working with Jeff Potvin of Vermont Building Trades to do worker training.

I met with Lindsay Deslaurier on paid sick leave this week. I gave her a lot of feedback on her draft legislation, and still have some concerns about our role at VDOL for enforcement.

VDOL is again reviewing our utilization of SSN on VDOL letters and forms, which was precipitated by a constituent complaint to the Governor's Office.

I met with Commissioner Lisa Gosselin of Economic and DS Leriche, at their request, to familiarize Lisa with the operations and programs of VDOL.

LP

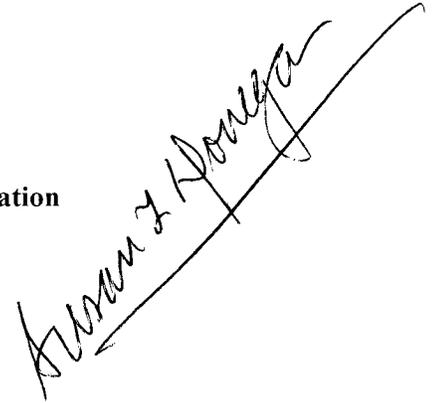
LP

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[www.dfr.vermont.gov](http://www.dfr.vermont.gov)

**CONFIDENTIAL and PRIVILEGED**

To: The Honorable Peter Shumlin, Governor  
From: Susan L. Donegan, Commissioner, Department of Financial Regulation  
Date: November 1, 2013  
Re: Weekly Report



**Captive Insurance Division:**

Captive insurance license number 1,002 was signed yesterday for Excela Risk Retention Group, a captive of Excela Health. Excela is a hospital system in Pennsylvania. Vermont Risk Retention Groups play a significant role (more than 30 percent market share) in providing medical malpractice liability insurance to Pennsylvania health systems.

**Insurance Division:**

Commissioner Susan Donegan signed a Stipulation and Consent Order yesterday fining MVP Health Plan and MVP Health Insurance Co. \$7,500. MVP had failed to update previously approved member forms that included updated language mandated by amended statutes and Regulation, and therefore the forms were not in compliance.





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**CONFIDENTIAL AND PRIVILEGED: NO SHARING  
MEMORANDUM**

TO: Governor Shumlin  
FROM: Armando Vilaseca, Secretary  
SUBJECT: Agency of Education (AOE)  
DATE: November 1, 2013

**Secretary Transition:** Rebecca is scheduled to meet with me next week and we will be discussing the impending General Counsel vacancy. We have a person in mind, and together will be meeting with this person next week. Rebecca is also scheduled to be back here the following week and is tentatively scheduled to meet with Senators Ashe, Kitchel, and McCormack in House Appropriations, and has separate meetings tentatively scheduled with Deputy Fischer and several AOE directors.

**Governor's Early Childhood Summit:** I was very pleased with the turnout and level of enthusiasm at this recent summit. Now the work begins.

**Governor's Statewide School Safety Conference:** Thursday I sent a memo to the field (superintendents, principals, and heads of independent schools) reminding them of this upcoming conference and encouraging them to send representatives from their school. Registration continues to grow and is at about 150 participants. We are hoping for a good turnout, as the issue of School Safety is one of pressing importance.

**Hazing, Harassment and Bullying Advisory Council (HHB):** This week I traveled to Hartford High School to participate in another HHB Advisory Council "listening tour." These sessions continue to be very productive in giving students the chance to be heard by caring and concerned adults. I think council participants would also agree that it has been a good opportunity for them to hear first-hand from students the different perspectives on what schools are, and are not, doing along the lines of prevention and response to incidents of bullying and harassment.

**National Center for Education Statistics (NCES):** A study released this week from the NCES found that eighth graders in almost all states performed above the international average in both math and science. In science, Vermont ranked fourth, behind Singapore, Massachusetts, and Taiwan, respectively. In math, Vermont was seventh in the world, behind South Korea, Singapore, Taiwan, Hong Kong, Japan and Massachusetts. Despite most states ranking above the international average in both subjects, even top-performing states don't compare with the performance of East Asian countries. This study is based on results from the 2011 NAEP-TIMSS Linking Study in mathematics and science. More information can be found here: <http://goo.gl/vAjbJ5>.

**Common Core State Standards (CCSS):** A Vermont team attended a two-day workshop to create strategies for transitioning to CCSS and the Smarter Balance Assessments. The workshop was sponsored by CCSSO. The team included John Fischer, Angela Ross, and Frank Gerdeman from the AOE as well as Jeff Francis from VSA, and Annie Howell from VSC. Sessions were offered on a variety of topics, including panels with parents and teachers, and lessons from early implementers and leading campaigns. In addition, teams were given ample time to begin working on state-specific plans and goals. Over 30 states and territories participated in this event. Also, my Op-Ed on CCSS was sent to media outlets yesterday and the Burlington Free Press has already indicated interest in publishing it. I have received a lot of positive feedback from the field on this Op-ed indicating support for my communication on this topic.

**CONFIDENTIAL and PRIVILEGED**

**To: Governor Peter Shumlin**  
**From: Greg Smith, Executive Director, VT Lottery**  
**Date: Nov 1, 2013**  
**Re: Weekly Report**

**Status of Governor's Priorities:**

n/a

**Legislative Issues/Contacts:**

Numerous messages and calls from a few legislators and Leg. Counsel about vending machines in bars (said they were asked to craft bills to remove bars & restaurants from agent eligibility). Set up mtg with Rep Ancel for Nov 12<sup>th</sup> to gain perspective. Club & Fraternal group lobbyist seems to be at the root of all the negative attention and misuse of terms (gaming machines and relation to Keno).

**Press Issues/Releases/Contacts:**

Various reporters with WCAX, VTDigger, VT News Bureau on same issue.

**Significant Events/Meetings:**

n/a

**Evolving Issues:**

Still working with Intralot (lottery gaming vendor) on presentations. Dates planned around northern half of state starting Nov 11 – Dec 6.

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**Summary of Key Agency Department Activity:**

Actively working to keep tasks current with three positions open. May use small amount of OT (maybe 5-8 hours).

**Executive Director's Commentary:**

I will be in Miami all next week at Lottery Conf (Public Gaming Research Institute). Participating in panel discussion so conf. is comp'ed. Working with vendors to prepare quotes for improvements to our websites and 2<sup>nd</sup> chance offering. Hope to bring this forward by end of Nov.

**Executive Privilege**

**TO: Governor Peter Shumlin**  
**FROM: Secretary Brian R. Searles**  
**DATE: Friday, November 1, 2013**  
**SUBJECT: VTrans - Confidential Report to the Governor**

**NOTES FOR GOVERNOR**

**Allegiant to Announce BTV Service**

There will be an announcement on Tuesday of next week that Allegiant Air will start service between Burlington International Airport (BTV) and Orlando-Sanford, FL (SFB) in February of 2014. They are likely to make two round-trips per week at the launch of service.

Lawrence Miller and I have agreed to participate in marketing this service at a level of \$75,000 in advance of the service and \$50,000 if the service is expanded to another destination (Fort Lauderdale is under consideration). Allegiant is a low cost point-to-point carrier that is based in Las Vegas and is expanding at a rapid rate. They have been serving Plattsburgh for a couple of years.

**F-35 Debate at City Council**

I did go to the City Council and spent three very strange hours enduring what cannot be described as informed debate, but rather, political theatre. My message was not about the F-35 as much as the unnecessary interference with the Airport that was imbedded in the two proposed resolutions, both of which went down to defeat.

Opinion: My view that this airport is not in good hands is strengthened by the absurdity of the proposals and the fact that the City of Burlington is willing to take them this seriously.

**Barre Banner Discussion**

The Travel Information Council met this morning to take up whether downtown promotional signs that feature business names of contributing downtown merchants should be considered off-premises signs. The bad news is they voted 3-2 that they should, which is not the position we espouse (The VTrans rep, John LaBarge voted in the minority). The good news is that there wasn't a quorum so it does not represent an official position. Therefore, I am instructing our personnel to ignore any enforcement of these provisions involving any downtown banners until such time as the TIC does the right thing or we can correct this in the next T-Bill. By the way, downtown banners that

mention specific businesses are showing up in other communities such as Shelburne and St. Johnsbury. We will not pursue any of these communities or their banners.

### State Plane News

The plane is currently back in the shop for a defective gas line. We believe that this is related to the rehab and will be dealt with quickly in Burlington. Following the replacement of the line, staff will fly the plane for 10 hours and assuming no problems, it will be back in service.

see ? told u .

### NOTES FOR STAFF

### Vilas Bridge Negotiations

This is an update from last week concerning the historic bridge from Bellows Falls to Walpole, N.H. that has been closed since 2009 by NHDOT in violation of an agreement, last updated in 2010, that states they will rehabilitate this historic structure and maintain it, along with Vermont, at a cost share of 93% NH/07% VT. Each of the 33 bridges has a cost share in statute that conforms to the state line, defined by the "ordinary high water mark" of the Connecticut River on the Vermont side. New Hampshire has removed the bridge from their draft 10-year project plan.

Commission Chris Clement has offered that he will restore the bridge and start the project 2 years from now if we agree to allow the project to mitigate the destruction of the historic Rt. 2 bridge between Lancaster, NH and Guildhall, VT AND split the cost 50/50. Unfortunately, a legislator named Cloutier from Claremont, NH has been lobbying Rockingham/Bellows Falls officials concerning this 50/50 split and the local press has bought into it as a viable solution. I have rejected that proposal and argued that the agreements based on the well-understood state boundary be preserved. However, I have offered that we could advance the money for the Vilas project and then get it back through lower percentages on upcoming projects. This would help New Hampshire with their cash-flow problem and preserve the agreements. Clement is taking this under consideration but warned me that the current tone of the NH legislature is not conducive to spending money that mostly benefits another state. If the game plan by the state of New Hampshire is to renegotiate responsibility for these bridges, we should look into other non-transportation agreements that favor NH. VTrans and NHDOT will continue talking.

### Montreal, Maine and Atlantic Railroad (MMA) (Follow-Up)

We participated in a conference call this morning with MTQ and Maine DOT about coordinating our efforts designed to protect the business on this line while the owner, MMA, is going through bankruptcy and the line subject to auction. Some problems exist with signing the Non-Disclosure Agreement to get into the "data room" to become more acquainted with the details of the proposed sale. It appears that neither Maine nor Vermont will be able to access the information because we might have to disclose it. Therefore, we will try to glean what we can in other ways and ensure that it doesn't have to be protected.

We have indicated our interest in preserving the part of the MMA line from Farnham, PQ to Newport, VT and will monitor this closely. Today, Dan Delabruere, VTrans Rail Director, spoke with one of the trustees for the MMA in the U.S. District Court of

SAWY

why can't we do an NDA?



jurisdiction and got assurance that they will be looking for a buyer that intends to keep operating the line. We expressed our desire that a private entity own the line and that we would file a letter only to stay in the game to protect our interests here in Vermont. This view is shared by the governments of Quebec and Maine.

The stakes are high as the Farnham-Newport line has carried as much as 400 rail cars a month and it feeds the Conn River Line, which we own. If there is no freight from Canada on this line, the value of the Conn River Line is diminished. On the other hand, if the ban on Haz-Mat loads through Lac Magantic stays in place, the Farnham to Newport line could be in much higher demand as many chemicals are making their way to the Atlantic Coast through Lac Magantic and the state of Maine. More to come.

### **I-91 Bridge Project Over Rt. 30 and West River.**

This will be the largest bridge project in Vermont history, (\$60 million) and is about to begin. We are replacing four spans with two on a design-build contract. The nationally known Figg Bridge Engineers Co. of Pennsylvania is the lead contractor, with a number of Vermont firms in support roles. This is a project of national significance and is being watched closely by the FHWA in Washington. The crossovers are complete and there will be lane closures for the better part of two years.

These four bridges are originals and are of the same design as the span that collapsed a few years back in Minneapolis on I-35 over the Mississippi River. We have taken interim steps to strengthen the current spans but they are considered structurally deficient by design. There was much public input on this bridge due to the Rt. 30 crossing and it being considered a gateway bridge to Brattleboro.

### **Line Striping Incident**

Yesterday at about 4:00 PM on Rt. 4A west of Rutland, some fresh paint was washed away by the heavy rain. This had been applied earlier in the day by a VTrans paint crew. ANR and VTrans Ops are investigating the incident as a nearby stream was impacted by the non-toxic paint.

WCAX was on the scene and took film of the mess and it made it on the news last night. Clearly, the crew was either not aware of or ignored the weather forecast. We will figure it out and take appropriate steps to see it doesn't happen again.

### **Affirmative Action Plan**

Sue met with the FHWA Director for Civil Rights to assess our progress on Affirmative Action Plan. The Director was very pleased with our Agency's actions and results. We will be following up with a memo to certify that we are meeting our obligations under our Corrective Action Plan, and bring us back into full compliance for this federal requirement.

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

**To:** Peter E. Shumlin, Governor  
**From:** Douglas A. Racine, Secretary of Human Services  
**Re:** AHS Weekly Report  
**Date:** November 1, 2013

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**Vermont Department of Health (VDH)**

Hub & Spoke Update:

Barbara Cimaglio was interviewed for VT Edition on October 31<sup>st</sup> about the progress on the Hub and Spoke and the opening of the Rutland Hub in November.

Chickenpox in a child care facility:

The director of a child care center contacted the VDH to report a case of chickenpox. The child had attended the center during the infectious period. Many infants attended who were too young to receive the varicella vaccine. While this year's immunization data had not yet been received from this center, the previous year's report had documented 19 children old enough for the vaccine who had not yet received it. The Department was also informed that some non-immune children had been exposed to chickenpox outside of this center. After consulting with subject matter experts at the Centers for Disease Control (CDC) the VDH gave recommendations to the director, and a letter to parents, on chickenpox prevention and control. The Department for Children and Families' Child Care Services Division was notified of these recommendations.

**Department of Mental Health (DMH)**

Mental Health Oversight Committee (MHOC):

Commissioner Dupre and Deputy Commissioner Reed met with the MHOC on Thursday. They updated the MHOC on the community mental health system; inventory of infrastructure and Act 79 requirements.

Mark Johnson (The Mark Johnson Show – WDEV):

Commissioner Dupre will be interviewed next Tuesday. Medication will be one of the issues discussed.

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

Vermont nursing homes reduce inappropriate medication use by 20%:

On Thursday, DAIL Commissioner Wehry testified before the MHOC on both appropriate and inappropriate use of antipsychotics in the elderly. Commissioner Wehry will focus on the successful efforts of the campaign to reduce use in nursing homes. New data from the Centers for Medicare and Medicaid Services (CMS) released yesterday shows gains made have been maintained into the second quarter. Vermont is one of only 11 states that met or exceeded the national target of 15% set by CMS in 2012.

USA Today seeks information on VT background check policy:

In response to recent national coverage of misuse of nursing home residents' funds, USA Today contacted the Director of the State Survey unit, Fran Keeler, regarding any Vermont exemptions for background checks on nursing home employees. Ms. Keeler assured him that the State of Vermont Licensing and Operating Rules for Nursing Homes do not exempt non-caregiving staff. The nursing homes need to run checks on all staff to assure awareness of any criminal history. There is no evidence of a major problem in Vermont.

Commissioner Wehry appeared on VT Edition to talk about seniors and housing:

The Commissioner's talking points were: Currently the 4<sup>th</sup> oldest state in the nation and VT is on track to have the largest number of seniors 85 and older by 2030. Rather than build nursing homes, VT needs to continue to address affordable housing for all Vermonters and focus on enriched services at home and livable communities for all. Commissioner Wehry highlighted the success of Act 160 and the Choices for Care program. Two disgruntled callers complained of lack of timeliness in getting Choices for Care services; one caller gave the program high marks.

DAIL sent notice of \$2.23M rescission to DS providers on Oct. 31<sup>st</sup>:

DS Director Camille George sent out instructions to address how provider agencies are to achieve a \$2.23M reduction in their waiver allocations. The DDMH Council Director, Julie Tessler, called this a.m. expressing the Council's desire to receive the instructions as soon as possible. "We know it's coming despite our best efforts to keep spending down". A debatable point but clearly the rescission comes as no surprise. The \$2.23M rescission will be close to a 1.4% reduction of current allocations.

Chittenden County VNA poised to discontinue services at Anderson Parkway housing co-op:

Commissioner Wehry spoke again with Visiting Nurse Association (VNA) Executive Director Judy Peterson and offered a package of increased rates and a risk sharing arrangement. Judy agreed to take the proposal back to her Board but despite the cordial conversation, it was pretty clear there was little to no interest in finding a compromise. Commissioner Wehry anticipates notice of their intent to pull out by November 1<sup>st</sup>. We are hoping to issue a joint message putting the decision in the best possible light so as to reassure residents they will be served. Our intent is to identify a new provider (likely Bayada). We are exploring multiple contingencies.

Health Care & Rehabilitation Services of Vermont (HCRS) in Springfield/Brattleboro shows questionable practices:

Three situations involving HCRS this week have highlighted the need for greater scrutiny and oversight of the designated agencies in general and HCRS in particular. DAIL has referred one case to the Medicaid Fraud unit after learning of mismanagement of waiver funds. (The family was permitted to spend the waiver on siding, central air and new beds for the whole family). In the second, two disgruntled mothers complained that HCRS facilitated their young adult son's (K.G., autism) unaccompanied trip to Florida. They also called the Governor's office. The third situation involves a 55-year-old woman in Corrections whom they tried to place in one of their very costly residential placements (\$>250K) under the guise of her being a public safety risk. The staff state she poses no risk.

**Department of Corrections (DOC)**

WPTZ:

WPTZ is running a two part series this week on the complications and challenges of reentering people with sex offenses.

Fox 44 Now:

Fox 44 is running on story regarding the monitoring of people living in the community who have committed a sex offense. In general, we work with people to leave outside lights out and not to answer the door. We conduct routine checks. Dale Crook, Probation and Parole Director, handled the interview.

State Auditor’s Office (SAO) Report:

On Monday, the SAO issued a report on their work regarding the DOC’s contract for the delivery in Medical/Mental Health. In short, the SAO stated that the DOC needed to make improvements in its monitoring system. They applauded us for changes already made but have suggestions for further changes. The DOC is currently working with the Community Oriented Correctional Health Services (COCHS) to potentially move away from a contract for these services. This story drew considerable interest from the media.

Population

The department’s incarcerated population averaged 2,105 for the previous week. The incarcerated male population averaged 1,945 with 380 being presentenced inmates. The female population averaged 160 with 49 being presentenced inmates.

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

Housing Pressures:

VT has lost 13% of its Section 8 housing vouchers resulting in 774 fewer units for low-income Vermonters, thus severely damaging the social safety net. We believe this reduction is contributing to our increased GA expenditures. We’re noticing the average length of stay (compared to July through September last year) is up 30% and daily motel expenses are up 11%. To relieve some of this housing stress on Vermont families, advocates are pressing for an additional \$500,000 in the Vermont Rental Subsidy Program. It will be difficult for vulnerable families to stabilize without good housing, yet this is one of many pressures these families face.

Good idea - even more? what is \$ trade?

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

Health Home State Plan Amendment (SPA):

The Health Home SPA has been in limbo, awaiting response from CMS. Commissioner Larson and Policy Director Selina Hickman spoke with CMS Associate Regional Administrator Richard McGreal on Wednesday to apply some additional pressure to move forward. CMS had some specific feedback and appears ready to move forward with the process again.

Hospice Expansion:

DVHA has complied with the legislative mandate to request permission to provide an enhanced hospice benefit but the budgetary impact is large enough that it makes implementation impractical without a legislative funding solution.

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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 1, 2013

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**Secretary's Top Issues**

**Tuberculosis** - Dr. Haas, State Veterinarian, is working with USDA APHIS and the VT Department of Health to determine whether there is any reason to TB test a Mexican farm worker employed by a VT farm in order to clarify whether he is the source for an unusually high rate of TB sensitization in the dairy herd with which he works. The outcome of this situation has not yet been determined.

**More Tuberculosis** - Animal Health extended the quarantine on a dairy farm in West Haven after receiving a tuberculosis test results of "Suspect" on one cow. This cow will be slaughtered tomorrow and samples collected for definitive testing. Results may take up to 8 weeks.

**Tissue Residue Violations** - The Animal Health section sent out a Notice of Violation this week to a VT producer who has had 6 tissue residue violations in the past 9 years, the most recent two being within the past 12 months.

**Mosquitoes** - The mosquito surveillance season ended this week, as of October 29. We extended the season two weeks later than previous years. This week the remaining 14 resting box mosquito traps were surveyed and we found no vector mosquito species for submission this week.

**Potential Reopening of Slaughter Facility** - Meat Inspection has been informed that the Grand Isle Slaughter plant is coming closer to being opened as the individuals interested in purchasing the facility are closing in on their last funding source. This facility closed due to animal abuse issues with the handling of calves being sent to slaughter. Opening under totally new management and ownership. May be controversial.

**Small Farm Water Quality Issue** - A small farm in West Danville will receive a corrective action letter for violations of Section 4.01(b) of the AAPs. The operation is raising some pigs, and has them confined in a small, sloped area with direct access to a stream. They are not managing an animal holding area in such a way as to prevent the runoff of waste to waters of the state.

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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 1, 2013

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**Status of Governor's Priorities:**

**Jobs in Agriculture**

**Press**

**Rabid Puppy** - Dr. Haas, State Veterinarian and Director, Food Safety & Consumer Protection, is working on a media release and additional media outreach surrounding the recent incident of a rabid puppy being imported through a rescue organization to VT. As a result of this, approximately 20 individuals are having to receive post-exposure prophylaxis rabies vaccinations. It highlights the critical importance of following best management practices when adopting puppies and dogs.

**Meat Inspection** - Dr. McNamara prepared a report for Sally Pollack of the Burlington Free Press documenting number of state, federal, custom plants and retail stores that actually process meats. As well as monthly slaughter totals for livestock and poultry slaughtered in state inspected establishments

**Significant Events/Meetings:**

The Agency hosted a public meeting on the proposed maple grades on Thursday, October 31 at 10:00am at the Agency. Seven interested parties testified and all were in favor of the proposed maple grade changes.

Dr. Mehlenbacher attended the 50 state call hosted by FDA on the latest FSMA rule – Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Food for Animals, officially published 10/29 with a 120 day comment period.

- Applies to domestic and foreign firms that must register under the Bioterrorism Act. Nutritional inadequacies are considered to be a hazard. Same exemptions as in the PC rule; FDA seeking input on business sizes.
- Sales totals (for exemptions and thresholds) only consider animal feed sales – don't include any human food that is sold by the business
- Implementation – FDA stated they will rely on state inspectors and continue to utilize state inspectors and the funding programs already in place – VT does not have a funding program in place from FDA for these inspections.
- Questions for VAAFM:
  - How does this change what we currently do with animal feed regs?
  - How will the industry in VT be affected?
  - What kind of funding can we get from FDA – would it fund an entire position?
- Other notes on the call:
  - FDA potentially reissuing certain portions of the Produce and Preventive Controls Rule do to large amounts of comments
  - FDA has formed three FSMA Operations Teams – one each for the Preventive Controls, Produce, and Import Rules; consist of FDA field and HQ folks along with state reps

- A Preventive Controls Alliance has been formed; is working on training for industry

### Evolving Issues:

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**Tuberculosis** - Dr. Haas, State Veterinarian, is working with USDA APHIS and the VT Department of Health to determine whether there is any reason to TB test a Mexican farm worker employed by a VT farm in order to clarify whether he is the source for an unusually high rate of TB sensitization in the dairy herd with which he works. The outcome of this situation has not yet been determined.

**Animal Abuse** - The VAAFM Meat Inspection Program referred a case of alleged animal abuse to the AG's office for consideration. This case involved a reported incidence of a farm worker inserting a metal pipe up a cow's rectum to get it to load. The animal was subsequently condemned at slaughter and had necropsy findings that could be consistent with traumatic rectal perforation. If the AG's office does not pursue further investigation, the case will be referred to local law enforcement for follow up.

**More Tuberculosis** - Animal Health extended the quarantine on a dairy farm in West Haven after receiving a tuberculosis test results of "Suspect" on one cow. This cow will be slaughtered tomorrow and samples collected for definitive testing. Results may take up to 8 weeks.

### Summary of Key Agency Department Activity:

#### Administration

**Section 248 review** - Assistant AGG Zamos, Renewable Energy Coordinator DePillis and Deputy Secretary Bothfeld discuss process for reviewing Section 248 reviews for solar projects on primary agricultural soils. A more specific protocol will be developed with the hiring of Chief Policy Enforcement Officer and full time Act 250 Coordinator.

#### Agricultural Development

Vermont Dairy Promotion Council meeting held on November 1. Agency of Ag granted \$265,500 to carry out dairy promotion work in Vermont.

### Food Safety and Animal Health and Consumer Protection

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**International Maple Meeting** - Henry Marckres, Chief of Consumer Protection, attended the annual meetings of the North American Maple Syrup Council and the International Maple Syrup Institute from October 22 – 26 in Moncton, New Brunswick. Henry provided reports from the Agency at both organizations meetings and participated in judging maple syrup and products in the International contest. Henry was appointed to the research fund committee that reviews proposals for research funding for NAMSC. Also, Don and Betty – Ann Lockhart and Jacques Couture of Vermont were elected to the North American Maple Hall of Fame, to be inducted in May in Croghan, New York.

**Featured Maple Expert** - A new book has just been released entitled, "The Sugarmaker's Companion", an integrated approach to producing syrup from maple, birch and walnut trees. It was written by Dr. Michael Farrell of Cornell University. Henry Marckres, Chief of Consumer Protection, is featured in one chapter on identifying off flavors in maple syrup.

**Maple Grading Kits** - Marc Paquette, Weights and Measures Specialist of the Consumer Protection Section, assisted the Vermont Maple Sugarmakers Association by mixing the colors for the temporary maple grading kits sold annually by the VMSMA. Consumer Protection has provided this service for many years. The kits will reflect the new proposed maple grades for 2014.

**Performance Based Budgeting** - The Food Safety and Consumer Protection Division management team is working with the business office and Deputy Secretary Bothfeld to establish objectives and performance

measures related to the performance based budgeting initiative that the State is undertaking. The Division was chosen to participate in a pilot project related to this program.

**Tissue Residue Violations** - The Animal Health section sent out a Notice of Violation this week to a VT producer who has had 6 tissue residue violations in the past 9 years, the most recent two being within the past 12 months. This case was referred by FDA to the State for enforcement under the statutory enforcement language that was enacted in 2011. The proposed penalty is \$2,000 for the most recent violations.

### **Meat Inspection**

- Annual audit for USDA FSIS is being worked on.
- Federal Budget call received and documents are being prepared for the federal Fiscal year 2014 50/50 funding
- USDA, FSIS has notified the state program of the Federal Fiscal Year 2014 Continuing Resolution allocation available for drawdown through January 15, 2014 based on 2013 funding and that the sum will be adjusted once the Agency receives a final appropriation. Letters will be sent at that time documenting the full year allocation.
- Meat Inspection has been informed that the Grand Isle Slaughter plant is coming closer to being opened as the individuals interested in purchasing the facility are closing in on their last funding source. The current building owner has stated the purchasers have a significant down payment on the property and should have final financing in place around mid-November
- Both of the proposed state inspected slaughter/processing plants in Milton and Wilmington are progressing on construction phases. Target dates for completion are not yet set in stone.

### **Meat Inspection Compliance activities**

- Compliance has identified and initiated corrective actions for a retail store misrepresenting beef products as breed specific that could not be verified
- Inquiries were made at the VT Food Bank concerning product that may be donated by an out of state federal poultry establishment. The proactive actions were to be sure that the food bank was aware that product that was pulled out of commerce for misbranding due to undeclared allergens could not be redistributed without proper labeling

### **Animal Health Updates**

- Dr. Mehlenbacher and Animal Health Inspector Darryl Kuehne met with Balanced Rhythms Equine Clinic regarding use of electronic Certificates of Veterinary Inspection. This will be the fourth clinic that has signed up for use of the Vermont specific version which we are providing at no charge. The VT version is an alternative to when the Section will begin to charge for the paper CVIs next budget year.
- Animal Health Section met with the new owner of Over the Hill Farm (Slaughterhouse) in Benson. The new name is Maple Ridge Meats and the owner is Greg Hathaway. They will be applying for a livestock dealer's license, enabling the business to purchase livestock and therefore the sale of meat in addition to its custom slaughtering operation.
- Animal Health Inspector Darryl Kuehne attended the Addison County Commission Sales for ADT compliance activity and the marketing report.
- AH inspectors completed dairy biosecurity surveys in Grand Isle, Chittenden, Franklin, and Rutland Counties. A few refusals to complete the survey.
- Animal Health Program Coordinator Jim Cameron met with the business office regarding the quarterly budget report for the Section's cooperative agreements with USDA.
- Completed Pullorum testing for a producer in Northfield
- Began a tissue residue inspection for FDA in Shelburne
- Delivered producer tags

## **Agricultural Resource Management**

### **Water Quality Enforcement Activities**

- A small horse farm in Milton will receive a corrective action letter for violations of Section 4.02(c) of the Accepted Agricultural Practices Regulations (AAPs). Horse manure is stacked within the 100 foot required setback from surface water (standing water in a wetland).
- A small farm in West Danville will receive a corrective action letter for violations of Section 4.01(b) of the AAPs. The operation is raising some pigs, and has them confined in a small, sloped area with direct access to a stream. They are not managing an animal holding area in such a way as to prevent the runoff of waste to waters of the state.
- A medium farm operation that received a notice of violation/administrative penalty for violations of the MFO general permit (conservation practices not in place to prevent a discharge of silage leachate to waters of the state) has requested a hearing on the Notice. A pre-hearing settlement conference will be held to determine if case resolution can be reached without the need for a formal hearing.

**Mosquitoes** - The mosquito surveillance season ended this week, as of October 29. We extended the season two weeks later than previous years. This week the remaining 14 resting box mosquito traps were surveyed and we found no vector mosquito species for submission this week. The previous week, 22 samples were submitted, all found to be negative for virus activity. All mosquito traps have been brought in for the season and will be cleaned, inspected, and stored for the season. We will summarize the findings this season in next week's report.

### **Medium Farm Operation (MFO) and Large Farm Operation (LFO) Programs:**

- Staff attended two CAFO inspections with EPA on MFOs in Addison County.
- Staff conducted a technical assistance visit on a MFO regarding the BMP (best management practice) and FAP (farm agronomic practices) programs. The farm is interested in using an irrigation system to manage storm water waste runoff from their production area and also just completed injecting manure on a substantial amount of their corn acreage.
- Staff is working with grantees in the Capital Equipment Assistance Program (CEAP) to verify purchase and sales agreements prior to making program payments.
- Staff worked with the Enforcement Section to process, develop and review enforcement actions for one MFO and one LFO for water quality permit violations.
- Staff are working on a response to a former LFO farm in Franklin County that would like to become a MFO. The farm is changing its management of the facility and would like to be regulated as a MFO rather than a LFO.
- Staff attended a tile drainage workshop at Miner Institute in NY. The event featured presentations regarding subsurface drainage on crop land and what water quality implications may be when tile drainage systems are installed.
- Staff attended a Soil Health Team Meeting at the NRCS State Office. The discussion related to how to develop an approach to promote soil health across VT through partner outreach, education and related programs. Representatives from NRCS, VAAF, and UVM Extension were present at the meeting.
- Staff are working with colleagues in house and with partners to design and implement water quality BMP projects on MFOs and LFOs.
- Staff are processing applications and information for several MFOs that are increasing in size and we are working to transition the farms into the LFO program. Staff are also working on compiling information related to LFOs that require permit amendments.
- Staff are continuing to work the AGs office regarding an enforcement case against a farm owner that manages 2 MFOs in Orleans County.
- To assist in the workload demands brought on by the current pesticide investigation, MFO/LFO staff are continuing to respond to all AAP complaints on small farms until further notice.

### **Conservation Reserve Enhancement Program (CREP):**

- Staff visited a small farm in Lamoille County to assist NRCS with planning of laneways, fence, stream crossings and explore potential for CREP to complement EQIP practices necessary to address multiple resource concerns.
- Staff visited a small farm in Swanton to meet with USFWS staff to review farm bridge project to get input on in-stream components needed to improve aquatic organism passage at this site (important, because bridge received higher level of funding because it would address this issue).
- Staff visited a small farm in Washington County to discuss CREP and perform field work needed to give farm a draft CREP proposal. To maximize benefit to landowners, we will likely seek to work with DEC river management on a River Corridor Easement proposal given dynamic nature of river through farm.
- Staff met with USDA and USFWS partners to provide input into VT USDA's proposal to National USDA on how to proceed with invasive plant issue affecting CREP, WHIP, and WRP projects.

### **Secretary's Comments**

#### Meetings:

- TMDL; National Life: met with state and EPA TMDL stakeholders regarding upcoming TMDL proposal, expressed concerns and challenges and discussed public rollout.
- Farm to Plate Annual Meeting; Killington: attended and spoke to conference of over 250 people who were in a problem solving mode to advance food systems in VT. Enthusiastic and focused conference, emphasized importance of VT's evolving community based food system models to our success in growing jobs, building community and changing the food system in the US
- Bed bugs, EPA, DOH, VAAFMT; Rutland: met with leadership and some staff for an update and conveyed support to staff and leaders for work they are doing.
- FY15 Budget Discussion; Montpelier: met with Administration to review VAAFMT budget proposal
- FSMA, VAAFMT staff: reviewed draft comments on FSMA and coordination with DOH, NASDA for submittal to FDA by Nov 15
- Maple Developments in Island Pond; Montpelier: discussed new business from Canada locating in Island Pond with ACCD and how we want to support them and their implications for maple industry in VT
- College of Agriculture and Life Science Advisory Board; Burlington: attend meeting to discuss future of CALS and meet new Provost David Rosowsky
- China Trade Mission, Teleconference: discussed particulars of trip with VAAFMT staff

#### EVENTS:

- Springfield Regional Development Corporation, Springfield: Guest speaker for Annual meeting, focused remarks on how VT Community Based Agriculture is a leader nationally and why ag is business and business is ag.

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Deborah L. Markowitz  
Agency Secretary

Justin G. Johnson  
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 1, 2013  
**Subject:** ANR Weekly Report

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**Governor Level Issues:**

**Wastewater/Water Permitting - Implementation of Professional Certification:** As part of our effort to make our programs more efficient and effective and to reduce unnecessary bureaucracy we kicked-off the rollout of professional certification for wastewater and water projects. Full rollout will take two years, and will put the technical responsibility for these projects more squarely in the hands of the engineer and licensed designer. Staff will do site visits and spot checks as needed. I am happy to give you more information about what we are planning if that would be helpful.

**Regional visits:** I have been doing a regional tour of Vermont, visiting our regional offices, speaking at Rotary and then meeting with a smaller group of lawyers, engineers, municipal officials and business owners to get feedback about the services from ANR and to get their thoughts about how we might improve and streamline our regulatory and assistance programs. It is also an opportunity to let them know about our LEAN initiative. The overwhelming response has been positive and they have given me good food for thought.

**Vermont State Nuclear Advisory Panel (VSNAP):** On Oct 23, VSNAP passed the following motion for consideration by both the Public Service Board and the Public Service Department: "For the benefit of the people of Vermont, VSNAP recommends that all parties pursue a DECON decommissioning strategy for the Vernon reactor site, in order to promptly release the site for unrestricted use; and VSNAP encourages constructive dialogue between the state of Vermont and Entergy/Vermont Yankee toward these ends."

**Waterbury Flood Control Dam:** The Dam Safety program has begun pursuing transferring all responsibility for the operation and maintenance, repair, replacement, rehabilitation, and



structural integrity of the Waterbury Dam to the U.S. Army Corps of Engineers. A formal proposal will be submitted separately on the topic. The operation and maintenance of Waterbury Dam has become highly specialized since the installation of the seepage control modifications in 2010, and annual costs have increased significantly. In addition, the spillway has been identified as needing to be replaced within the next two to seven years due to gate structural and binding problems. Cost to the State is currently about \$76,000 annually for maintenance alone; the spillway repair project has an estimated cost of \$35,000,000 of which the State will be responsible for up to 35% (\$12,225,000).

**Sunset Farms Mobile Home Park:** Compliance & Enforcement held a meeting with ACCD Staff, Shires Housing, Mobile Home Park Project staff and the Town of Bennington. We discussed the future of the mobile home park. General consensus was that the park should be closed. This determination was made based on the estimated costs of connecting to the municipal wastewater system (\$500-600K) and repairing and upgrading the water supply system to provide residents with potable water. DEC will take the lead in closing the park working in conjunction with other groups and bringing an action before the Environmental Division of the Superior Court. We are currently working with ACCD staff to identify a receiver, and their duties and responsibilities. It will take one year to fully close the park.

**Moretown Landfill Emissions:** In response to increasing hydrogen sulfide (H<sub>2</sub>S) levels at the Moretown landfill, Air Quality staff have been working with Advanced Disposal to cap and reduce these emissions. A temporary gas pretreatment system was installed on October 17 to remove H<sub>2</sub>S from the landfill gas before it is combusted. This will be replaced with a more permanent system in the near future. H<sub>2</sub>S in the landfill gas not only causes odors, but concerning SO<sub>2</sub> emissions when the H<sub>2</sub>S is burned. Separately, we have been working with Advanced Disposal to develop the meteorological data needed for the modeling analysis as part of their anticipated application for an expansion at the landfill. An expansion would result in more landfill gas emissions, and the addition of a third engine to capture and recover energy from landfill gas at the site.

**2013 Lampricide Activity:** The USFWS conducted the lampricide treatment in Stone Bridge Brook, located in Milton, on Oct 23 and the Lamoille River on Oct 30. Both treatments went well with minimal losses of non-target species. We were particularly concerned with the treatment of the Lamoille River because last time this stretch was treated there was a surprisingly large impact on Mudpuppy (which have been the subject of significant advocacy for listing as an endangered species in Vermont.) with nearly 500 being killed. Thankfully, this last treatment resulted in only one mudpuppy death (that we are aware of as of this moment.)

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## **EVERYTHING ELSE:**

### **Legislative Issues/Testimony:**

**Toxics in Products Legislation:** DEC staff met with VDH counterparts to discuss regulation of toxics in products, in advance of a second meeting this week with Senator Lyons and VPIRG to

LP

discuss the technical comments on their draft bill (as opposed to an Administration position). Significantly, we discussed a lot of common ground related to the need for states to lead, absent federal action on this important public health matter, our recommendation to clarify roles, including a VDH lead on the technical, toxicological reviews, as well as the significant staff/resource need that would be driven by waivers and alternatives assessments. VPIRG and Senator Lyons resolved to get back together to redraft based on the discussion.

**Shorelands Commission:** David Mears and DEC staff participated in a Shorelands Commission meeting where the commission members discussed how they will be moving forward with the bill. The Senators emphasized their commitment to move ahead on a bill and there was general agreement that it would be making some significant changes to the house bill.

LP - under combs !?

### Press Issues/Releases:

**Good Point Recycling.** In September, ANR did not award GPR a contract and denied a proposal that would have allowed them to continue collection of consumer electronics on behalf of manufacturers. After having their first case dismissed on jurisdiction issues, GPR refiled the case last week in the Superior Court, Environmental Division. There have been articles published in VT Digger, and the Addison Independent to date.

**Help Keep Vermont's Flawless Hunter Safety Record, Wear Hunter Orange:** Last year was the safest year ever for Vermont hunters. There were no hunting-related shootings of any kind in any of Vermont's hunting seasons. So far, 2013 is also accident-free and smart hunters can help keep this new hunting tradition going by choosing to wear hunter orange.

**Pat Berry had an op ed "The Case for Hunters":** His main message was: well into autumn, a season that is synonymous with hunting for countless Vermonters, it is important to reflect on the value of hunting for both cultural and ecological reasons—and how we can keep this tradition strong. Hunting is a quintessential part of Vermont's heritage. Vermont boasts the highest participation rate in the lower 48 states for hunting, fishing, trapping, and wildlife watching. Hunting is not only one of the most socially, ethically, and environmentally responsible way to put meat on the dinner table, it also provides an important opportunity to bring families together and get kids outdoors to learn an appreciation for nature.

### Significant Events/Meetings:

**Zero Emission Vehicle (ZEV) Memorandum of Understanding (MOU):** Eight states, including Vermont, announced an agreement to put 3.3 million zero-emission vehicles on the roads in their states by 2025. Signed by eight governors, this multi-state effort is intended to expand consumer awareness and demand for zero-emission vehicles. Transitioning drivers to zero-emission vehicles will reduce greenhouse gas emissions, improve air quality and public health, enhance energy diversity, save consumers money, and promote economic growth. The ZEV MOU includes commitments to create a multi-state task force to prepare a plan to

accomplish the MOU's goals; lead by example (e.g., by establishing ZEV purchase targets for state fleets); evaluate and establish, where appropriate, monetary and nonmonetary incentives to promote ZEVs; and develop uniform standards for roadway signs and charging networks.

**Multi-Agency Meeting on School Science Labs:** Staff facilitated a meeting with Agency of Education, Dept. of Labor (VOSHA), Dept. of Public Safety, and Department of Health to discuss strategies to improve high school/middle school laboratory chemical management. All agreed to work collaboratively to develop a voluntary compliance self-certification checklist and program that addresses environmental, health, and safety requirements. Initially the program would be voluntary with a focus on outreach and assistance, but eventually would be mandatory.

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## **SUMMARY OF KEY DEPARTMENT ACTIVITY**

### **Environmental Conservation**

**VY Decommissioning:** Significant foundational work was done this week, including setting up a teleconference with EPA regional counsel to discuss jurisdictional matters, and a meeting with Chris Campany and Tom Buchanan, Windham Regional Commission, who have had substantial involvement in the Public Service Dept dockets over the last decade related to the various activities at VY. Besides downloading their institutional knowledge, Chris C. offered to set up a meeting with Waste Management staff and our counterparts at MA DEP and Franklin Council of Regional Governments to discuss the decommissioning experience at the Yankee Rowe plant in Rowe MA.

**Roxbury Hatchery:** Watershed Management staff met with F&W and FEMA representatives regarding the Roxbury Hatchery. FEMA is changing its thinking regarding F&W's request for reimbursement under the Codes and Standards provisions. At this point, FEMA is not satisfied that the F&W request meets the five eligibility criteria. This turnaround is the result of information assembled by Watershed staff for use by F&W. FEMA was particularly swayed with regard to proof furnished of the development and subsequent implementation of the Reasonable Potential Procedure. At issue now is to determine whether FEMA can find their way to issuing a recommendation that the Irene event itself was a suitable trigger for the need to build an upgraded facility to meet the limitations imposed by the Determination. FEMA has supplied a list of questions to be addressed jointly by Watershed staff and F&W to provide that documentation.

**Barnet Water Supply:** In response to Barnet's drinking water being determined at risk of viral/bacterial contamination in Feb 2011, the system was required to issue boil water notices quarterly to the residents. Since then, the village has worked hard to find the resources needed to pay for needed improvements. The village has now decided to sell the system to the local Fire District. This is seen as a good first step toward getting funding so that the improvements can be made to the system in 2014.

**Vernon Green Nursing Home:** A Chlorox product was accidentally used to disinfect the water system on Oct 23. The product contained sodium hypochlorite, sodium metasilicate and sodium hydroxide which can cause nausea and gastrointestinal distress. While concentrations of these chemical are believed to be very low, Drinking Water & Groundwater Protection advised the water system operator to flush the storage tank and distribution system to remove the non-authorized chemical. Once the sodium hypochlorite residual was no longer detectable during the flushing (the next day), normal operations resumed.

**Draft Unsafe Dam Funding Rule:** The draft unsafe dam revolving fund rules were posted on the Secretary of State's website and the Dam Safety website. A public hearing will be held at National Life on Nov 22. The comment period will close on Dec 2. We have received two inquiries so far. The Rule will establish standards and procedures for the use of the Vermont Unsafe Dam Revolving Loan Fund. The Unsafe Dam Revolving Loan Fund can be used to provide loans and grants to qualified municipalities, nonprofit entities, and private individuals for the reconstruction, repair, removal, breaching, draining, or other action necessary to reduce the threat of a dam or a portion of a dam that has been determined to be unsafe via the process laid out in 10 V.S.A. §1095.

**Exchange Network Grants and eDEC 2.0:** The ANRIT/DEC eDEC 2.0 workgroup met with the DII Deputy Commissioner and the DII project manager assigned to DEC to review the project plan and major deliverables of the work. Major outcomes included DII proposing/supporting a simplified proposal/contracting process to secure the vendor that will enable the eDEC transition and establishing the DII/DEC workgroup responsibilities. The workgroup will continue work on various documents including a Statement of Work for the contracting process. Weekly meetings are established to ensure this process moves as expeditiously as possible.

**Groton State Park Maintenance Yard, NOAV:** We received a written response from FPR today, as requested in the NOAV sent last month for oil spills that occurred at the maintenance yard. Park staff worked with Matt Moran in a timely fashion over the course of the month to assess the extent of the spill, conduct cleanup and institute a plan, including training, statewide for timely reporting and management of spills in the future. A report of the environmental assessment and remediation by an independent consultant was submitted to DEC, along with a commitment to complete the cleanup.

**Essex Junction WWTF Discharge:** The Essex Jct. WWTF experienced another discharge of partially disinfected effluent on Oct 20 when a construction contractor severed an underground power cable. The incident has been referred to CED for investigation.

### **Fish and Wildlife**

**National Guard Protects Bats:** Staff worked with the National Guard at Camp Johnson this week. The Guard halted a firing range demolition due to small-footed bats roosting in the

materials that were being torn down. Demolition is scheduled to continue this week with their contract biologist on the work site. Pretty fantastic response from the Guard on this endangered species matter.

**Good News for the White River:** Staff attended the NRCS state technical committee meeting to get updates on USDA – NRCS programs and practices that will be available this year. Staff discussed impacts of the shutdown, and what the future of NRCS technical assistance looks like. Some changes may occur this year to the programs, with some new initiatives coming on line to aid in restoration of the White River post Irene.

**Hunter Education:** The 2013 Hunter Education Season is nearing its end with the last few classes occurring this week and weekend. This includes a staff lead course that will be occurring in Orange on Sunday. Overall this year was a very well attended program and we wish all the programs graduates good luck this fall.

**Vermont Yankee Recommendations Still in Works:** Staff continues drafting Vermont Yankee Environmental Advisory Committee recommendations for VT ANR consideration in drafting a NPDES discharge permit for Vermont Yankee. At the time that this activity report is being read, EAC representatives have been provided a copy of draft recommendations for their review and comments. Comments are due back to district staff by Nov 4. This will be followed up with final recommendations submitted to VT ANR.

*Y2esh.*

**Access Area Improvements:** The Department worked to complete a number of small access area improvement projects over the past few weeks. These included removing boulders from the Neal Pond ramp area to improve boating safety, installing stone to curb shoreline erosion on the Lake Elligo access (native plantings will follow next spring), creating a gravel path and formal parking area on Lake Hardwick, and dredging the Horicans ramp to remove sand and gravel following the spring flooding of Lake Champlain in 2011. To date, there have been 14 access areas improvement projects completed this year. These projects were all funded with capital funds and matched with federal aid funds from the US Fish and Wildlife Service.

**Deer:** Archery deer hunting season has closed. The last week of the season was extremely busy for the warden force. It appears desperate hunters were willing to do almost anything to fill their tags. Several arrests for illegal night hunting were made along with instances of shooting from roadways and even shooting deer with rifles and attempting to report them as legal archery kills. There were also several illegal “antler point violations” deer self-reported by hunters. In addition wardens continue addressing baited deer stands and an uptick in road killed deer.

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

**Forest Legacy:** The Vermont Forest Stewardship Committee met last week to review new Vermont Forest Legacy applications. Three new applications were reviewed: two expanded proposals that were resubmitted, Groton and southern Windsor County, and the new Dowsville Forest project in Duxbury. The committee decided to forward all three applications to the US

Forest Service to be considered for FY15 funding. These projects will be reviewed and ranked by the USDA Forest Service later this year.

**Survey:** Department staff and contract surveyors from Dubois and King met this week with camp owners along the West Shore Access Road at Lake Groton to review the draft right-of-way survey of the access road prepared by Dubois and King. When finalized, it is hoped that this survey will resolve some longstanding questions that many camp owners have had regarding the location of their right of way.

**Encroachments:** Work continues on two major encroachments at Coolidge State Forest: one in Plymouth and the other in nearby Mendon. The Plymouth encroachment involves the construction of a snowmaking pond at Round Top ski area that spilled over onto about half an acre of adjacent state forest land. There are also storm water and possibly wetlands violations associated with this encroachment that are being looked into. The Mendon encroachment involves the establishment of a small cabin/tent facility in a sensitive wetland on the former International Paper Parkers Gore parcel that is being used for commercial purposes. There are wetland, Act 250, and easement violations associated with this encroachment.

**Rock and Ice Climbing:** Recreation Coordinator, Jessica Savage, meets this week with CRAG (Climbing Resource Access Group) Vermont to discuss formalizing the relationship with FPR related to rock and ice climbing.

**Trail Info Tool:** Progress is being made toward the high-priority development of a digital statewide recreational trail public information tool. Partnerships and funding are being pieced together to complete this much needed service.

**Roads and Trees Workshop:** The second of two successful ‘Roads and Trees’ workshop was held in Stowe on Oct 22 with 45 participants. The workshop was held in partnership with the Vermont Local Roads Program and offered attendees an outdoor learning experience that explored strategies to balance road safety and tree canopy. [To view photos from the day, click here.](#)

**Timber Sales:** The prospectus for the Northwest Passage sale at Lewis Creek WMA has been mailed to loggers. The sale is located in Starksboro on 232 acres and contains 395 MBF of saw timber and 1,603 cords of hardwood pulp/fuelwood. The District III crew is working hard to complete a 100-acre timber sale in the Honey Hollow area of Camels Hump State park, where temporary employee John VanHollenbeek has played a key role in writing the prescription and managing the marking crew.

### **Information Technology**

**iTop:** We moved our data backup to DII’s iTop model a few months ago. We discovered problems with recovering some of our backed-up data. This is a concern and a top priority for us.



**Privileged and Confidential**

**MEMORANDUM**

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To: The Honorable Peter Shumlin, Governor  
Sarah London, General Counsel

From: Christopher Recchia, Commissioner

Date: November 1, 2013

Subject: Weekly Report

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**Governor Level Issues:**

*need to see ...*

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

**VY:** I am working on a proposed counter-proposal to Entergy's last proposed agreement. They are expecting something from us as a next step while they are working on scenario analyses. The Board responded to last week's filings asking for more briefing. We are not objecting to a request by Entergy to extend this response date by 2 weeks. This will give us time for additional negotiations and for the next meeting between you and Bill Mohl.

**TDI:** We received a "heads-up" regarding the TDI NE Clean Power Link 1000 MW line through Lake Champlain in advance of the TDI announcement on Thursday, and answered several press inquiries about it (BFP Wed; Digger, Thurs). Our press response was that this is very early in the process, we have no details, but the proposal is of interest and may assist with the goal of increasing diversity of power sources and importation of Canadian hydropower (their PR says this is the intended generation source). A meeting has been requested of them through Adam Necrason for greater detail.

**GMP Stafford Hill Solar – Docket 8098** – GMP responded to the Department’s first round of discovery requests relating to this docket and noticed errors in its analysis resulting in changes to costs and quantification of benefits which brings the project closer to reasonable costs. Additionally, they are considering amending this proposed project to include a storage element. Responses to the Department’s second round of discovery requests, focusing on the aesthetics of the project, are due by October 31<sup>st</sup>. A stipulation or litigation schedule is due to the Board by November 5<sup>th</sup>.

**VEC Net Metering Tariff 2.0 – Tariff No. 8471** – On October 30, the Department filed a letter with the Board addressing VEC’s Net Metering 2.0 tariff. VEC has reached the 4 percent cap for net metering facilities and has proposed to extend the program on different terms (and at lower rates) than those set forth in 30 VSA § 219a. The Department is recommending that the Board initiate an investigation into the proposed tariff, highlighting that the Board should address the threshold level of whether or not the proposal is consistent with section 219a.

**WEC Net Metering Tariff:** – On October 25, WEC proposed a tariff that would restrict the size of net metering facilities to 5 kW. WEC describes this as a temporary tariff to be put in place so it can continue to offer some form of net metering until the Legislature revises the program. WEC has passed the 4 percent cap in the existing statute and is presently at almost 10 percent. The Department is reviewing the proposed tariff. An initial reading suggests that the same threshold legal issue (consistency with section 219a) would exist in this case as exists with VEC’s proposal.

**Order 1000** – The NEPOOL Transmission Committee held a vote on October 30 regarding a default cost allocation for public policy projects. The Transmission Owners put forward a proposal under which 70% of the costs of a public policy project would be socialized across the region and 30% of the costs would be borne by the states which have public policies necessitating transmission. We withdrew our support via NESCOE for the 70/30 split and hope to be providing NESCOE with a qualitative default suggestion early next week where the beneficiary of a particular policy-based project pays. As a result, NESCOE took no position on the proposed allocation. The Transmission Owners’ proposal passed with 75% of the vote. VELCO opposed the proposal. Other VT utilities abstained. There will be a Participants Committee vote on the proposal on November 8; it is likely that the proposal, if it goes forward as is, will have similar support. The Transmission Owners are legally able to file with FERC regardless of the outcome of the Participants Committee vote and it is expected that they will file the 70/30 proposal at FERC. Still, our position enables us to oppose the formula if used on specific projects.

hmm. Payment for big regional trans

**VGS Efficiency:** As a result of substantial discussion, VGS is proposing to expand their efficiency programs as part of the Phase I project – though through their efficiency docket – to all customers and potential customers (even if they don’t become customers) within their expanded footprint. This stretched our financial analyst’s approach to system and state versus ratepayer benefits, but we got there, and it shows our creativity in advancing Vermont’s energy goals. This will probably be announced next week.

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VGS involved  
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## Significant Meetings/Events this week:

**October 28:** Chris and Darren and other staff at REV conference (Chris moderated afternoon session); Chris/Darren met with Carolyn O'Connor and Steve Molodetz of HQUS. We discussed the TDI and Northern Pass Transmission projects. *get update.*

**October 29:** Darren and Asa speak at REV conference (Darren sits on Plenary Panel).

**October 30:** Chris speaks with NESCOE re transmission – withdrawing our support for the 70/30 cost allocation; Chris, Darren, Geoff, Autumn and Ed McNamara attend Joint Energy hearing in leg and testify on role of Public Advocate in siting decisions and curtailment – this went relatively well; Chris and Darren attend Gov's Council on Energy and Environment meeting.

**October 31:** Chris attends EAN Meeting at GMP on Total Energy Standard; Darren meets with Paul Craven of VLITE; Chris meets with Justin Johnson, Jim Volz and Greg Faber to hear proposal from ANR to increase funding and staff resources due to section 248 workload; Darren meets with National Bank of Middlebury; Chris and Darren attend Land Use meeting.

**November 1:** Darren meets with Sen Bray re Net Metering.

## Next week significant events/meetings:

**November 4:** Chris/Darren meet with AARP; Chris attends Energy Solutions meeting.

**November 5:** Bi-weekly VY Interagency meeting; Darren attends EVT/Fuel Dealer mtg

**November 6:** Chris and Ed meet with ISO Board along with PSB

November 8: Chris and Ed to meet with NECPUC regional partners, NEPOOL and ISO in Boston on regional issues.

**Media:** Several news outlets publish story on PSD reply brief re Entergy/VY amended petition for CPG to operate until December 2014.

## Everything Else:

### **PERD**

#### Total Energy Study

- A Nov 14<sup>th</sup> public meeting was added to the TES Public Engagement process to provide an educational overview of the TES goals and steps, the Policy sets, and to hear public discussion. The meeting will be held in Montpelier and hopefully will also include a webinar for remote accessibility. We will take written comments as well.

#### Net Metering

- Presented about net metering policy choices (without details on proposals) at the REV Conference.

- Received first ever CHP NM application (3.8kW) Morrisville Electric territory. Morrisville has previously notified the Board their cap has been reached and they are not accepting additional applications. Applicant is a Morrisville Electric Board Member.

<b>Net Metering Activity 10/18/13 – 10/25/13</b>			
	Registrations	Applications	CPGs Granted
<b>Count</b>	7	1	37
<b>kWAC</b>	37.937	11.400	76.751
<b>Ave Size kW</b>	5.419	11.400	6.395

<b>Cumulative Capacity of Registrations and Applications Submitted</b>			
<b>Year To Date</b>		<b>Total Since 1999</b>	
<b>2012 kW</b>	<b>2013 kW</b>	<b>1999 – 2013 kW</b>	<b>% of CAP</b>
6404.48	10664.02	37840.29	~ 94.6%

**Engineering**

Vermont Yankee Operation

Since the last report, Vermont Yankee has operated at 100% with no notable issues. The plant has operated continuously for 208 days since the last refueling outage. On Monday of this week, VY entered a planned Limiting Condition of Operation (LCO) for preventative maintenance of the “A” standby gas treatment system (SBGT). VY expects to exit this LCO today. This week the NRC conducted a commitment audit, which reviewed a sampling of the commitments VY has made to the NRC. The NRC did not find any issues, and will issue an official report within 30 days.

**CAPI**

<b>YEAR</b>	<b>CALLS</b>	<b>COMPLAINTS</b>
<b>2011</b>	130	75
<b>2012</b>	92	50
<b>2013</b>	104	65

<b>Company</b>	<b>Complaint Numbers</b>
GMP	14
FairPoint	11
Comcast	5
VGS	4

## **CONSUMER COMPLAINTS**

Complaint numbers above are for the period October 23 – October 29.

### **Post-CPG wind complaints**

CAPI took in three noise complaints regarding Lowell Wind (one complainant had not contacted CAPI before and another hadn't contacted CAPI in quite some time. The three people who contacted CAPI about Lowell Wind complaints all said the noise was particularly loud on Saturday, October 26, until 4 pm, when the noise suddenly stopped. Additionally there was a prominent article in the Burlington Free Press on Sunday regarding the current (and potentially greater in the future) impact of wind turbines on nearby property values; a few of the consumers who have contacted CAPI were featured in the article.

## OTHER CAPI ITEMS

### **Municipal Billing/Accounting Issues**

CAPI continues to uncover more issues involving the billing systems related to municipal billing systems and practices. The latest identified issue is with Lyndonville Electric Department's inability to bill non-recurring charges on a customer's account, which means LED is unable to properly bill for deposits or reconnection charges. Additionally, LED has been disconnecting customers who do not pay the deposit installment charges on a 5 day broken arrangement notice, which is not allowed by PSB rules. CAPI will continue to work with the specific LED issue brought to our attention as a result of a consumer complaint, but it is clear that billing/accounting issues for municipalities may be an even more wide-spread issue than originally suspected.

### **Lifeline 2013 Form**

CAPI had been working with the Department of Taxes to meet a deadline for including the Lifeline 2013 form in the 2013 Vermont Tax Booklet. Unfortunately, due to issues which can, in part, be blamed on the federal government shutdown, too many issues remain unclear at this time, so the form could not be finalized in time.

The Federal Communications Commission is close to making a decision regarding how outstanding requests for permanent waivers of sections of the Lifeline Reform and Modernization Act will be handled. Currently, the FCC has been in a holding pattern on permanent waiver requests from Vermont and Iowa regarding the application process (Vermont submitted our permanent waiver request in November 2012, but a subsequent temporary request filed by the United States Telecom Association – USTA – filed at the request of the providers and on behalf of seven states – was granted and since extended while no action has been taken on the state specific requests). The FCC will be determining if new waiver requests need to be submitted or if supplemental filings will be required. Upon notice, Vermont will proceed with a submission requesting the permanent waiver.

### ***Public Advocacy***

Abandonment of Willoughby Lake Waterworks– Docket 8117 – The Department continues to

communicate with the customers in an attempt to answer questions and to schedule a conference call to discuss the petition and alternatives. Additionally, the Department has communicated with the petitioner and ANR to understand any outstanding issues. A status report is due to the Board by November 14<sup>th</sup>.

Transmission Owners Base Return on Equity – FERC Docket EL11-66 – FERC trial staff and other parties filed briefs opposing exceptions to the presiding administrative law judge’s initial decision.

VELCO/GMP Bennington Substation– Docket 7763 – In conformance with Condition 21 of its CPG, the Petitioners submitted their final designs for the 115 kV modifications and remaining fence line at the existing facility to the Board for review and approval. Parties and the Town of Bennington have two weeks to comment.

National Life 500kW Net Metering Project – Docket 8110 – The Board issued an order on October 28 determining that National Life’s newly proposed 500kW group net metering ground mount solar project is a separate facility from an existing 70kW net metering rooftop solar project. National Life argued for this result and the DPS supported the National Life position. The ruling in this case, however, was limited to its facts and therefore provides little guidance to future developers of net metering projects. The Board also issued a request for clarification to National Life concerning the output capacity of the project. Using the 5% DC to AC capacity conversion methodology adopted by the Board in Docket 6181 from 1999, the Board calculated that the 2090 panel National Life project would have an output capacity of 596 kW (AC) which exceeds the 500kW cap. However, this method of calculating project capacity is not part of the statute, and the Department, solar developers and others have urged the Board for a number of reasons to use the nameplate AC rating of the inverters for all but the 10kW and smaller projects. The Board has declined to do so in pending matters and also in the pending revision of the rule. The Department may want to consider further efforts to change the rating methodology. The Board did not rule on the question of whether this project will be considered for streamlined review under Section 248(j).

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Swanton Electric Rate Investigation – Docket No. 8024 – On October 18, the Department recommended the Board accept Swanton’s tariffs as in compliance with the Board’s order in this proceeding, authorizing a 1.0 percent rate increase. Swanton has informed the Board and the Department that it has a limited ability to refund customers the amount it over-collected in the course of the investigation. On October 22, Swanton proposed different options for doing so. The Department filed comments on October 25 expressing dissatisfaction with Swanton’s inability to provide customer-specific refunds. The Department urged the Board to require additional information from Swanton on its proposed method of refunds and to require Swanton to acquire the ability to provide refunds before any subsequent rate case.

Stowe Rate Investigation – Docket No. 8074 – On October 22, the Board issued a memorandum seeking comment on whether to require Stowe to have a comprehensive business process review in light of Board concerns about Stowe’s management, recent bonding practices, and its

historical relationship with the Board. Comments are due by November 1. Preliminarily, the Department is likely to support this requirement and is currently evaluating how to fit it into the current rate investigation, which is presently in the discovery phase.

Kinsley Net Metering CPG - NM 2375 – The Board has set the technical hearing in this matter for November 12 and requested the petitioning party, Kinsley, to provide additional information on the cost of its proposed landscape mitigation plan, along with more detail on the planting layout and an estimate of how much it would cost to install the intervenor/neighbors’ proposed, more elaborate landscape plan. DPS will attend the hearing.

30 V.S.A. 2811(c) PSD report to legislature on Smart Meter savings and cyber security breaches - No Docket number - DPS sent letters to GMP, BED, SED, WEC and VEC requesting information that the Department believes it needs in order to file a report with the legislature by January 1, 2014. Due date for responses from utilities is November 15.

Addison Expansion—Docket 7970—Parties filed reply briefs on October 25. In its initial brief, the Department requested that the CPG be conditioned upon a VGS study/proposal with respect to its intended EE efforts and outreach in Addison County and we have been working with VGS and members of the Addison County delegation on an acceptable proposal to take to the Board. The Department additionally requested that VGS propose and implement a biomethane program and we have been working with VGS and program developers on policy issues.

VGS/Plouffe Condemnation—Docket 7819— A second site visit scheduled for October 30 was abruptly cancelled by the Board with no explanation given. The Board will issue a memo regarding next steps; briefs are due on November 14 and reply briefs on December 5.

Technology Drive Solar – Docket 8111 – The Department filed comments with the Board arguing that the petition raises a significant issue with respect to the § 248(b)(5) criterion – aesthetics – and that the Project is not of limited size and scope, and therefore not appropriate for expedited review under § 248(j). The Department’s comments also support an apparent request by the Brattleboro Selectboard to hold a public hearing in the proceeding. The aesthetic concern cited by the Department will likely be resolved. The Department’s aesthetic expert has not yet submitted a final report for review.

WEC AMI Plan – Docket 7810 – The Department and WEC have agreed to hold an engineers-only meeting to discuss the Department’s concerns regarding the technical limitations of WEC’s IHD proposals.

Georgia Mountain Community Wind – Docket 7508 – The Department filed a motion to alter the Board’s latest order addressing Reggie Johnson’s noise complaint. The motion seeks to add language ensuring that the turbine cooling fans are not operational during shutdown cycles used to gather background measurements during the latest (and last) monitoring cycle. The PSB issued a memo seeking responses to the PSD motion before the final monitoring cycle; however that monitoring has already begun. PSD will seek to inform the Board of that fact.

FairPoint PAP Proceeding – Docket 7506 – The parties agreed to a briefing schedule to address three remaining issues not covered by the latest stipulation (to which the Department is not a signatory). The Department has conferred with the CLECs to better understand their position going into the briefing. The Department is also exploring how to address its concerns with a provision of the PAP that allows for CLECs to waive penalty payments owed to them by FairPoint in exchange for the ability to purchase non-regulated services from FairPoint. Initial briefs are due November 8, and reply briefs due November 23.

Coventry Solar Project – Docket 7948 – The Department filed comments in response to petitioner’s request to transfer the CPG to a third-party LLC. The Department has requested that the Board condition the transfer on naming the ultimate owner of the LLC on the CPG holder as well, and for the LLC to jointly secure a letter of credit for decommissioning with the LLC’s corporate parent. The petitioner filed a response stating that the Department has misunderstood the nature of the transaction (which appears to be true) and that the conditions are therefore not appropriate. The Department is reviewing the filings to determine what, if any, corrective action is warranted. Comments to the Board are due by November 1.

BED AMI Plan – Docket 7824 – BED submitted an In Home Display Plan to the Board for review. The IHD Plan looks promising, and at the very least does not suffer from some of the technical deficiencies present in the WEC Plan that the Department is currently reviewing. The Department will review the BED plan with greater scrutiny soon. The Board has not yet set a deadline for comments.

### ***Telecommunications***

Proposed Telecom Legislation – PSD telecom staff met with Senator Ashe on 10/22/2013. He was amenable to the concept of a unified bill (USF, pole attachments, 248a and potential VTA legislation) as well as having the bill initially come out of his committee. He was meeting with Representative Botzow later this week and this bill and who initially handles was to be one of his topics to be covered.

PSD telecom staff also met with the Verizon lobbyists regarding the proposed telecom bill. While not thrilled with the prospect of having 248a tied to a larger bill – they did request that we would support a point-of-sale methodology for pre-paid collection. As some thirty-six states have adopted point-of-sale for the collection of USF on pre-paid wireless, this might not be unreasonable request.

PSD and ACCD staff are meeting with Comcast regarding the pole attachment piece of the proposed bill on November 11, 2013.

Broadband Availability Table – PSD staff has directed Stone Environmental to proceed with the production of broadband availability information as of 12/31/12. Stone is preparing two versions for the broadbandvt.org website. One version will include coverage from both fixed

and mobile service, and shows only 6 unserved locations statewide. The other version will include only service from fixed service providers (and exclude service from mobile providers like AT&T and Verizon). This version shows 172 unserved locations. Both versions treat the entire VTel network throughout the ARRA service territory as a project in process.

Health Exchange outage – Verizon Business has initiated an internal investigation to determine the cause of the outage that disrupted the Vermont health exchange web site. Verizon will have a representative in Vermont next week and plans to meet with PSD staff.

Meeting with Counsel for Verizon: Staff met with Counsel for Verizon, Brian Sullivan, to review issues pertaining to 248a applications. Mr. Sullivan reported that he had spoken with Hearing Officer Greg Faber regarding recent problems with Verizon's 248a petitions. Mr. Sullivan understood the Board's concerns and is working to change his submissions to conform to the Board's requirements. Mr. Sullivan and staff also discussed other 248a issues, such as siting and legislative reform to the law.

Telecom Legislation: Staff began researching questions regarding proposed legislation of a high cost fund, pole attachment amendments, and renewal of 248a permitting law. Staff reviewed New York's high cost fund bill under consideration in the New York Assembly as well as high cost laws of other states. Staff also reviewed the current state of pole attachment laws in Vermont and other jurisdictions.

good. who?

### ***Finance and Economics***

#### Electric

Electric Rates—IBM Retention Strategies to reduce/mitigate power cost and to consider alternatives means for making energy efficiency expenditures. Staff has met and has created a list of options for consideration. A meeting will be scheduled for further discussions.

LIZ F/U

#### Energy Efficiency Utility

EEC – Staff found what appears to be an error in the Fiscal Agents reporting of 2012 EEC revenue. PSB staff has been made aware of this issue and its affect on the 2014 EEC calculation. Note the Fiscal Agents contract may be up for renewal in the short term.

Which was? Party

PSB Workshop on Formula Rates and 30 V.S.A. § 226(b): At the workshop, the department agreed to draft an initial framework for handling formula rates. Staff has reviewed and provided comments on a draft framework document prepared by PA that is scheduled to be finalized and sent to all of the workshop participants soon.

Stowe Electric Department – Docket 8074 Investigation into the existing rates of the Town of Stowe Electric Department –Staff has reviewed the adjustments to the Stowe COS; reviewed responses to the first round of discovery; and, has finalized a second round of information requests that will be sent out next week.

Swanton Village Electric - Docket No. 8024 Rate Case. Staff has begun to track compliance requirements arising from the Order in this case. Most notably, Swanton claims it does not have the capability to make the refunds that are required by the order and has proposed some alternatives that are currently being reviewed.

### Gas

VGS Review and Audit of Filings Made by Vermont Gas Systems Pursuant to its Alternative Regulation Plan – Progress is in jeopardy due to the lack of responsiveness on the part of VGS in providing timely responses to informal discovery on hedging. We requested information on Oct 10 and as of Oct 30; we have not yet received the information. It has been previously promised and VGS has promised again to provide the information by the close of business today.

### Water

Barnet - Barnet Water Company some time ago had filed for a 500% + rate increase. After our review and after substantial PA discussion with the company, it has withdrawn its request for a rate increase and the company will be sold in January 2014 to the local fire district.

Red Pines Water – Docket 8026 - Since 1983 Conklin Associates has served water to a nine unit residential development known as Red Pines Estate Development. Conklin Associates' water system is connected to the Village of Morrisville's municipal water system and has billed the residents of Red Pines by passing on the cost of the water billed to them by Morrisville. Conklin Associates, Inc. is now in the process of dissolving as an entity and seeks to transfer water supply responsibilities to a yet-to-be-formed homeowners association. Staff has met with their representative to provide information under a public information request.

Colonial Estates Water—has advised the department that it plans to file for a rate increase soon and has submitted a notice for department review. CAPI has determined the notice is not compliant with PSB rules.

Crystal Springs Water - PSB Docket 6467; Staff participated with PA in a meeting with the fire district representative. The fire district would like to purchase the water company.



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Jeb Spaulding, Secretary

**PRIVILEGED AND CONFIDENTIAL  
 MEMORANDUM TO THE GOVERNOR**

**TO: Governor Peter Shumlin**  
**FROM: Secretary Jeb Spaulding**  
**DATE: November 1, 2013**  
**SUBJECT: Confidential Report to the Governor**

**SECRETARY'S OFFICE- CHIEF PERFORMANCE OFFICER**

**Issues Update:**

FY 2015 Programmatic/Performance Budget Pilot: CPO Zeller and State Budget Director Matt Riven hosted a workshop for the departmental participants of the pilot. The focus of the workshop was for participants to learn how to use the Vantage Budget System performance module.

Time and Labor: The number of employees that did not enter their time by the deadline was down to 40 this pay past period, the fewest we have had to date. The number of supervisors/approvers that did not approve their employee's time by the deadline is still problematic. We had several hundred approvers that were late in accomplishing this task. We will continue to communicate expectations to departments in various ways including using one-on-one meetings. The effort and energy used to chase this time is effort not dedicated to auditing the time before payment. The end result is we audit time after it is paid, requiring prior period adjustments to correct errors.



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**Legislative Contacts:**

Government Accountability Committee: Chief Performance Officer Zeller attended the Government Accountability Committee meeting this week. Although she was not on the agenda to testify, the committee asked for her comments on several subjects related to the State Strategic Plan and the Programmatic/Performance Budget pilot being rolled out in the FY 2015 Governor's Budget Recommendation.

House Appropriations Committee: CPO Zeller testified before the House Appropriations Committee meeting this week. The Committee asked for her comments on her new role, the State Strategic Plan and the Programmatic/Performance Budget pilot. After opening remarks by Zeller, Budget Director Riven presented detailed slides showing a list of the pilot programs and the format the Vantage system reports will take. Riven also explaining the strategy for handling certain inconsistencies between programs.

## **BUILDINGS AND GENERAL RESOURCES**

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

- Met with members of HCIC 10/25 to update them regarding BGS's progress and financial standing on several different projects.
- Met with Sen. Mullin and Rep. Botzow after regional development grant meeting to discuss St. Albans and other BGS downtown investments.

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

- Did interview with Ann Galloway, VTDigger, re: the Montpelier/SOV heat plant cost overruns

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

- Met with Mylan regarding the terms of the P&S and lease back agreements.
- Met with each Director to outline pre-approval, necessity testing and impact analysis of overtime in an attempt to manage overtime charged.
- Meeting with Tom Ball, Shelley Martin and Eric Oberg re: EE past, present and future memorial.
- Talked to FDA re: how much Mylan stands to save in FDA facility fees due to St. Albans project.

### **Evolving Issues:**

You should consult with the Treasurer regarding the financing of energy conservation efforts in order to avoid any disagreement.

? what does this mean - leh

## **FINANCE AND MANAGEMENT**

### **Issue Updates:**

ERP System: The AoA Time & Labor (T&L) Team reports that the number of employees that did not enter their time by the deadline was down to 40 this pay past period, the fewest we have had to date. The number of supervisors/approvers that did not approve their employee's time by the deadline is still problematic. We had several hundred approvers that were late in accomplishing this task. We will continue to communicate expectations to departments in various ways including one-on-one meetings. The time and energy used to chase this time is time not dedicated to auditing the time before payment. The end result is we audit time after it is paid, requiring prior period adjustments to correct errors.

Budget Meetings: Commissioner Reardon continues to meet with departments regarding their FY 2015 budget requests. Recent meetings include: Agency of Agriculture; Department of Labor; Labor Relations Board; Public Service Board; Liquor Control; Military Department; and Veterans' Home.

Emergency Board: Last Thursday, October 24, the Emergency Board approved a transfer of \$2.1M to the LIHEAP program from the appropriation within Secretary of Administration reserved for addressing the impacts of federal fund reductions. With the \$8.1M total State funds appropriated to LIHEAP, it is possible to provide the same estimated purchasing power for LIHEAP recipients as last year.

Commissioner Reardon attended a meeting of the Governmental Accounting Standards Advisory Council (GASAC), of which he is a member. GASAC is responsible for consulting with the GASB to establish and improve standards of state and local governmental accounting and financial reporting.

### Legislative Issues/Contacts:

On October 30, Commissioner Reardon and Deputy Commissioner Clark presented a preliminary picture of the FY 2014 BAA and FY 2015 fiscal outlook to the House Appropriations Committee. Chief Performance Office Susan Zeller and Budget Director Matt Riven presented on the pilot program to incorporate performance measures into the Vantage budget system.

## **HEALTH CARE REFORM**

No report.

## **HUMAN RESOURCES**

### Legislative Issues/Contacts:

General Counsel Collier attempted to contact Senator Sears to discuss with him concerns around investigation of inmate complaints of abuse, including complaints by a particular individual who is well known to Senator Sears. To date, Senator Sears has not responded.

### Significant Events/Meetings:

Commissioner Duffy met with Secretary Spaulding, the Governor's Counsel, Robin Lunge and Joe McNeil, the state's labor negotiator, to discuss proposed language to include in collective bargaining agreements related to Green Mountain Care. Both Commissioner Duffy and negotiator McNeil raised concerns that as drafted the legislation does not clearly mandate the inclusion of state employees. VSEA is taking the position that state employees are not mandated to be in Green Mountain Care. Ms. London and Ms. Lunge agree that is the intent of the legislation, even if the language is somewhat ambiguous. Accordingly, DHR will either propose language that assumes the inclusion of State employees and request impact bargaining or will withdraw its request for language on Green Mountain Care. Assuming agreement can be reached on this issue, the State appears to be close to a deal with the Supervisory and Corrections bargaining units of the VSEA.

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## **Evolving Issues:**

Commissioner Duffy has been in communication with Steve Howard of the VSEA in an attempt to resolve a complaint filed by an employee at the Vermont Veterans' Home alleging a VSEA steward is bullying her and causing her emotional distress. Both employees are represented by VSEA, and the State agreed to let VSEA mediate the issue if both employees agreed.

Unfortunately, the complaining employee did not agree, and an investigation will need to be conducted. Nonetheless, the attempt appeared to be appreciated, and efforts are continuing to improve key relationships and work towards amicable solutions at the Veterans' Home.

DHR is continuing to work with KPMG to provide documentation for audit purposes. DHR has been unable to provide some of the requested information because of a failure at AOT to preserve documents that should have been retained when moving to a paperless system. A few other instances exist as well, but they are few in relationship to the total number requested. DHR will finalize a policy on retention of documents and provide additional training on the retention of documentation at its next Field Staff meeting.

## **INFORMATION AND INNOVATION**

No report.

## **LIBRARIES**

No report.

## **TAXES**

### **Legislative Update:**

OTC Litigation: The NH lawsuit is public. Several NH news outlets have picked up on the story, and the online travel companies have come out swinging, especially suggesting that they are akin to travel agents. The National Hotel and Lodging Assoc., which supports the collection of tax from OTCs, have some materials showing that a traditional travel agents' commission does not affect the tax paid. The OTCs also are claiming that jurisdictions are failing miserably in their litigation. What is true is that no jurisdiction has succeeded in getting the tax due without litigation. After lawsuits, jurisdictions in MD, GA, NY, SC, IL, FL, TX and MI have recovered taxes – through compliant tax payments or settlement. The biggest win has been in Hawaii, which was awarded more than \$20 million (although technically, it was a mixed decision). Kristin Kelly did call asking for comment (and an interview, which never happened). I told her that the Department had determined that our rooms tax applied to online travel companies, and that we were enforcing the statute. I explained that we had an administrative audit and appeal process that protects individual taxpayer confidentiality (she referred to the “kind” Tax Department).

JFO Data: From Thursday's Times Argus story focused on Friday's committee meeting, it appears that Ways and Means (or at least Rep. Ancel) wants to continue pushing on tax reform, and to highlight the legislature's supposed need for independent data analysis. Our policy team, including the director, economist and financial analyst, plan to be at the meeting to support the Secretary, and to emphasize the seriousness of confidentiality, and the improvements that we are working on with our increased

capacity, including better aggregated data for JFO (prepared earlier than in the past), the continued employment of Deb Brighton, and continued discussion about possible purchase of a microsimulation model.

*GPS pls read*

Education Property Tax Rates: The Commissioner is working primarily with Deb Brighton and Mark Perrault to understand the current forecasts that will drive the rate announcement for the December 1 letter. The data are gnarly, and bottom line, we again are looking at a .05 - .06 increase in both the homestead base property rate and non-residential base property rate. Dynamics include increased local education spending (preliminarily 4.9% growth) despite falling equalized pupil count and slightly falling grand list values. These pressures are not outweighed by the general fund transfer increase – which is slated to be up about \$7M, plus another \$1.3M automatically added from the supplemental property tax relief fund. (Another \$11.8M, equivalent to a .01 discount on rates, could be available “one time” from this fund if the legislature chooses – an interesting question, since one could argue to do something bolder with this money to incent savings).

*ask Deb/DJSS*

Another troubling trend is that the base education amount, pursuant to statutory formula, actually falls this year. This is the first time this has happened, based on a recalibration of the state and local inflation index since 2005 – inflation has turned out to be slower than expected, essentially meaning the base amount was increased “too much” last year (we actually had argued for a lower than statutory number, to no avail). The rate has nothing to do with what the schools receive – but it is what the homestead rates are keyed from, so a lower base amount means that spending adjustments will be higher.

In a troubling landscape, there is another statutory twist likely to cause controversy. When Act 68 passed, the homestead rate was \$1.10, the non-residential rate was \$1.59, and the base income percentage was 2%. When rates were dropped in the era of rising grand list values, pennies were shaved off in tandem on both property rates, and the income percentage was put at a floor of 1.8%. In the time of falling grand list values, pennies were added back in tandem – until last year, when the non-residential rate was raised a penny more. But the spending adjustments have a multiplier effect on the homestead property tax rate, and, without action, this year will be the first year that the average homestead property rate, adjusted for spending, will be higher than the non-residential rate. The statute actually requires the Commissioner to “determine the factors contributing to the deviation in the proportionality”, and “make a recommendation for adjusting the...rates accordingly”. The factors are easy to identify – the anomaly of the base education amount going down, the multiplier effect of raising the penny rates in tandem, and of course, increased spending. To avoid this result, the base homestead property rate increase would need to be held to .03 (.97 base rate), while the non-residential rate would need to be raised .10 (1.54 rate).

The letter could explain this sequence, but there could be a recommendation against it. First, one could challenge the “deviation in proportionality” assumption. It is interesting to look behind the rates to see the percentage of education spending borne by the various payers. While the non-residential payers have “enjoyed” lesser increases overall relative to homestead payers, the real story is that the increases are falling hardest on the roughly one-third of homestead payers that do not receive adjustments. Perhaps not surprising, when the financing is designed partly as an income tax, but the numbers are stark.

Non-residential payers currently (FY14) fund 37.2% of total spending (the statute has another trigger if this falls below 34%). In terms of property tax revenue, the non-residential payers contribute 56.4%, and the homestead payers 43.6%. This does represent a shift from 2005, when non-residential payers

contributed 60.3%. The average annual change on the non-residential portion has been 3.9%, while the homestead portion has been 5.8%. However, even more telling is what is happening since FY09, and within the homestead payer group. Of course, 2009 was when real estate values started to fall, and FY10 was the last year we dropped rates (by a penny). We also have seen a decline in the number of homesteads applying for income sensitivity in some of those years (theories include that with less homeownership, households are larger, tipping income over the cap). In any event, from FY09 through FY 2014, the percentage of spending borne by non-residential tax has fallen 3.4%, but that has been picked up almost exclusively by homesteads without adjustments, who have seen a 3.5% increase in their share of the revenue. The growth in non-residential revenue has averaged .8% annually. The revenue from income sensitized homestead filers grew by 1.8% annually (on the smallest base), while the revenue from homesteads that pay on the penny rate grew by 4.6% annually.

Deb Brighton and Mark Perrault are still pulling apart these numbers (and apparently, Janet has asked to look at them as well). But even accounting for other factors (such as ownership changes, and deviations in grand list values homestead versus non-residential), it does appear that homestead payers who do not get property tax adjustments have borne the brunt of spending increases since 2005. However to assume, as the statute apparently does, that adjusting the rates between the non-residential and homestead payers is the answer, is too simplistic, particularly when the root cause is spending. Non-residential payers (second homeowners and commercial) will argue that they should not be the backstop for spending decisions that have outstripped all revenue growth. And this spending has not been uniform - in FY14, the majority of towns still had local homestead rates lower than the statewide non-residential rate of \$1.44; only 99 (38%) of the districts had higher homestead rates. Moreover, no doubt non-residential payers will point out that while adjusting the rates in tandem may be questionable, it was done when the rates were being lowered in earlier years, meaning these payers saw lesser percentage rate relief when market values were skyrocketing.

Any response to the projected rates should emphasize that spending is the issue, and as long as we don't address that, the question of who pays for large increases gets more and more contentious. That is where we can point to the proposed Picus symposium. We can say that we are convening a panel of local and national finance experts to consider the question of whether there is some mechanism that can be introduced within our financing system to encourage more thoughtful decisions on spending in light of limited available resources, while preserving equity, local control and quality of education.

Late Filed Declarations/Property Tax Adjustments: The final late deadline for filing passed on October 15, so the numbers are in. A total of 171,696 homestead declarations were filed, of which a very healthy 163,057 were timely by April 15. 8,639 were received late (approximately 6,400 by September 3, although a processing error delayed some transmissions to the towns, with another 2,200 received by October 15). A total of 112,341 property tax adjustment claims were filed (approximately 65% of homesteads). Approximately 103,000 were timely by April 15, and 9,400 were late (again, approximately 6,400 by September 3, and 3,000 by October 15). Most of the late adjustments appear to be associated with an amended income tax return – the whole point of moving the date back. We will be meeting with the towns, and urging them to support the reconciliation of late filing dates to October 15. VLCT states that it will propose that towns have the authority to set penalty rates for late filings of declarations, up to a maximum (currently towns have discretion over imposing penalties, but the amount is set). On a related note, the Department soon should have a draft of its report investigating the utilization of property tax adjustments in response to Rep. Wright and Komline (interesting in the context of the upcoming rate debate).

↳ fallout from Dodge ...

Solar and Wind: The Commissioner spoke at the REV conference to explain the background on our nameplate capacity tax and also, to discuss the tricky issues around solar arrays on farms in current use. Several questions, online and off, centered on towns. According to the advocates, towns never thought to apply the municipal tax to arrays until the statewide capacity tax, and their valuation is unfair. The point is well taken that valuing arrays is complex, with fluctuating and unpredictable results, and inevitable appeals. On the other hand, I just had to caution that municipalities are rightfully protective of their tax base, and that proposals to limit the municipal tax, or proscribe a capacity basis, might be controversial. The advocates had a separate meeting with Steve Jeffrey, and the Department will facilitate another meeting later this month. In the meantime, valuation of properties neighboring wind facilities has also been raised as an issue, with some towns agreeing with homeowners that noise and other concerns have limited the marketability of their homes. Bill Johnson of PVR has gotten some questions, particularly from Sen. Hartwell and his study committee, but currently we have no data to support or refute the diminished valuations.

\$1.5M Budget Commitment: The Department has developed a matrix to explain and track the initiatives we are pursuing to reach \$1.5M in enhanced collections (which will be available if the Joint Fiscal Committee considers this issue at its November meeting). It is still too early for actual results, although recovering against abandoned property through the Treasurer's Office looks like it will bear the most fruit quickly.

Retailer List Sheet: We have resisted putting together a list of what is and is not taxable for retailers, since there are no hard and fast, simple rules for the millions of goods sold, especially as the nature of goods evolve (who knew diapers would become ubiquitous for adults – a sales tax pet peeve of Jim Harrison). Any attempts at lists in the past have ended badly for both the Department and the taxpayer. However, Tasha Wallis and Jim were relentless, so our outreach team put together a fact sheet that was literally cut and pasted from statute and regs. Which led to a question of what exactly is a “footlet”.

Appeals Cases: The Supreme Court continues on a virtual tear deciding property tax cases. It upheld a town decision that a camp operated by a church was not entitled to exemption. It also resolved a split between town appeals regarding the effect of a restrictive sales covenant on affordable housing, ruling that the covenant does not necessarily diminish value. The affordable housing advocates likely will advance legislation to overturn this result.

LP

Integrated Tax System: We continue to work with the AG's office and DII on technical contract language, while we continue to discuss technical and timing issues with FAST. It is clear that FAST is not bending on the overall \$28M contract price, and in fact, in discussions is getting more defensive about how challenging Vermont's project is (because we have partially implemented the unstable Oracle product, because we have installed RSI's data warehouse, because we are small, etc. etc.) After some go rounds, and strategizing with our consultant, we decided the best approach was to hold a higher level meeting. One of the founders of FAST, James Harrison, along with the proposed project manager, will be here late next week to meet with the Commissioner, Deputy, Secretary and Commissioner of Finance.

CONFIDENTIAL and PRIVILEGED

To: Governor Peter Shumlin  
From: Michael J. Hogan, Commissioner of Liquor Control  
Date: November 1, 2013  
Re: Weekly Report

**Status of Governor's Priorities:** Working on performance measures for FY15 budget.

**Legislative Issues/Contacts:**

- Reviewing final draft changes to Department Regulations.

**Press Issues/Releases/Contacts:** Nothing to report.

**Significant Events/Meetings:** Next Board Meeting 11/13 Enforcement Hearings.

Marketing Meeting with suppliers 11/20-21 to review product introductions for 2014.

Auditor's Office will meet with our Board on 11/13 to discuss the direction of the performance audit.

**Evolving Issues:**

- Working with vendor on contract for ERP/POS Project. Ongoing process.
- Preliminary review of department processes for potential licensing and enforcement system. .
- Working on evaluating additional agencies throughout the state and breaking down costs associated as well as the return on the investment.

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**Summary of Key Department Activity:**

- October sales finished at +5.3% for the month over last year this time. The upcoming holiday months look good with plenty of new products for spirits buyer!

**Commissioner's Commentary:** Have a great weekend.

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