

# WEEKLY REPORTS

Checklist  
10/17/14

Elizabeth Miller/Alyson Richards

- ☒ Agency of Commerce and Community Development – Patricia Moulton
- ☐ Department of Labor – Annie Noonan
- ☒ Department of Financial Regulation – Susan Donegan
- ☒ Agency of Education – Rebecca Holcombe
- ☒ VT Commission on Lottery – Greg Smith

TBD

- ☒ Agency of Transportation – Brian Searles
- ☒ Agency of Human Services – Harry Chen

Sue Allen

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

Sarah London

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

Susan Spaulding

- ☐ Boards and Commissions – Susan Spaulding (**no report this week**)
- ☒ Department of Liquor Control – Mike Hogan

Alyson Richards

- ☒ Leg Prep

**To: Governor Peter Shumlin**  
**From: Patricia Moulton, Secretary - Agency of Commerce and Community Development**  
**Date: October 17, 2014**  
**Re: Weekly Report**

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**PATRICIA MOULTON, SECRETARY:**

**Highly confidential: Rutland Plywood:** It is looking more and more like Rutland Plywood will not be reopening, even a portion of the business. Jamie Stewart of the Rutland Regional Development Corp (REDC) reports that Jack Barrett, owner, is in his 70s. He has been toying with re-opening the "diamondwood" portion of the business but we recently learned Jack is in negotiations with an out of state firm to produce that product with him as sales/consultant. Jamie has talked with a Pennsylvania entrepreneur about re-opening the gun stock portion of the business. When Jamie approached Jack about that possibility, Jack indicated he's talking to a California company, who produces gun stocks, about potentially being their sales rep. It appears Jack is moving in the direction of creating an exit strategy for himself without reopening. Jamie is going to continue to work with the Pennsylvania entrepreneur who would like to hire back the staff who produced the gun stocks. But this may be a race to see who gets set up and going first.

**AncBio:** We received a box of documents Friday from Mark Scribner on behalf of Bill Stenger and AncBio. We have forwarded a copy to Edwards, Wildman and Palmer (EWP), the legal firm who will be doing the review for us. Instead of the \$60,000 check from Jay Peak for legal review, we received a \$20,000. Bill Stenger assures me he will pay additional funds when needed. So we are asking EWP to begin their review up to the \$20,000. Should they find any fatal flaws at that point, we need go no further. Should things check out, we will seek additional funding from Jay Peak.

We know the third party marketing study we requested will not be completed until the end of the year, according to Bill. We are still reviewing all the documents but are relying on the review by EWP. John Kessler has since uncovered concerns regarding Ike Lee, the reported CEO of AncBio Vermont. A recent article indicates that Mr. Lee has accepted a CEO position with a California company. Further, we are finding different credentials for Mr. Lee depending on which document we look at. He indicates he's a Harvard graduate, but a CV indicates he did a fellowship at Harvard and graduated from the University of Georgia. While seemingly minute, EWP reports this may be significant. Brent is recommending we order AncBio to stop spending investor funding until the third party marketing study is completed. This is allowed within the language of our current MOU. We are talking to EWP tomorrow about what, if any concerns, they have thus far that may be additional justification to order them to stop spending investor dollars.

We had an excellent meeting with Susan Donegan and her team re: their involvement with compliance review. She prepared an excellent outline of what they can provide. We need to finalize that and agree on a fee structure but I am optimistic we can work out those details.

**VTel:** We are in the middle of a debate with Michele Guite regarding his plan to put a transmission tower center in the steeple of a historically significant church in downtown Middlebury. VTel is proposing to remove the original windows and install fiberglass replicas so aid transmission. Historic Preservation stuff have done extensive review, made multiple site visits, and determined that removing the original windows have an adverse impact to the historic church. AT&T has had a transmitter in the same steeple, one level up, for 10 years and kept the original windows. We had been working with Diane Guite who is been much more reasonable, until she went to graduate school a few weeks ago. Michele is not being reasonable. I will be sending him an email detailing our concerns. He may complain to you as well. I've talked to Kiersten, who admits Michele was being unreasonable. There is also a local opposition group forming around any changes to the steeple. We are willing to work with them to find a solution or an alternative site. Head up on that.

**"Kitchen cabinet" meeting in Hardwick:** Last Friday I had another "kitchen cabinet" meeting with businesses in the Northeast Kingdom and Lamoille County region. It was a good discussion but with the usual stuff about permit process, healthcare financing, taxes Vermont's image as being business unfriendly. I heard again about the "death by a thousand cuts" from this group as I heard in Franklin/Grand Isle County. I found Greg and Dawn Tatro of GW Tatro were particularly negative and vocal. After, I had a brief chat with Bill Stritzler of Smugglers Notch, who was helpful. Bill feels the Governor on to make strong statements in defense of our EB5 program given the VtDigger article. I shared the

work we are doing with DFR and he was pleased to hear that and felt we need to “broadcast that to the world” which we will. In addition, Grant Spates gave me some good suggestions about permit reform which I will discuss with David Mears.

**VtDigger:** VtDigger has made another public records request for all email correspondence between any of the Jay Peak/AncBio partners and much of the ACCD leadership team plus Brent Raymond and John Kessler. We are assembling that information and will get that to Sarah for review before it goes out. I too, as usual, we will reviewing. Anne Galloway has again requested a waiver of the fee, and I have again said no given the time and effort that is involved in retrieving and reviewing these documents.

#### **LUCY LERICHE, DEPUTY SECRETARY**

- **Vermont Strong Scholars:** Associates and Bachelor’s degree majors have been selected in the areas of Engineering and Software Development. Marilyn Cargill from VSAC is working on a proposal for operationalizing, and will let us know of any trouble spots there. We will need to dig into the larger question of how to pay for this program soon, as the report is due to the legislature November 1, 2014, and JFO has contacted ACCD to get it on the agenda for Joint Fiscal on the 12th.

#### **DEPARTMENT OF ECONOMIC DEVELOPMENT**

##### **Lisa Gosselin, Commissioner**

- **EB-5:** Met with team from ACCD and DFR to discuss how program could be optimally administered. DFR is following up. Sent response to VT Digger story to other media outlets that had published the story.
- **Business Portal:** Met with Alex Ibey and David Metraux and reviewed SOS business portal. Identified content that needs to be added as well as areas on current site that need to be more customer-focused.
- **Media:** Fielded call with Pat Moulton and Ken Jones from Michelle Monroe of St. Albans Messenger for article on how Vermont’s economy is impacted by the national economy and trends.

##### **BUSINESS SUPPORT ♦ Ken Horseman, Senior Economic Development Specialist**

- **Plasan NA - Bennington:** The company reports full time employment at 69. They are actively seeking to market their excess capacity in autoclave, welding, composite design/build, fabric cutting, and high pressure press work while they anxiously await word on the new Joint Light Terrain Vehicle (JLTV) contract to replace the Humvee’s. They are also rolling out a new joint venture with Cambridge University in England for a new carbon nanotube product. We discussed programs to assist, and will spread the word on their capabilities in-state.
- **Vermont Timberframe – Bennington:** Business is booming and the company is close to announcing a major contract that will grow the business. Although few new staff will be added, new investment in automation and equipment will be forthcoming. Much discussion took place around the need for an established and formalized mechanism for CAD apprenticeship programs. They have had success working with VTC and value their students. Employment is at 23 full time. They are also interested in any future ExporTech training opportunities. No immediate needs at this time.
- **JBM Sherman Carmel – Bennington:** The company is diversifying and actively searching for a Production Manager. A new contract to provide sealing of underwater piers at LaGuardia airport was just signed, and the future looks bright for that new product. They are also building window frames for railroad and subway cars, and will soon put in a new product line to service that business. Full time employment is at 52. Appropriate referrals will be made.
- **McGill Airflow – Bennington:** This quiet company has been in business over 20 years with headquarters in Ohio. They manufacture duct work, with their major customer the Global Foundry plant in Malta, NY. Business has been declining. In 1989 they employed 45. Today they are at 10. They have five plants in the U.S., and recently closed the California operation. All product ships outside Vermont. They have run a 4-year sheet metal apprenticeship program, but have had to lower the passing grade score or few would graduate. The major issue confronting them is the inability to find workers. Appropriate referrals will be made.
- **MetalFlex – Newport:** Business is steady with full time employment at 31. 60% of their work is for the semi-conductor sector, and we made introduction to them to the Global Foundry plant in Malta, NY. They continue to service aerospace, primarily F-16 work but need to upgrade their ISO certification to AS9100 if they are to pursue F-35 contracts. They wanted assistance in sourcing small machine shops in Vermont. Appropriate referrals will be made.

- **Easton Hockey – Newport:** This small company is headquartered in Drummondville, PQ making wooden hockey sticks. They employ 27 full time and on average produce over 12,000 sticks each week. They are potentially in need of expansion given space constraints, and see the potential of moving some composite work from Canada to Vermont. NVDA will work closely with them to meet their needs going forward.
- **Louis Garneau – Newport:** The new 60,000 square foot facility has improved operations and staff morale with elbow room plus for their 91 full time employees. We reviewed a number of areas of potential assistance which they are now able to reconsider with the move behind them. Areas discussed included VTP, ExporTech and the Foreign Trade Zone. Future meetings will be scheduled to provide more detail.

#### **BUSINESS SUPPORT - Economic Development ♦ Jared Duval, Director**

- Chaired the second meeting of the **Goals and Evaluation Committee** of the **Working Lands Enterprise Board**. With helpful input from **Ken Jones** and **Paul Frederick** (DFPR), we have identified the data sources that we will present to the WLEB Board at our November meeting, to help ground and inform our grant making strategy. Continuing work on **survey design** as well, so that our evaluation metrics are in line with our goals and RBA metrics.
- Met with **Andrea Cohen** from **Vermont Businesses for Social Responsibility (VBSR)**. VBSR is now helping to share the **Working Lands RFP** among its members, and we will collaborate on further information sharing related to working lands and the green economy. Have also worked with other associations and lists to share the RFP, including the Vermont Forest Products Association (**VFPA**), Vermont Wood Manufacturers Association (**VWMA**), Vermont Environmental Consortium (**VEC**), the **RDCs** and the **RPCs**, and more.

#### **FINANCIAL SERVICES ♦ Dan Towle, Director**

- **State of Vermont and Vermont Captive Insurance Association (VCIA) Road Show:** Dan Towle, Director of Financial Services and Dave Provost, Deputy Commissioner of Captive Insurance will be in Boston next week presenting on a panel called the Strategic Advantages of Captive Insurance. The day-long event includes a “captive owner only luncheon” and two educational seminars followed with a reception. Three Vermont captive owners will also be presenting on the panel. Approximately 100 attendees are expected. These ‘road shows’ have proven to be a good way to bring together both existing Vermont Captive owners and prospects. Dan and Dave will also be meeting with the VCIA Board the evening prior.
- **Managed Care Conference:** Dan attended this 2 day conference held in Chicago, Illinois. Dan was invited to this invitation only conference for the managed care industry. This conference was a great opportunity for Dan to get in front of decision makers in this niche sector of health care which is a growing sector for captives in Vermont. Dan was recognized in one of the sessions for the work Vermont does in captive insurance in Vermont.

#### **DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

##### **Commissioner MacKay and Deputy Commissioner Hollar**

##### **Commissioner MacKay**

- **Meeting with Bill Kaplan, Sr. VP Vermont College of Fine Arts:** Joined SHPO Laura in meeting with Bill Kaplan and Jay Ancel of Black River Design. They discussed the exciting programs offered and accolades won over the past couple of years. They also shared with us their plans to redevelop two historic homes and demolish a garage for additional housing for visiting faculty as well as modify the façade of the gym so that it is all glass to showcase that space as an art venue. They were ‘confused’ about if they needed an Act 250 permit. Noelle followed up the following day with both the District Commissioner and NRB staff and the College will need a permit as was shared with them several months previously. They are preparing an Act 250 application and DHP offered to meet with them to discuss the project detail.

##### **Deputy Commissioner Hollar**

- **CDBG Disaster Recovery:** HUD staff from the regional office and headquarters in DC monitored our CDBG-DR grants in June. At an exit conference this week, they gave the Department the results of their review. They have two “findings” and three “concerns.” The only significant finding echoes the Office of the Inspector General Audit and calls for us to enhance our monitoring procedures for DR grants. This work is already underway. The others relate primarily to documentation requirements and include such minor corrections as calling for the correction of dates and on site storage of files.

- **Limited Services Positions:** The Department's request for two limited service positions to support the CDBG Disaster Recovery program has been forwarded by the Department of Finance and Management to the Joint Fiscal Office. JFO staff hopes to send to the Joint Fiscal Committee for its consideration by the end of the week.

## **COMMUNITY PLANNING & REVITALIZATION ♦ Chris Cochran, Director**

### **Partnerships**

- **US Forest Service:** Submitted for internal review a multi-agency (ANR, VTrans and ACCD) grant to help Lake Champlain basin communities install trees and green stormwater infrastructure along roads.
- **Planning Manual Outreach:** The first of three stakeholder meetings for the State Planning Manual gathered input from the 11 Regional Planning Commissions (next week's outreach includes an inter-agency meeting as well as one for external partners). The regional planners strongly supported the proposed direction and reiterated the need for guidance to create shorter more meaningful plans that focus on vision, land use and implementation. While 19 out of 23 of the planners indicated that they were familiar with the existing manual – only one person used it, while the others found it outdated and unhelpful. Follow progress here: [http://accd.vermont.gov/strong\\_communities/opportunities/planning/manual](http://accd.vermont.gov/strong_communities/opportunities/planning/manual)

### **Downtown Report**

- **Barre:** After four years and helping shepherd an amazing downtown transformation, Dan Jones recently stepped down as Executive Director of the Barre Partnership. Gary met with Board President Hillary Montgomery and Board Member Caitlin Corkins to discuss the next steps as an organization and to offer training and support during the transition.

## **HISTORIC PRESERVATION ♦ Laura Trieschmann, State Historic Preservation Officer**

- **Historic Sites Closing for the Season:** Six of the historic sites open to the public closed after Columbus Day weekend. We are most appreciative of the many guests who graced our historic sites this season and explored the vast history Vermont has to offer. We are now working to winterize the buildings and collections. The site interpreters and trail crews did an outstanding job this season, for which we are very appreciative. A special tour will be held at Theron Boyd in Quechee on October 22 for the local historical society. President Calvin Coolidge State Historic Site closes on October 19<sup>th</sup> and Bennington Monument will close on October 31st, following a special Halloween event. Parents in costumes get in free! Don't forget that the Coolidge Site will open for holiday fun and shopping on December 6, with specially guided tours of the house where Calvin Coolidge was sworn in as President of the United States.
- **Advisory Council on Historic Preservation:** Laura, Devin and Trudy traveled to Billings Farm and Museum in Woodstock for the Advisory Council for Historic Preservation meeting. The meeting included approval of the new application for Historic Site Roadside Markers program and endorsement of nine new roadside markers, including one for Brown Bridge. Devin presented three National Register nominations, which were all approved for forwarding to the National Register of Historic Places. These included the update to the Putney Village Historic District, Vermont Academy Campus Historic District, and the Abbott Memorial Library. The Council was updated on the reconfiguration of the parcels and proposed sale of 30 acres known as the Lafreniere Property in Bolton. The Council, along with DHP, applaud the Department of Forests, Parks, and Recreation for their stewardship of this property and dedication to exploring the best preservation options. The Council and DHP staff were then treated to a tour of the Research Center, although some of the staff visited the cows and gift shop instead. Thank you so much to David Donath, Marge Wakefield, and the staff of the Billings Farm and Museum for hosting the meeting.

### **Historic Preservation Grants and Barn Grants**

- **2015 Historic Preservation Grant Round:** Caitlin has received 42 Historic Preservation Grant applications for the FY 2015 round of grants to be awarded in December. We received grants from 13 of Vermont's 14 counties totaling \$575,436 in requests and \$1,611,893 in project costs. This compares to 50 grant applications last year with \$760,355 in requests and 36 applications requesting \$486,245 for FY 2013.

### **Environmental Review**

- **Bernard Carrier Subdivision, Newport:** Scott continues to negotiate with Bernard Carrier concerning archaeologically sensitive areas identified on three proposed lots of a 7-Lot subdivision on Indian Point in Newport along Lake Memphremagog. After Mr. Carrier did not agree to conditions protecting the sensitive areas until appropriate archaeological work was completed, the Division requested that the District # 7 Environmental Commission convene a hearing to resolve the matter. Somewhat unusually, District #7 declined to hold a hearing just on the historic sites aspect of Criterion 8 and asked Mr. Carrier to waive the hearing timeline pending further

attempts to come to agreement on permit conditions. Scott has had two rather unpleasant phone conversations with Mr. Carrier where he has accused the Division of “taking” his land. Phase I site identification work in the sensitive areas would require about two days of work by a qualified archaeological consultant hired by Mr. Carrier, at an approximate cost of \$10,000 dollars. The work could be deferred by permit conditions allowing development of the remaining four lots which do not have any issues.

- **Vermont Energy Investment Corporation:** Jamie worked with staff at Vermont Energy Investment Corp. to create incentive reservation forms for DHP to utilize in the review of Modern Wood Pellet Heating Systems which will be eligible for state tax incentives in FY2015 as part of the Vermont Small Scale Renewable Energy Investment Program.

## **VERMONT COMMUNITY DEVELOPMENT PROGRAM ♦ Josh Hanford, Director**

### **CDBG-Disaster Work**

- **Reaming CDBG-DR \$ and Windham Co. maximums:** VCDP & GMS staff have been crunching numbers, making expenditure assumptions and best guesses on likely future DR grant awards to better understand what funding remains and where it can be used and by what date it must be spent. This is necessary due to different expenditure rules and targeted county funding allocations mandated by HUD in each CDBG-DR grant award. The details and variables are not of much interest to most people so the up-shot is: Approximately \$5.5Million remains to be obligated and a maximum of approximately \$1Million can be awarded to Windham County.

### **Other**

- **Five Year Consolidated Plan Community Outreach Meetings:** Every five years, the state agencies that manage CDBG, ESG and HOME funding are required to update their five year consolidated plan. Together with staff from the Agency of Human Service and HOME, the state will facilitate a series of community forums to learn about community development needs around the state. The Town of West Rutland will host the first of seven community outreach meetings on Wednesday December 17<sup>th</sup> from 4pm – 6pm in their municipal auditorium. The primary goal of the meeting is to gather input from Vermont citizens about the issues that most impact their daily lives.

## **DEPARTMENT OF TOURISM & MARKETING: Megan Smith, Commissioner**

- Tourism was in the news this week with [Vermont State Parks](#) (VSP) announcing nearly one million visitors this year, the highest number in 25 years. VDTM worked with VSP this year on marketing efforts as increasing visitors to parks is part of the Performance Based Marketing goals for both departments. This is a good example of how targeted marketing campaigns can be very effective.
- The [Boston Public Market](#) is a venue that the [Agency of Ag](#) is considering. The facility is near Haymarket Station and will be open Wednesday through Sunday from 8am to 8pm, essentially a summer long or year-round version of [The Big E](#). Many vendors are interested, but all agree this would need to be run by someone in-market. Ag will be putting out an RFI to see who responds. Megan is working with them on this project as the representative from ACCD. The unofficial total in sales by Vermont vendors at this year's Big E was over \$1.2 million during the 17 days of the fair.

### **Steve Cook, Deputy Commissioner**

- **Summer 2014 Media Recap:** Below are highlights from this summer's Vermont Tourism solo advertising campaign.

#### **Google Search**

Total Impressions:	287,609
Total Clicks:	2,703
Average CTR:	0.94%
Insights:	8.44% conversion rate

#### **Google Display**

Total Impressions:	10,200,556
Total Clicks:	4,738
Average CTR:	0.05%
Insights:	1.92% conversion rate

#### **Digital Advertising: Comcast**

Total Impressions:	889,752
Total Clicks:	6,050
Average CTR:	0.68%



### **Digital Advertising: YouTube**

Total Impressions: 625,197  
Total Clicks: 2,743  
Average CTR: 0.44%

### **COMMUNICATIONS ♦ Laura Peterson, Director of Communications**

- **Media Support:** Journalist interactions included supplying information and/or photo assets for a number of stories, including a story on microbreweries in New England ([Quebec Journal](#)), Halloween activities ([Seven Days](#)), traveling with a small footprint ([E the Environmental Magazine](#)), general Vermont travel ([Black Enterprise / JET Magazine](#)), Winooski ([En Route Magazine](#)), Pittsford (BYU TV), indoor play facilities ([Champlain Business Journal](#)), and Vermont's apple orchard industry ([Business People](#)). Laura also supported the Governor's press conference on fall tourism, and issued her first official VDTM press release on her own appointment.



### **CULTURAL HERITAGE TOURISM ♦ Catherine Brooks, Cultural Heritage Tourism Coordinator**

#### **Cultural Heritage Projects**

- **Civil War Sesquicentennial:** Catherine attended the October 14 commission meeting where decisions were made regarding the wrap up of the five-year event. Two excellent main events remain: the Vermont Conference on the Humanities two-day conference *A Fire Never Extinguished: How the Civil War Continues to Shape Civic and Cultural Life in America* on November 14 and 15, and a Farmer's Night event April 8, 2015 to recognize the end of the civil war and the legacy of Abraham Lincoln.

### **RESEARCH & STATISTICS ♦ Greg Gerdel, Research & Operations Chief**

- **Telecommunications and 800-Vermont:** Having until this week little success in getting the current staff of DII-Telecom to respond to the concern, we now have some assurance that the Advanced Network Features we have been using for 800-Vermont will be extended until November 20.

Although Level 3 formally announced in May that this service would be terminated on October 31, 2014, Telecom remained consistently unresponsive to our requests for some initiative to develop an alternative service. The Level 3 features provide the announcement and prompt options to callers to 800-Vermont.

While it is not yet clear what Telecom will provide for this service beyond November 20, Peter Kipp reports that an amended contract for the extension is in process.

An interim option will be to have all 800-Vermont calls terminate directly at the call center, then, if necessary, forwarded by the agents to the appropriate partner number. These include State Parks, Fish & Wildlife, and the Vermont Ski Area conditions report. The call center will continue to handle vacation packet requests and travel-related inquiries.

**CHIEF MARKETING OFFICE ♦ Nancy Brooks, Chief Marketing Officer/Heather Pelham, Marketing Specialist**

- **State Craft Centers:** The Overview Commission of the State Craft Centers met this week to hear a presentation on the Shelburne Craft School (SCS) and voted unanimously to accept SCS as the third Vermont State Craft Education Center. The school has a rich history and provides a full slate of craft education opportunities for all age groups. Engagement and support within the local community is exceptionally strong, and all in attendance felt the addition of SCS to the state network of craft education centers would further strengthen the Vermont brand and our reputation as a destination for the arts.
- **Health Care Reform:** Heather met with team at the Office of Health Care Reform to discuss content strategy for a new website to address the question of “what is single-payer and what does it mean for Vermont.” While under-resourced, the team is on an aggressive schedule to revamp the web presence the office currently has in anticipation and preparation for the attention and scrutiny this issue will face in the upcoming legislative session. One bright light on the resources side is the office has the assistance of a group of 5 dual-master degree (MD / public policy) candidates from the Harvard Kennedy School who have chosen health care reform in Vermont as their thesis and research topic, and will be working on strengthening communication surrounding the issue for the next several months.
- **Great Jobs in Vermont:** The first “Monthly Messaging Kit” e-blast was sent out to colleges, regional chambers and SOV marketing managers last week (50.5% open rate) with creative and editorial content these partners could share and distribute out to their networks. Along with Steve Cook, Heather met with the group this week to flush out next steps to continue the momentum of the initiative, including a planned press event next week to highlight tech advances in Vermont in preparation for TechJam. The group is also considering the logistics and scope of resources that might be needed to host a new tech-related conference in Vermont (12-18 months out, broadly showcasing jobs/workforce and promoting recruitment) so if anyone is interested in being part of that effort, please let Heather or Steve know.

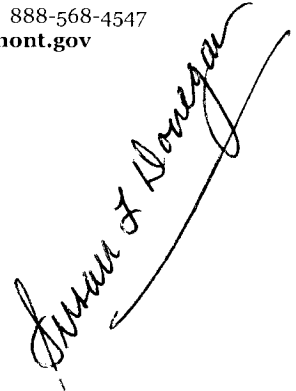


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[www.dfr.vermont.gov](http://www.dfr.vermont.gov)

**CONFIDENTIAL and PRIVILEGED**

**To: The Honorable Peter Shumlin, Governor**  
**From: Susan L. Donegan, Commissioner, Department of Financial Regulation**  
**Date: October 17, 2014**  
**Re: Weekly Report**



**Department-Wide Initiative:**

Commissioner Susan Donegan has created an internal DFR working group charged with studying the feasibility of consolidating the divisions' consumer sections. Currently, the securities, insurance and banking divisions run separate consumer services sections. The commissioner wants to examine whether consolidation into one unit would yield efficiencies for the department and improve the delivery of services and outreach to consumers. She expects to have an internal report and recommendations ready by year end.

**Captive Insurance Division:**

A new captive insurance license was issued for Birch Property & Casualty LLC, being formed by Retail Properties of America, Inc. RPS is a real estate investment trust based in Oak Brook, IL

As previously reported, Deputy Commissioner of Captives David Provost is meeting today with a delegation from the Chinese insurance authorities to discuss how Vermont's captives market operates.

**Securities Division:**

Deputy Commissioner of Securities Michael Piaciak spoke to approximately 60 small business owners, financial professionals and mission driven organizations at the New Economy seminar held at Main Street Landing in Burlington on Thursday October 16th. The event was sponsored by the Clean Yield Fund and the deputy spoke about the Vermont Small Business Offering Exemption (VSBOE) and other avenues for small businesses to raise capital.

**Insurance Division:**

The Insurance Division is in the process of reviewing the State of Vermont Employees Health plan for compliance with federal ACA and state mandates.





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**CONFIDENTIAL AND PRIVILEGED  
MEMORANDUM**

TO: Governor Peter Shumlin  
FROM: Rebecca Holcombe, Secretary, Agency of Education  
SUBJECT: AOE Weekly Report  
DATE: October 16, 2014

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**Press Contacts**

10/13

- Jill Remick and Tom Alderman were interviewed by Mike Curcov, new education reporter at Fox 44, regarding major education issues, and Act 77 implementation, specifically PLPs.
- Jill was asked by WCAX if we could confirm that the South Burlington School District public school educators were the highest paid in the state (yes).
- Charlotte Albright from VPR spoke to Kathy Renfrew on our science team about Next Generation Science Standards following Rebecca's recent press conference.

10/14

- Leslie Engle, producer at Fox 44, requested an on camera interview with Rebecca regarding the Strike. It did not work out that Rebecca was available, alas, though Jill was able to answer some of Leslie's questions via phone.
- Jill was asked by NECN if we could confirm that the South Burlington School District public school educators were the highest paid in the state (yes.).

10/15

- VSBA Meeting in Lyndon – Jim Jardine of the Caledonian Record and a reporter from the Newport Daily Express were in attendance.
- Vermont Watchdog contacted our special education department about the number of students receiving special education services. Bruce Parker was directed to see the data on our website.
- Jill Remick answered the question by Josh O'Gorman, Vermont Press Bureau, regarding what the impact of a 30 percent cut in education spending would look like. This was in response to Scott Milne's proposal to do so.

10/16/14

- Susan Keese of VPR reached out on follow up questions for John Fischer on the Vermont Center for Deaf and Hard of Hearing closure, and the Agency's position on mainstreaming deaf and hard of hearing students.
- Our legal office continues to respond to the Wall St. Journal reporter who filed a broad records request regarding Common Core, SBAC. They have done so in all 50 states.

10/17/14

- Rebecca spoke with Robin Smith from Orleans County *Record*. She asked about the most insightful questions I have heard yet. Her primary interest was Pre K and the title 1 cliff, which has all the North Country boards very agitated. I was able to explain that our records show they have a FY 14 Medicaid roll over which they can use to cushion and help the transition for the first two years. She pointed out that these were one time moneys, so I stressed that they have a good Superintendent with a plan, who sees this as an opportunity, and what they need is a bridge to give them a little more time to transition. She got that. I also emphasized the importance of not forgetting this is about PK and making sure kids aged 3 and 4 have access to the kinds of intentional learning opportunities they need to build the self-regulatory, early literacy and early numeracy capabilities they need to thrive in school. She also pointed out that boards and school administrators seem completely overwhelmed by the number of initiatives that have come at them in the last three years, and that it all feels very fragmented and overwhelming. She is spot on. Between Act 77, EQS, and PK, these districts feel torn apart by a policy agenda that lacks coherence. I did not tell her this, but it is worth keeping in mind that we are not seeing evidence of big dual enrollment uptake in the NEK. **If we want to see implementation, we are going to have to slow down and create some space for districts to figure out how to do everything that has been thrown at them.** I emphasized to Robin two elements of the Governor's letter to me:
  - I said the Gov asked me to go speak to boards directly through the VSBA, to hear directly what boards are grappling with and what they feel are solutions and needs moving forward, precisely because he knows they are the most directly informed and knowledgeable about challenges and states of implementation.
  - I reminded her of the Gov's call for a moratorium on new mandates or legislation that would increase burden on districts, and said this was because the Gov was mindful of the need for coherence and mindful of capacities and limitations of local boards with respect to implementing new initiatives, before they had a chance to manage and grapple with what is already on their plates.

### Meetings/Public Appearances

Tuesday, Oct. 14: Met with mayors in St. Albans to discuss education finance and spending pressures. Shap was present as well.

Tuesday, Oct. 14: filmed a welcome short video for UVM's event to recognize outstanding teachers.

Wednesday, Oct. 15: Presented a version of the VSBA slides for Shap's Education Funding Group at JFO. JF asked me to present again at one of the orientation sessions at the beginning of the upcoming session. This coincides with an SBE meeting, but I will do what I can do.

Wednesday, Oct 15: Lyndon, VT. Presented at the final VSBA session. There were several representatives of the press at this event.

Thursday, Oct. 16: VTC and Vermont Works for Women—Keynote at the We Can Do This conference to introduce young women to STEM and nontraditional careers. This was a very well attended, well organized and all around wonderful event. Very sorry to see that Tiff is moving on to a new career, but I am sure she will continue to work wonders for our young women.

Friday, Oct. 17: Cindy Hill, the State Supt from Wyoming (another nonwaiver state), reached out for a call. She asked us to take leadership and convene a group of nonwaiver and rural states at the November CCSSO meeting.

### **Emerging Issues:**

#### ***VSBA Regional Meetings:***

Wednesday evening, I joined the Vermont School Boards Association for the sixth and final regional meeting with school boards. During these meetings, we presented and interacted with nearly 600 school board members across the state, hearing their suggestions on education equity and outcomes and sustainability. Both the VSBA and I presented these members with a great deal of data in order to further the conversation regarding education staffing, opportunities and leadership.

I am going to share some of the challenges, because I feel you need to know what they are so that we can respond effectively as they come up. **I am operating on the assumption that to the extent it is possible, it is best to know all concerns and complaints in advance, so that we can respond effectively to ensure the integrity and effectiveness of policy goals. Now that districts have begun building budgets, these issues and concerns are much more likely to come up on the campaign trail.** They were expressed with increasing frequency and urgency at the last two VSBA meetings than at the first four, which I think reflects the fact that districts have begun budgeting.

- Several people expressed appreciation for the fact that you asked me to go to the school boards first and elicit their ideas on how to move towards more

affordability. **You might want to emphasize in public that the reason you sent me to speak with Boards was that you wanted me to hear first from those most directly engaged in finding solutions for their towns.**

- **People feel overwhelmed by the challenging of integrating all the initiatives coming their way. This is a good reason to emphasize your call for a moratorium on new legislation.** Their agenda feels very fractured now, and they are unable to work coherently on school goals, because of the need to figure out how to manage outflows at the PK level and the HS level associated with PK and dual enrollment. You need to know that while boards agree that PK and college access are critical, I am getting increasing skepticism that the current tools are the best way to support these goals. **There is a disconnect between our messaging and their perceptions, which has not been helped by the implementation.** Here are a few examples to give you a sense of what I mean:
  - **Dual enrollment:** The college system dropped the ball on evaluation of dual enrollment, so we do not have robust data to evaluate the quality of that experience. What we do have is a lot of anecdotal data that is not good. Across a number of systems, students are reporting back to administrators that college courses are easier than high school courses. At the same time, we are getting queries from the College system about whether they can expand their dual enrollment offerings to include remedial courses, so they can access more students. We have replied that kids who need remedial courses should still be in high school, because that is where the college preparatory work should take place. Schools are mad that they are sending cash out the door to colleges, and while schools are put over the barrel on accountability, there is no accountability in the college system for the value of that expenditure.
  - **PK:** at the last couple of VSBA sessions, I was approached by numerous boards and administrators who are increasingly worried about PK, and see the current bill as a very expensive way to achieve a goal. I think the increasing intensity reflects the fact that districts are beginning to plan budgets. Here is a sampling, which I share so you can anticipate how you want to respond:
    - One district currently collaborates with Head start to provide PK, by sending them \$12k to support the cost of a teacher. Next year, they will have to send Headstart \$60k for what is looking to them like same program.
    - One district that currently operates PK for a substantial portion of their students just realized that next year, they will still have the step cost of operating their PK, but will also have the marginal cost of \$3000 for every student who elects to go somewhere else for PK. Because budgets are built a year ahead, this may show up as a deficit on their financial statements if they don't budget, and if they do budget it, it will look like paying twice for PK.

- One superintendent just realized that because the PK kids go on the count for the district to they can be included in the equalized pupil count for funding purposes, (e.g. enrolled in the school for funding purposes, even if getting services elsewhere), the administrators in the district are responsible for monitoring etc... associated with all PK placements. They are questioning whether they may have to staff up at the district level in order to manage PK placements in a wide variety of sites, because of the administrative demands associated with this. This factor alone will may incentivize districts to ask for small PK regions.
- We need to **make the case for the strategy we chose for providing PK**. I am not hearing disagreement with the goal, but we should anticipate pushback on the strategy, which is growing. I was not here when this law was put together, so I really need help understanding the logic behind the approach. Board members and superintendents were asking why the Education Fund is now being used to support child care, and many are pointing out that they expect this model to be costly. Two superintendents have mentioned national data that suggests that when you control for background demographics, kids in school-based PKs arrive at school with better skills than kids from child care providers. We need to assure people that we are doing our best to ensure quality across the system and that we will be able to evaluate the effectiveness of different pathways. I think we need a cogent statement that explains why we took this approach. **I think we have assumptions that shaped choice of model that have not been adequately articulated and thus are not accessible to those actually tasked with implementation—the districts and school boards. The 0-5/AHS/private provider world takes these reasons for granted, but the Ed world reads different research. I am starting to hear them say we chose a more expensive model that will have worse results. We need to explicitly state the assumptions behind the choice of model, because they are not shared by many of the folk in charge of implementation. This is politically risky. I welcome any guidance on this.**
- Strategically, I think the PK advocacy groups have to be careful of their messaging, lest they provoke a backlash. For example, Eddie Gale jumped on the Hartford business manager for saying that every child who did not enroll in the Hartford PK was a loss to the district. From the perspective of the budget and the financial statements, that is actually a true statement and Eddie Gale is flat out wrong. Giving the business manager a spanking for that may just antagonize the people tasked with implementation, and this in a district that supports the goals and intent of the law, and which will be a good partner despite the cost.



(In case I am not being transparent enough, I am worried about PK. I am working closely with Aly to ensure all our messaging is tight and consistent. We need to make this a priority.)

- **People are starting to get the message that not addressing spending concerns is not an option.** That said, they are still looking for outs. People want to talk about funding formulas because they don't want to talk about spending cuts.
- School boards are feeling hemmed in by teacher contracts and bargaining, combined with the state and federal requirements designed to ensure high quality experiences for Vermont students. I have also heard several times that while they want legislation on strikes, they don't agree with the no imposition piece, because **the school boards do not believe the NEA will ever agree to concessions on health care, and they do not believe there is any way to get a handle on costs without some concessions by the NEA on health care.** I am also hearing more interest in looking at SU-wide or even statewide teacher contracts—both from boards and legislators. Boards want this because they feel outgunned by the NEA and because SU-wide contracts would make it easier to share staff across sites, and legislators want this because we have statewide funding and contracts are the single biggest cost. We do need to look at collaborative bargaining, and also I think the time is right to get someone to float SU level or even state level teacher contracts.
- We have some very tough negotiations ahead around health care. We need to be a little proactive in thinking about how to make those go productively.

In sum:

What we have now that we did not have a few months ago is extensive feedback from boards about the challenges they face, what they are currently doing to address them, and what steps they are taking to reach out or collaborate with neighbors. VSBA is in the process of typing this up and I will share back with you when it is ready. Jeff Francis and I were able to successfully make the pitch that we bring nascent suggestions from the Boards to Lisa Ventriss' AI Summit, as a way for framing that conversation and grounding it moving forward. My biggest fear is that the AI summit will turn into another session at which 200 people brainstorm 40 new policy objectives we need to implement yesterday, but which don't address the goals of fiscal sustainability and equity of access to high quality learning opportunities.

### ***State Board of Education***

Two issues here: the strategic plan and the SBE's legislative agenda.

**Strategic Plan:** The SBE now realize that we work for the Governor, not the SBE, so their strategic plan is their plan, and not our plan. This means they don't manage implementation, but it also means they have more freedom in the agenda they carve, and can go places we don't go. Food for thought.

I have attached the SBE's first draft at a **legislative agenda**. You will see that it reflects a shift to research and policy formation, which I think is helpful. I will point out that a few members of the SBE are committed to exploring some issues related to choice and equity, so some issues will inevitably come up related to equity of access in schools that accept tuition dollars, and some low hanging fruit related to tuition dollars sent to schools in places like Europe and California, when we have empty seats in VT, including in our independent schools with boarding capacity.

### ***More on PK***

We are focusing on getting out guidance, as folk are working themselves into a lather in the field, and there is clearly a lot of misinformation flying around, both good and bad, about what PK providers (whatever their flavor or sector) can and can't do.

Our strategy is to acknowledge the cost and complexity, but emphasize the benefits. We are also doing what we can to soften the transition. For example, many districts have Medicaid rollovers about which they don't seem to know. Most if not all of the Title 1 dependent districts also have a lot of Medicaid rollover. We are pulling this data and sending it to Supts and Boards to remind them of a cushion they have at their disposal.

### ***Strike implications***

The So. Burlington strike means that students in So. Burlington who are eligible for Free and Reduced lunch do not have access to this publicly food. In the case of South Burlington, this includes students from an estimated 10 towns that send their students into South Burlington. This incident did reveal a data need on our part. We have no easy way to identify FRL eligible students from sending towns and ensure access to food for those students. This means when strikes occur at schools that receive large numbers of students from other districts, it is difficult to ensure food security for students who need access to publicly supported nutrition.

### ***Kudos***

I appreciate Aly's efforts to go out of her way to thank and acknowledge folk at the Agency for working so hard on PK. They are really tapped out now, and other aspects of program are suffering due to the demands of PK implementation. Aly's acknowledgement and thanks are going a long way towards smoothing the waters.

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## **Legislative Agenda 2015**

### **Vermont State Board of Education**

#### **Draft (3): 10-17-14**

The state board calls for limited legislative action in 2015.

The reasons are straightforward. The state board is aware of the financial pressures on school districts and the state. These constraints limit the ability of schools to implement worthwhile, yet costly, new mandates. New programs in college dual enrollments, early education and individual learning plans are the most prominent. The development and implementation of a new accountability system (Education Quality Standards) reflecting the broad purposes of education also place personnel demands on an inadequately staffed state agency and upon local districts.

School Funding, Expenditures and Efficiency - Many proposals for state aid changes are being publicly mooted. Unfortunately, many of these notions have regressive effects and would shift the tax burdens more on to middle income and poor Vermonters. Such proposals would increase, rather than close, the opportunity gap – and they raise legal equality issues. Fiscal shifts, in recent years, have exacerbated the problem by increasing the reliance on property taxes. Thus, any changes to the funding system must rely on broad-based and progressive sources.

The SBE's broad principles are that cost-shifts should not take place, changes in the funding system should advance tax progressivity, changes must be based on broad-based taxes, and unfunded mandates should not be imposed on schools.

Areas for further specific inquiry include:

- Much of the discussion of school finance has been hampered by different stakeholders using different definitions. The state board encourages the legislature (and other commentators) to use standard school finance definitions in a clear and uniform way.
  - One example is the confusion of tax increases with school cost increases. New programs have been funded through the education fund rather than through new and/or separate funding sources (universal pre-K, dual enrollments, retired teacher health care, corrections, etc.). The result has been a wrongfully perceived increase in education costs.
  - Another example is provided in “school costs” which is somewhere between \$13K and \$18K depending on how on what base you compute the number. Is per pupil expense the best or only way to examine school spending?
- More than 40% of Vermont students were eligible for free and reduced lunch. Unfortunately, the formula weights for economically deprived children are arbitrary, likely inadequate, and need review (With universal lunch, how we define children in need will have to be revisited). Dense concentrations of poverty affects learning in a far more dramatic way, which indicates that finer tuning of program definitions and costs is needed.

- Rolling averages (“phantom students”) – Most states have a rolling student count average of two or three years to protect schools from sudden and dramatic population and revenue shifts. The rolling average combined with maximum loss provisions has been portrayed as “offering a Cadillac program which other towns pay for.” While some argue for eliminating these provisions, this would subject towns to even more extreme tax and cost fluctuations. The situation self-corrects and does not represent a solution to the major problems.
- Health care costs are the most rapidly increasing school expense, representing approximately ten percent of costs. It is too early to be definitive about how teacher health insurance costs should be factored into the state health system. The board asks the legislature to actively pursue and resolve this area.

Staffing and Costs – While many notions are advanced to reduce school spending, 80% of school spending is in personnel. Thus, ideas that do not deal with staffing in a direct and demonstrable way will not be effective. By most any definition, Vermont enjoys favorable staffing ratios. Yet, little is known about this most important of cost variables. Geographic, temporal, special education, local population variability and a host of other variables affect staffing decisions. The state board recommends that a study of these issues be funded and monitored by the state board. This is a place where return on investment could be significant.

The Opportunity Gap - The Achievement Gap - The first priority of the state board of education is to reduce and eliminate the achievement gap. The gap is manifest by income levels, ethnic identity and gender.

This will require a number of activities both within the traditional definition of schools as well as in coordinated work with other agencies of Vermont government. Workforce training, employment opportunities, social services, housing, and health programs are all integral parts. The reallocation of existing education resources and coordination with other programs is essential for fiscal and programmatic efficiency.

Specific school related initiatives include:

- Full service schools need to be explored and expanded. Colocation of programs with AHS must be pursued. There are some successful programs in the state but these often lack solid economic foundations. In the long run, these efforts should save money for the state. For the immediate future, a low cost needs assessment, feasibility, effectiveness and planning initiative needs to be undertaken.
- Extended learning opportunities (longer day and longer year) have been shown to have positive effects on the achievement gap. However, these programs often rely on short-term grant funding sources and are vulnerable to state and local economic pressures. These programs need to be legitimized and stabilized. A more systemic and reliable funding stream is needed which may call on the reallocation of existing resources. (This should be coupled with the categorical weight review noted above). (*Discussion: What’s the best way to move forward? It is permissible now*).

- Equality of Opportunity in independent schools - A related principle is that any private school receiving state monies should be subject to the same rules as public schools. Independent schools must employ the same non-discriminatory criteria as public schools in student acceptance criterion and the provision of services.

Privatizing Public Schools – While the state board recognizes and supports the contributions provided by historical independent schools, it is opposed to eliminating public governance of public schools.

Consolidation and Governance – The state board recommends that local education agencies continue to study and implement the consolidation of services, in whole or in part, when approved by the affected citizenry. Small incentive grants should be available from the state. As attractive as a one size, top-down model may appear, reality shows that locally tailored solutions will prove more appropriate and acceptable.

SEA/ SBE Staffing and Support Levels – Funding of AOE staff is disproportionately dependent on specific federal programs. The legislature has mandated dual enrollments, universal pre-school, personal learning plans, health record-keeping and a host of other requirements. However, these gains will be placed in jeopardy if the state does not provide sufficient personnel to implement the programs.

Furthermore, with the SBE specifically charged with educational policy, an independent staff capacity is needed. While the agency has been most cooperative and supportive, the SBE requires policy analysis, legal, and administrative capabilities.

Special Education Funding – *placeholder* -

Early Education Implementation Monitoring (Act 166) – The state board has long been supportive of the universal provision of early education. Now that a law has been enacted, a number of implementation issues require attention. Among these are the adequacy of the 10 hour minimum, whether the ten hours provides enough time for needy children, whether the public/private mix will inadvertently have a discriminatory effect on less affluent children, and the disallowing of Title I funds to support the universal minimum (which has a huge and immediate negative financial impact on pre-existing early education programs).

Virtual Schools –With the growth of virtual schools across the nation and the open questions about costs and quality, the state board asks the legislature to implement a review of this area and to adopt necessary legal protections to assure the wise use of public dollars. With nominal staff support, the state board could address this through rule changes. Model legislative language is available which could be used as a point of departure (see for example <http://nepc.colorado.edu/publication/financing-online-education> ) (*Discussion question: How much of this can or should be done in rules? If rules, we need capacity.*)

Privacy Protections – With the increasing interest in “big data,” the potential gains must be balanced against the all-too-frequent breaches of data. Unfortunately, if the information is collected in the first place, recent history shows it can be hacked. The state board recommends that the legislature enact

protections on data collection immediately. Model legislation is available through NASBE and a number of states that have already addressed this concern. (*Discussion: 21 states have loose to tight new laws. Expect federal action in some form*).

Assessment and Accountability – Both the State Board and the Secretary of Education have made strong public statements about the proper role of assessment and accountability. With the adoption of the new Education Quality Standards, proficiency based standards, dual enrollments and individual learning plans; revisiting the state accountability system is indicated. A draft of the new system should be available for review and suggestions early in the session. Current Vermont statute (16 VSA 165) is appropriate and only minor tweaks at a later date appear indicated. However, the legislature, governor, secretary and state board must work in close harmony in approaching the federal government about a new approach to assessment and accountability. The state board requests a legislative joint resolution indicating their support.

Advertising in Schools – Commercialism in schools is increasing rapidly. In many ways, local businesses have been staunch school supporters and have contributed a great deal to schools. At the same time (and in a cyber-age) excessive advertising can be inappropriate and distracting. The state board asks the legislature to develop and guidelines on the appropriate and inappropriate applications of commercial advertising in schools.

*Some resources:*

<http://nepc.colorado.edu/publication/policy-and-statutory>

*This focuses on food and beverage marketing, but is useful:* <http://changelabsolutions.org/publications/district-policy-school-food-ads>

*See also ChangeLab's publications on first amendment implications of restricting marketing.* <http://changelabsolutions.org/landing-page/junk-food-marketing>



LOTTERY

10/17/14

I am away at a funeral. Nothing significant to report.

Gregory Smith

OFFICE OF THE SECRETARY  
Phone: (802) 828-2657  
Fax: (802) 828-3522

**Executive Privilege**

**TO: Governor Peter Shumlin**  
**FROM: Secretary Brian R. Searles**  
**DATE: Friday, October 17, 2014**  
**SUBJECT: VTrans - Confidential Report to the Governor**

**NOTES FOR GOVERNOR**

**Mayor Weinberger Wants Review of Pedestrian Issues on Champlain Parkway**

I have agreed, after a meeting with the Mayor yesterday, to have our staff participate in a fresh look at the pedestrian crossing infrastructure on the proposed Champlain Parkway in light of recent serious traffic accidents on Pine Street involving a pedestrian and a cyclist.

Essentially, the City and VTrans, along with a consultant already working on other City projects, will review the current design plans to evaluate whether they are sufficient to meet current and future pedestrian safety needs as this neighborhood continues to redevelop from an industrial section to a mixed use section of the City.

**Gas Tax Still Underperforms**

The gas tax, through three-quarters of Calendar Year 2014, is \$9 million off last year's pace, falling from \$78 million to \$69.8 million. The Purchase and Use Tax is up more than \$9 million thus resulting in a wash for the T-Fund. However, there is a connection between new vehicles and lower gas tax revenues as these vehicles are outperforming previous models significantly on gas mileage. This is bearing more heavily on the revenue, I feel, than the current impact of electric vehicles which are still not numerous on the highways of Vermont.

**ASCE Report Card**

Sue was the keynote speaker at the ASCE (American Society of Civil Engineers) release of their 2014 Report Card on Vermont's Infrastructure, along with David Mears. The report card gave Vermont's infrastructure (roads, bridges, dams, drinking water, wastewater, solid waste) a letter grade of "C". This was an improvement from our last grade (2011) of "C-". We shared that we were not satisfied with a "C" grade, and concur that there is much work ahead, including the uncertainty of federal funding, and the vulnerability of climate change predictions. We also described our bridge innovations

and accelerated delivery and significant improvements as an argument (somewhat in jest) for a higher grade.

### **Drone flies over Morrisville Alternate Truck Route October 2014**

This footage, captured by a drone, shows the new facility which will open with a ribbon-cutting on October 31.

<https://www.youtube.com/watch?v=lof5VIUIff4>

### **NOTES FOR STAFF**

#### **Culvert Replacement in Chester**

A large culvert replacement has been completed using a design that is friendly to aquatic life. Todd Menees from the Agency of Natural Resources attended the final inspection of the new facility, took photos and described in his report a brook trout and a black salamander using the new Aquatic Organism Passage (AOP). He referred to the event in his report as “a great success story” but the real success story is the terrific partnership with ANR that has been growing stronger with time in the last three years.

#### **Auditor “Disappointed” over Liquidated Damage Calculations**

Doug Hoffer has communicated his disappointment that we have not incorporated all of his suggestions in the calculation of liquidated damages as part of our contracts. His audit of a paving project from 2009 found that the contractor was not charged enough in damages for being late with the project. However, we felt that there were some mitigating circumstances, as there often are, given the weather and unknown sub-surface conditions and the like. We did agree to update LD calculations every two years and have our Specifications Committee research and consider other recommendations.

Our methodology, which has been approved by the FHWA as recently as June 13, 2014, tries to strike a balance between having a hammer to bring down if a contractor doesn’t meet requirements and being so hard-nosed that contractor bids go up in anticipation of a strict enforcement of damages.

We will continue to look at this issue but I’m not convinced that this isn’t a solution in search of a problem.

#### **Continuing Saga of Exit 16 of I-89 (Colchester)**

This is the Diverging Diamond Interchange on Route 7 at I-89 Exit 16, the first of the major Circ Alternative Projects, for which our Act 250 permit is under appeal by area gas station owners. In the two developments this week:

Yesterday, the District Commission soundly rejected all aspects of Skip Vallee’s request for a delay of a hearing on water criteria, adding criteria to the hearing agenda and re-doing Criteria 7 (Municipal Services).

Also on October 16, VTrans filed a motion under Act 250 Rule 12 asking the District Commission to confirm that the term “Headwaters” does not apply to this project.

The appellants think the term should apply. In a previous case concerning the Costco gas pumps, the District 4 Commission found that Exit 16 and vicinity are not “Headwaters” because ground or surface waters do not flow “through or upon lands which are not devoted to intensive development” and this project is fully contained in an area devoted to intensive development. The hearing on all water quality aspects of this case will begin, as previously scheduled, on November 6, 2014.

### **Vergennes Historic Rail Station Sewer Services**

In response to the desire of the Vergennes Area Chamber of Commerce to operate a “Welcome Center “ at the historic railroad station and Park and Ride in Ferrisburgh, we have requested a sewer hookup from the City of Vergennes.

Talks have stalled over the City’s insistence that we include language in the agreement purporting to allow the City to seize the State-owned Park and Ride at a tax sale should VTrans fail to pay its sewer charge in a timely manner. As previously reported, we will not agree to this under any circumstances.

Assistant AG John Dunleavy has corresponded with the Vergennes City attorney, Jim Oimette this week explaining our position due to the following:

1. The City’s proposed language, in effect, asks VTrans to waive sovereign immunity (which can only be waived by express action of the General Assembly);
2. Quite apart from sovereign immunity, it’s extremely doubtful that a contract could vest the City of Vergennes with authority to conduct an extraterritorial tax sale in the Town of Ferrisburgh.

John also reminded their attorney that Vermont is a “Dillon’s Rule” state – meaning that municipal corporations are creatures of the Legislature and possess only such powers or rights as are expressly granted to them by that body.

### **Hetzel To Manage VTrans Training Center**

We are extremely pleased with the appointment of Christine Hetzel from the Department of Human Resources to the Agency training center as its program manager to replace Kari Miner who has recently been appointed Deputy Commissioner of DHR.

### **Vermont Highway Safety Alliance**

The Vermont Highway Safety Alliance held its second annual meeting in Killington on October 14. The event was attended by approximately 110 safety partners from both the public and private sector. This year’s agenda focused on the future and technology of highway safety while setting the priorities for VHSA in 2015. The 2014 priorities - Driver Inattention, Impaired Driving and Occupant Protection - will be continued in 2015 with additional emphasis placed on Bicycle/Pedestrian and Older Drivers. As crash data is the driving force behind VHSA, emphasis will also be added to crash data accuracy and availability.

With a 7% reduction in major crashes in the last several years and 33 fatalities in 2014 to date compared to 52 at this time last year, the VHSA partners continue to see improvements on our highways. While improvements have been made, much work remains as we continue "Toward Zero Deaths."

### **Unsafe Guardrail Reports in the News**

You may have heard or read recently about lawsuits in a few states regarding vehicle collisions with guardrail end treatments resulting in harm to the occupants. This has triggered a few states (Nevada, Missouri, Massachusetts, and Virginia) to either suspend or remove the specific Trinity ET-Plus from their respective Approved Products List. The FHWA has been working with each state in evaluating any crash data available on the subject end treatment. Currently there has been no mandate from the FHWA to remove the item from a state's Approved Products List. In fact, just the other day FHWA wrote VTrans in support of having the ET-Plus on our Approved Products List. We have no data or reports of any issues with our end treatment performance across the state highway network. We do have some of Trinity's ET-Plus in service and have for a number of years now with no negative results reported. The system has been crash tested by the FHWA with no negative outcomes to suggest they are unsafe. We will continue to monitor the situation closely here in Vermont and nationwide and take corrective action as data and results dictate. Rumor has it much of the law suit may very well have to do with a former employee of Trinity....

10-13-2014  
83 Park St.  
Essex Jct, VT  
05452

Brian Searles, Secretary  
VT Dept Transportation Agency  
1 National Life Dr.  
Montpelier, VT 05609

Dear Mr. Secretary,

I am 68 years old today.  
And, I am here today because of  
the rumble strip along I 89-N  
just beyond St. Albans.

This summer, I fell asleep  
at the wheel and was awakened  
by the sound of my tires crossing  
the rumble strip. (It was mid morning.)

Thank you for your  
protection of my life and the  
policy and money spent on rumble  
strips. I am grateful for my  
extended life. Mary Jane Heale



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

**To:** Peter E. Shumlin, Governor  
**From:** Harry L. Chen, M.D., Acting Secretary of Human Services  
**Re:** AHS Weekly Report  
**Date:** September 26, 2014

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**Highlights:**

**VDH:**

Bennington Opiate Treatment Update \_\_\_\_\_ pg. 2

Ebola Planning \_\_\_\_\_ pg. 2

**DMH:**

Vermont Psychiatric Care Hospital (VPCH) \_\_\_\_\_ pg. 3

Brattleboro Retreat Continues on Track \_\_\_\_\_ pg. 3

(MHOC): Quality Review and Report on Hospitals \_\_\_\_\_ pg. 3

**DAIL:**

Health Oversight Committee to take testimony on Choices for Care system report, nursing homes  
complaints \_\_\_\_\_ pg. 3

State Auditor report released yesterday \_\_\_\_\_ pg. 4

**DOC:**

Offender on Escape Status \_\_\_\_\_ pg. 4

**DCF:**

ACCESS Computer Glitch Delays Child Support Payments \_\_\_\_\_ pg. 4

**DVHA:**

Mental Health Oversight Committee \_\_\_\_\_ pg. 5

ACO Year 2 Total Cost of Care (TCOC) \_\_\_\_\_ pg. 5

Xerox Protest Update \_\_\_\_\_ pg. 5

**Secretary's Message**

The Waterbury project has entered into the Detailed Design phase for AHS. This phase involves working with teams of 5 (for about every 75 people) from each of the departments (totaling about 14 groups). These teams are meeting weekly to design the exact layout for each Department's space. This week, Lynda Ward from Hayworth, shared a presentation on Change Management and how to use it to make this project successful. Lynda has a degree in experimental psychology and over twenty five years of experience in aligning customers' business goals with desire for change

Lynda's first presentation was to the Waterbury Leadership Group on Tuesday. She provided a shortened presentation to this group which I believe was helpful to most. On Wednesday, Lynda provided a full presentation to two different groups consisting of the 5-person teams from AHS who will be working through the detail design. Her message was clear, in order for this project to be successful, resources need to be available to ensure department staff are appropriately guided and

supported in preparing for this change. Executive support for this project must be made clear to all employees in each of the departments moving back to Waterbury.

### **Vermont Department of Health (VDH)**

#### **Bennington Opiate Treatment Update**

Tom Dee, Southwestern Vermont Health Care, and Ralph Provenza, United Counseling Center, have put together a proposal for enhanced opiate treatment services in Bennington. This proposal was developed in response to concerns about distance to the Hub in Rutland for Bennington residents, and concern about potential diversion of buprenorphine from primary care Spoke practices. They are proposing to create a center that will work with patients with more intensive care management needs; the center would serve 100 patients in Year 1. It would not be a methadone clinic, but would carry out observed dosing of patients receiving buprenorphine. The annual budget is approximately \$485,000 plus \$58,000 startup costs. The Blueprint (Spoke) portion is \$195,000 and the rest would be billed per patient per month. They shared this proposal with Deputy Commissioner Cimaglio and also planned to share it with Senator Sears.

#### **3<sup>rd</sup> Annual College Symposium: Preliminary Results of Substance Abuse in VT**

The National College Health Assessment (NCHA) and the Vermont Young Adult Survey (YAS) provided preliminary results of substance abuse in VT. While the NCHA sample included college students only, the YAS focused on young adults in general. Harmful alcohol consumption and significant rates of marijuana use are evident in both samples. Of particular concern, are the high rates of binge drinking (5 or more drinks in one sitting) and the high proportion of frequent marijuana users. The table below presents selected results for alcohol and illicit drug use for both surveys.

Table: Selected Results from the National College Health Assessment (NCHA) and the Young Adult Survey (YAS) - %

	<b>NCHA 2014</b>	<b>YAS 2014</b>
<b>Any Alcohol Use Past 30 Days</b>	72	75
<b>Binge Drinking</b>	44 (Past 2 weeks)	55 (Past 30 Days)
<b>Marijuana Use Past 30 Days</b>	32	37
<b>20+ Days Used Marijuana in Past 30<sup>1</sup></b>	31	50
<b>Past Year Nonmedical Use of Pain Relievers</b>	6	7

<sup>1</sup> Among those who used marijuana in past 30 days.

#### **Ebola Planning**

- Coordination with EMS agencies, Public Safety, and federal agencies is underway.
- Training for all Vermont hospitals addressing popular questions from providers and hospitals including details on testing, patient transfer between hospitals, and infection control is under development.
- A letter about Ebola and the low risk of transmission within the school setting is being provided to all Vermont school districts for distribution to parents/guardians.
- Infectious Disease staff continues to provide guidance and resources to district offices on Ebola investigation protocols. A November conference call for epidemiology designees will address district office responsibilities during an Ebola investigation which may include contact tracing and temperature checks of exposed contacts.

- The State Epidemiologist will present information on Ebola to multiple community partners including the Vermont Chapter of the American Academy of Family Physicians in the coming weeks.

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

#### **Vermont Psychiatric Care Hospital (VPCH)**

Vermont Psychiatric Care Hospital opened the 4<sup>th</sup> and last unit this week. Bed capacity is still holding at 21 as the acuity level of a number of patients remains high. Clinical staffs are trying to work around this and hope to be able to open more beds soon.

#### **Brattleboro Retreat Continues on Track**

DMH held a Follow up meeting with Brattleboro Retreat regarding the status of the CMS Plan of correction and systems improvement agreement. They continue on track for responding within the required timeline. They will issue a press release with more information on the survey findings. This information has been shared with Committee chairs of MHOC.

#### **Mental Health Oversight Committee (MHOC): Quality Review and Report on Hospitals**

DMH, DAIL, VDH, DVHA, and DCF gave a presentation to the MHOC on quality review and adverse event reporting for hospitals and residential facilities. The MHOC was interested in how the departments work in coordination on the quality oversight. Commissioner Dupre and Deputy Commissioner Reed gave an update on the ACT 79 consultant report recommendations, “Advancing from Vision to Results”.

#### **Concerns for E.T. at MTCR**

A bed at MTCR needs to open, a plan for treatment and security is being developed and the addition to the fencing needs to be completed before E.T. can move in. Secretary of State, Jim Condos, has concerns about E.T. at MTCR. His email chain sent on October 15<sup>th</sup> was responded to by Commissioner Dupre.

#### **Lengthy Stays at E.R. Reduced/Decreased**

Emergency Room numbers and wait times have reduced but is still a concern. A number of folks waiting in Corrections for inpatient beds have decreased as well.

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

#### **Health Oversight Committee to take testimony on Choices for Care system report, nursing homes complaints**

Commissioner Wehry testifies today on the recently submitted Choices for Care report. Senator Lyons asked the Commissioner to be prepared to answer questions about nursing home oversight in light of a constituent’s complaint about Birchwood Nursing home (reported last week). DAIL anticipates questions regarding the auditor’s report released October 16, 2014.

#### **Investigation of Unspent Funds in Designated Agencies Continues**

DAIL has completed its review of underutilized respite funds and other self-directed expenditures in Developmental Services. The results of the report mirror those of the state auditor’s report and have

uncovered significant problems with monitoring by the agencies. DAIL is now identifying solutions to improve this going forward and will have a full report by the end of October.

#### State Auditor report released yesterday

Despite VT Digger Morgan True's blog entry *Auditor slams state's failure to track social service contracts*, the reports title: *Designated Agencies: State Oversight of Services Could Be Improved, But Duplicate Payments Not Widespread* actually better reflects its content. Overall, the report appears to be accurate and the recommendations sound. DAIL leadership has created a work plan and timeline to begin making improvements. Additional resources will be required to fully implement the auditor's recommendations and these will be reflected in the budget request.

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

#### **PREA AUDITS**

DOC had three Prison Rape Elimination Act (PREA) audits in 2014. The auditor found no significant deficiencies in facility operation but rather identified areas where we can improve written documentation. DOC has 180 days to implement corrective action plans to address these deficiencies. The next round of audits begins April 27<sup>th</sup>, 2015. The St. Johnsbury, Newport, St Albans and Rutland Facilities will be completed by the end of May 2015. DOC plans to have passed all of our audits one year ahead of the PREA audit cycle in September 2016.

#### Update to Town Hall meeting

DOC had 50 participants from around the state at the Town Hall meeting held last week. The presentation was on the Recidivism Grant and the implementation of Act 195.

#### Offender on Escape Status

Scott Favreau was convicted of Murder 2<sup>nd</sup> Degree with a 17 year- Life Sentence, with a minimum release date was 4/11/11. He was released to the community on conditional reentry on 4/18/13 after completing his incarcerated programming. Our staff in Brattleboro P&P was notified by his employer that he left his shift and never returned on 10/12/14. On 10/13/14 we placed him on escape status and requested a warrant for him was issued on 10/14/14 with \$100,000 bail. On Wednesday evening, Mr. Favreau was taken in to custody in Greenfield, Mass.

#### Population:

The department's incarcerated population averaged 2046 for the previous week, the average presentenced population was 357 (17%). The incarcerated male population averaged 1894 with 321 (17%) presentenced inmates. The female population averaged 153 for the previous week with 35 (23%) comprising of presentenced female inmates.

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

#### **ACCESS Computer Glitch Delays Child Support Payments**

On the evening of October 9<sup>th</sup> there was a glitch in the ACCESS Mainframe system that combined two money batches. DCF IT has been investigating the cause of this issue but has not come to a conclusion at this point in time. This glitch may have caused the function that enters money into the system to lock up. OCS was therefore unable to process any money received in the regions or mail on October 10<sup>th</sup>. This affected a total of 35 cases totaling \$8,865.98 of child support being delayed. This money was entered on October 13<sup>th</sup>.

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

### **Mental Health Oversight Committee**

Mark Larson and others are testifying on Friday at the Mental Health Oversight Committee on “Quality of Review and Adverse Event Reporting.”

They want to know where DVHA, DAIL, DMH and VDH are in the process of coordinating quality oversight and streamlining adverse event reporting.

- Which department collects which specific information?
- Why information is collected (e.g. State law, federal law, etc.)?
- With whom is each set of data automatically shared? With whom may each set of data be shared?

Highlight which pieces of information/sets of data are collected from the hospitals and community mental health centers.

### **ACO Year 2 Total Cost of Care (TCOC)**

In the Vermont Medicaid Shared Saving Program contract, ACOs can opt to take on accountability of additional cost categories in exchange for a higher shared saving percentage, from 50% to 60%.

DVHA is proposing to include pharmacy and non-emergency medical transportation as the additional categories for year 2 TCOC. These two categories will be confirmed and finalized in a letter to the ACO on October 17<sup>th</sup>.

### **Xerox Protest Update**

On September 26<sup>th</sup> Xerox protested the MMIS RFP process with Buildings and General Services (BGS) instead of DVHA. When it was determined it was a DVHA RFP, Howard Pallotta, General Counsel, received a call from the two attorneys representing the protestant and then met on 10/6. They are protesting that the bid should be reissued because of a mandatory requirement regarding the reuse of Oracle.

On Wednesday, Howard Pallotta responded to Xerox’s protest and rejected their request based on the following:

- Xerox did not participate in the MMIS RFP bid process they have no standing to challenge the bid criteria or process
- Any objection raised in writing must have been made before the last day of the question period (July 24<sup>th</sup>)
- DVHA would not have rejected Xerox’s bid based on not meeting the mandatory terms. We find that consistently the bid document sought solution offerings from bidders and preferences for reuse.

### **Cigna Community Health Team Payments**

Cigna continues to withhold payments from local community health teams (CHT) because they feel their share of CHT payments should be smaller given the loss of the state employees’ health care contract. DVHA has responded to Cigna’s request and explained the process that must occur to change the current allocation formula. A meeting with Cigna executives is scheduled for next week. The lack of payment to local CHT’s is becoming a significant financial issue for the local administrative agencies and CHT staff.

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FAX: (802) 828-2361**

**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:** October 17, 2014

**Secretary's Top Issues**

- State Veterinarian, Kristin Haas, continued to work with Windham county State's Attorney, Sheriff's department and Wildlife Services this week to facilitate the movement of seized fallow deer from Putney to Bennington. Progress is being made, and Wildlife Services will be performing a site visit at the Vermont Veteran's home on 10/17 to evaluate the safety and logistical ease of multiple methods of depopulation of four white tail deer that are currently in the Vermont Veteran's Home enclosure.
- Secretary Ross spoke to the Champlain Farmers Coalition composed of southern Chittenden and northern Addison counties who are concerned with water quality issues. Sec. Ross took the opportunity to compliment the Coalition for their work on educating farmers about new water quality efforts. He expressed concern that the public is losing patience, we all need to work together and the Agency will continue to work through our administrative enforcement process and when encountering farmers who are not willing to toe the line on reasonable regulations VAAFM will continue to enforce in a meaningful manner (as it has in conjunction with the AG office that have resulted in two fines being levied in excess of 30K). Sec. Ross also explained how he will defend farmers who are doing the right things of which there are many in our state. He reminded the Coalition of the importance of the agriculture community engaging on this topic so we can protect the agriculture industry (dairy in particular) which is so critical to our state's economy, culture and community. At this gathering Sec. Ross also spoke with Leon Berthiaume of the St. Albans Cooperative regarding these same issues.
- Two additional batches of mosquitoes have tested positive for Equine Encephalitis virus (EEE). The samples were from the towns of Cornwall and Whiting, collected on October 8. The mosquito surveillance season ended on October 9, and the last 78 samples were sent to the Vermont Department of Health the following day. These late season findings are considered to be low significance as the overall number of mosquitoes has dramatically dropped with the cold nights.
- The Agencies of Agriculture and Natural Resources met with approximately 30 Lab Staff and Lab Users to provide an update on the status of this large infrastructure project to be sited at VTC. BGS architects offered information about siting and building design; process is well underway with contractors to develop an in-depth proposal for presentation to the legislature in January 2015. A tremendous investment of time and visioning from internal stakeholders --state employees from both agencies -- over the past 2 months has resulted in a most dynamic and positive process. Lab Director position has been posted and we anticipate a hire by end of calendar year, at which time, greater focus on Governance and Business Model will commence. In addition, partnership development with VTC has launched and will develop over the next few years to include student, state employee and business development opportunities.



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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: October 17, 2014

**Status of Governor's Priorities:**

**Jobs in Agriculture**

The Agency of Agriculture, Food and Markets (AAFM) is looking for an Agricultural Licensing & Registration Specialist Trainee position. This position will help develop our licensing & registration programs through technology, streamlining processes and cross-training.

**Significant Events/Meetings:**

- Animal Health assisted a cervid producer in the South Royalton area with tagging deer last week and this current week. This will likely be an extended process as only a few deer at a time are able to be contained. However, once the deer are all tagged, the producer will be in compliance with the Captive Cervid Rules.
- Assistant State Veterinarian worked with Veterinary Services Veterinarian to provide an accreditation session to three new veterinarians in Vermont. One veterinarian has significant shelter medicine experience and another is a large animal veterinarian in the Manchester area. Both provide significant veterinary resources to the state.
- Assistant State Veterinarian hosted a meeting at the Agency for the new Food Safety Specialist recently hired at the University of Vermont Extension, Dr. Omar Oyarzabal. Dr. Oyarzabal is a veterinarian with a PhD in microbiology. He will likely interact with many folks from the Agency.
- Assistant State Veterinarian worked with Local Foods Administrator on FSMA related activities:
  - Continued planning for the VT hosted listening session with FDA – communicating with NEASDA about co-hosting and sponsorship to help defray some of the cost of the meeting. Also trying to plan a dinner meeting with FDA subject matter experts the night before.
  - Participated in a webinar hosted by the Western Growers Association with presentations from FDA subject matter experts regarding the supplemental rules
  - Reviewed the supplemental rule and the Vermont submitted official comments from last November to gain an understanding of how the supplemental rule addressed, or didn't address, the Vermont comments.
  - Reviewed the supplemental rules for Produce, Human Preventive Controls, and Animal Feed to attempt to understand the effects on Vermont producers.
  - Participated in NASDA Technical Working Group calls to review the additions to the Preventive Controls Rules
  - Planned for the upcoming internal Agency meeting and prepared documents to review with the group.

**Evolving Issues:**

- Assistant State Veterinarian provided an NOV for a non-compliant cervid producer for Secretary Ross's signature. The Animal Health Section has worked with the producer for close to a year to bring them into compliance with no result.
- State Veterinarian, Kristin Haas, continued to work with Windham county State's Attorney, Sheriff's department and Wildlife Services this week to facilitate the movement of seized fallow deer from Putney to Bennington. Progress is being made, and Wildlife Services will be performing a site visit at the Vermont Veteran's home on

10/17 to evaluate the safety and logistical ease of multiple methods of depopulation of four white tail deer that are currently in the Vermont Veteran's Home enclosure.

- State Veterinarian, Kristin Haas, worked with Deputy Secretary Bothfeld, Dan Scruton and legal counsel Diane Zamos to finalize a Secretary's decision in response to a Rural Vermont petition requesting that the Agency rescind its internal Tier 2 raw milk compliance policy.
- To date, the Livestock Care Standards Advisory Council has received \$600.00 in sponsorship money to fund the development of best management tools for livestock industry stakeholders re. the humane transport of cattle and calves.
- Food Safety Consumer Protection Division Director, Kristin Haas, is working with HR to post a position for a temporary Program Services Clerk to work on behalf of the Division in data entry and management in support of multiple initiatives. The goal is to have someone hired by the 1<sup>st</sup> of December.
- Food safety and Consumer Protection Division Director, Kristin Haas, scheduled a meeting with Division managers and Naomi Sheffield with the AG's office. Naomi has taken over some of the duties associated with the Vermont Origin rule, which overlaps with many of the complaints received by the Division. The purpose of the meeting, to be held in early November, is to establish SOPs for how these complaints are handled and for case follow up.

### **Summary of Key agency Department Activity**

#### **Administration:**

##### **Collaborative Lab**

The Agencies of Agriculture and Natural Resources met with approximately 30 Lab Staff and Lab Users to provide an update on the status of this large infrastructure project to be sited at VTC. BGS architects offered information about siting and building design; process is well underway with contractors to develop an in-depth proposal for presentation to the legislature in January 2015. A tremendous investment of time and visioning from internal stakeholders --state employees from both agencies -- over the past 2 months has resulted in a most dynamic and positive process. Lab Director position has been posted and we anticipate a hire by end of calendar year, at which time, greater focus on Governance and Business Model will commence. In addition, partnership development with VTC has launched and will develop over the next few years to include student, state employee and business development opportunities.

#### **Agricultural Development:**

##### **FDA coming to Vermont for Food Safety listening session on November 17**

- FDA officials are in Vermont on November 17, 2014 for a public listening session to offer farmers and food processors an opportunity to understand and provide comment on new supplemental rules proposed by the federal Food Safety Modernization Act (FSMA).
- The FSMA listening session is scheduled for November 17<sup>th</sup>, 2015 from 9am-1pm at the Vermont Law School in South Royalton. FDA staff will join VAAFM staff for an informative dinner on Sunday November 16<sup>th</sup>.
- There is an opportunity for the Governor to attend and provide some welcome remarks on the morning of November 17<sup>th</sup>.
- While oriented towards regional farmers and food processors specifically, this listening session is open to all interested parties. Northeast State Departments of Agriculture are invited to send staff and invite producers and processors from their states to also attend.
- All growers, manufacturers, and anyone interested in fresh produce safety and manufacturing of human and animal food are encouraged to comment on the supplemental proposed rules. The FDA comment period will remain open for 75 days until December 15<sup>th</sup>, 2014.

##### **VAAFM Ag Dev Local Foods Team Leads Tour of Vermont Schools, a Food Hub and a Farm with USDA Farm to School Northeast Regional staff**

- On October 9<sup>th</sup> Danielle Fleury of USDA Farm to School visited every Burlington School, learning about the school lunch program, getting tours of kitchens, gardens, and other related facilities.
- On October 10<sup>th</sup> Danielle Fleury visited Vermont Food Venture Center, learning how food hubs help farmers and schools connect. Additionally, she visited with award-winning Milton School Food Service Director, Steve Marinelli.

- Schools shared the value of having resources to support a farm to school coordinator that provides capacity for developing their farm to school curriculum. In Milton School, since instituting the farm to school program they have seen an increase in standardized test scores.
- As a takeaway from the tours, Danielle Fleury was appreciative of Vermont's leadership in supporting farm to school programming and building a strong statewide network.

### **October is National Farm to School Month & Farm to School Coordinator visits schools**

- October, as National Farm to School month, is full of school events and celebrations across the state and a variety of schools are excited to share with their communities and VAAFM staff their programmatic accomplishments.
- On October 15<sup>th</sup>, the VAAFM Farm to School Coordinator visited Lothrop School in Pittsford, where there is a robust school gardening program and composting program.
- National Farm to School month provides an opportunity to share the message of the importance in connecting students to the working landscape, nutrition education, curricula and classroom innovation, and connection to the local agricultural community.

### **Boston Public Market Update**

On October 15, Ag Development released a Request for Interest seeking responses from parties interested in working with the state on supplying and operating a Vermont food stall at the Boston Public Market. If there is sufficient interest shown through the RFI, the Agency will work directly with Boston Public Market management to secure specific area within the market to sell Vermont products, primarily organic produce, fluid milk, maple syrup and other maple products.

This specific initiative is part of the state of Vermont's strategic effort increase the export of Vermont food and agricultural products to domestic regions such as Boston, New York City and beyond. The Boston Public Market is a permanent, year-round, self-sustaining market featuring fresh locally-sourced food brought directly to and from the diversity of people from Massachusetts and throughout New England. The market is expected to open June 2015.

The RFI has been posted on Vermont Bid System, and shared with VT Specialty Foods, ACCD, WLEB Board, VAFPD, and Food Atlas. The Agency hopes to receive creative responses from an ample number of VT businesses.

<http://www.vermontbusinessregistry.com/BidPreview.aspx?BidID=11107>

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

#### **Meat Inspection:**

- Several plants are getting closer to completing construction and/or Hazard Analysis Critical Control Point (HACCP) plans to enable state inspection to begin. These are located in Milton, Arlington, Burlington, Orange, Randolph Center and other locations.
- Visited the Grand Isle slaughter plant that has been closed for 5 years. Plant is trying to open in November for Custom (no daily inspection, intended for owners own use and CANNOT be sold and must be marked "Not for Sale") slaughter and processing. Plans include transitioning to State Inspection around the beginning of next year.
- Visited the Milton Slaughter plant where construction is nearing completion. Plans are to operate four days per week performing State Inspected slaughter and processing
- Several inquiries concerning production of Rabbit sausage. Rabbit is an FDA regulated product and VT Health Department requires rabbits to come from an approved source in order to be sold in restaurants within the State of VT. The VT Meat Inspection service has an MOU with Health to inspect the approved source facilities but does not do carcass by carcass inspections as is required with amenable species (cattle, sheep, swine, goats, chicken, turkeys, etc.). These inspections allow the sale of whole rabbits to restaurants but Health is going to require written HACCP (Hazard Analysis Critical Control Point) plans if the producers are to do further processing. Sales to individuals and other retail outlets are otherwise un-regulated as FDA does not have an inspection process available.
- One exempt poultry producer operating under the 1000 to 20,000 bird exemption had facility rejected for further use due to insanitary conditions
- Waiting for outcome of the USDA request for further clarification on laboratory policies from the VT Department of Health in order to maintain the "at Least Equal To" status.
- Beginning to work on the annual self-assessment documents for USDA

## **Animal Health:**

### **Animal Health Field Staff:**

- Attended the weekly livestock auction at the Addison County Commissioned Sales (ACCS) to monitor events for compliance with Animal Disease Traceability.
- Attended the Fall Dairy Replacement sale at the ACCS checked for Animal Disease Traceability and export compliance.
- Continued case work on two separate tissue residue investigations.
- Provided Avian Influenza and Pullorum testing for private flock moving to North Carolina.
- Worked with veterinarians from North West Vet Associated and attended the clinic's quarterly continuing education producer meeting.
- Provided animal disease traceability supplies to a livestock dealer in Orleans County and a cervid producer in the Newport area.

## **Agricultural Resource Management:**

- The Champlain Valley Farmer's Coalition held a discussion about agricultural water quality in Charlotte this week. They invited all incumbent legislators and those running for office in the VT legislature and the turnout was good. Members from a wide variety of committees including many of the money and natural resource committees were there. The goal of the coalition was to make sure that legislators know the local farmers and feel comfortable reaching out for input when needed on subjects that come across their desk during the session.
- VAAFM, DEC and the Attorney General's Office are holding a joint training for all inspection/enforcement staff on 10/27. We met this week to review the agenda and presentation material. The general focus is who's responsible for what and what is a direct discharge.
- Legislators in Franklin County are being pressured by the residents of Lake Carmi to sign on a petition which was due this week. The petition seeks to sponsor a bill(s) ensuring federal and state dollars for clean-up, removal of the AAFM Water Quality Program and relocation under the Agency of Natural Resources, and consideration of removal of agricultural exemptions. It is yet unclear how many signatures were gained.

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

- Staff conducted an inspection on a LFO in Addison County. The inspection was conducted to evaluate the facilities for compliance with the LFO permit. We also evaluated the proposed water quality database inspection questions and the inspection was in collaboration with an ARM Division Field Agent.
- Staff visited two facilities managed by a LFO and also visited a MFO in Addison County to assist with VAAFM BMPs to improve waste management on the farms.
- Staff attended a public information meeting (PIM) in Addison County for a LFO that has proposed building animal housing to increase their herd size. The PIM was a discretionary meeting held to inform the public of the proposed project.
- Staff are drafting inspection reports and memos for complaint investigations, enforcement actions and ongoing inspections.
- Staff are working the Attorney General's Office and one staff member was deposed as part of an ongoing enforcement case in Orleans County.
- Staff are working with ARM Division engineering staff to assist with development and implementation of BMPs on several MFOs and LFOs.
- Staff have been processing FAP Program grants for farms. To date, 55 grants have been sent to farms statewide totaling just over \$190,000. The grants cover 7,056 acres of program practices.
- Staff are continuing to process LFO permit applications and permit amendments. The PIM mentioned above will allow staff to continue to process a LFO permit amendment.
- Staff are working on developing and testing the water quality section of the new CAI USA Food Safety water quality database. In addition, staff are reviewing the database inspection questions and developing comments based on the collaborative inspections that occurred over the past two weeks.

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

- Staff met with FSA and NRCS to discuss CREP Soil Rental Rates and how to respond to proposed 2015 rates and what information needs to be gathered to submit a response.
- Staff met with a planting contractor and USFWS staff on SFO CREP site in E. Fairfield to discuss shortcomings of a buffer installation related to a particular nursery. Staff also conducted a field visit to second, older CREP project at a SFO in Montgomery where USFWS will cover a supplemental planting next spring.
- Staff met with consultant working on the VERI (Vermont Economic Resilience Initiative) project in Enosburg to get input on flood risk issues to farms and farm related businesses in the Tyler Branch watershed.
- Staff met with a contractor at a SFO in Williston to get a second estimate for stream crossings that will be installed via CREP.
- Staff conducted a visit to a SFO in Georgia along with NRCS staff to discuss EQIP and CREP plans and how best to make them work most beneficially for the farm.
- Ongoing work with FSA and NRCS to prepare CREP contracts.

### **Plant Industry Section, Vector Management Program**

- Two additional batches of mosquitoes have tested positive for Equine Encephalitis virus (EEE). The samples were from the towns of Cornwall and Whiting, collected on October 8. The mosquito surveillance season ended on October 9, and the last 78 samples were sent to the Vermont Department of Health the following day. These late season findings are considered to be low significance as the overall number of mosquitoes has dramatically dropped with the cold nights.
- Our goal this year was to trap in as many counties as possible. We trapped mosquitoes in 12 of Vermont's 14 counties. Last year we trapped in 5 counties. This represented an increase in the number of towns trapped, from 31 to 54 this year. We identified over 67,000 mosquitoes and tested 41,000 of these. This represented a twofold increase from last year, 32,000 mosquitoes and 16,000 tested. We submitted 3, 245 batches of mosquitoes for testing this season, compared with 1,338 tested last year.
- Eastern Equine Encephalitis virus positive mosquito batches were found in the following towns (and # of detections):
- Grand Isle (1), Whiting (4), Colchester (1), Swanton (1), and Cornwall (1)
- West Nile Virus positive mosquito batches were found in the following towns:
- St. Albans (1), Newbury (1), Brattleboro (1), Putney (1), Rockingham (3), and Springfield (1)
- The season for adult deer ticks started at the beginning of October and will continue until the end of June next year. Ticks may be found on any day with temperatures with above 50 degrees and a lack of snow cover. The Vector Management Program will begin quantitative sampling for ticks in October and submit ticks for testing at the VAAFM lab in Burlington. Lab testing will screen for 3 tick-borne diseases: borreliosis, anaplasmosis, and babesiosis.
- Planning for the 5<sup>th</sup> annual deer and moose sero survey is underway. This is a collaborative effort by the Vermont Agency of Agriculture, the Vermont Department of Health, the Vermont Fish and Wildlife, and the Centers for Disease Control. We are looking for antibodies of tick and mosquito-borne diseases in the blood of these animals. Moose sero sampling will begin opening weekend, October 18 and 19. Deer sampling will begin on the weekends of November 8-9 (youth weekend) and November 15-16 (rifle season opening). Anyone wishing to help with this volunteer effort should contact Jenna Paige [Jenna.Paige@state.vt.us](mailto:Jenna.Paige@state.vt.us)

Table Summarizing Mosquito Arbovirus Findings for 2014

<b>CDC Week</b>	<b>Beginning Sunday</b>	<b># Batches</b>	<b>Negative</b>	<b>EEE+</b>	<b>WNV+</b>	<b>Cumulative # Batches</b>
23	1-Jun	41	41			41
24	8-Jun	83	83			124
25	15-Jun	111	110	1		235
26	22-Jun	231	231			466
27	29-Jun	63	63			529
28	6-Jul	202	202			731
29	13-Jul	234	234			965
30	20-Jul	210	210			1175
31	27-Jul	252	251		1	1427
32	3-Aug	286	286			1713
33	10-Aug	306	306			2019
34	17-Aug	286	278	2	6	2305
35	24-Aug	242	242			2547
36	31-Aug	208	206	1	1	2755
37	7-Sep	165	164	1		2920
38	14-Sep	110	110			3030
39	21-Sep	90	89	1		3120
40	28-Sep	93	93			3213
41	5-Oct	32	30	2		3245
		<b>3245</b>	<b>3229</b>	<b>8</b>	<b>8</b>	<b>16</b>
		<b>Total</b>	<b>Negative</b>	<b>EEE</b>	<b>WNV</b>	<b>Arbovirus Total</b>

**Secretary's Comments:**

- Secretary Ross spoke to the Champlain Farmers Coalition composed of southern Chittenden and northern Addison county who are concerned with water quality issues. Sec. Ross took the opportunity to compliment the Coalition for their work on educating farmers about new water quality efforts. He expressed concern that the public is losing patience, we all need to work together and the Agency will continue to work through our administrative enforcement process and when encountering farmers who are not willing to toe the line on reasonable regulations VAAFM will continue to enforce in a meaningful manner (as it has in conjunction with the AG office that have resulted in two fines being levied in excess of 30K). Sec. Ross also explained how he will defend farmers who are doing the right things of which there are many in our state. He reminded the Coalition of the importance of the agriculture community engaging on this topic so we can protect the agriculture industry (dairy in particular) which is so critical to our state's economy, culture and community. At this gathering Sec. Ross also spoke with Leon Berthiaume of the St. Albans Cooperative regarding these same issues.
- Sec. Ross ran the Dairy Promotion Council meeting in Barre, at which the dairy promotion budget (which had been crafted and systematized by Alison Kosakowski) was approved.
- Sec. Ross attended the Big Eastern States Expo VT Trustee meeting. This meeting was held in Queechee in the wake of a record breaking year in attendance and revenue (\$1.7 million) for the VT building.
- Next week Sec. Ross will go to Washington D.C. for a gathering regarding land conservation funding. This meeting will be with USDA representatives, as well as other Secretaries of Agriculture from the northeast.

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Justin G. Johnson  
Deputy Secretary

**State of Vermont  
Agency of Natural Resources**

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**To: Governor Peter Shumlin**  
**From: Deborah Markowitz, Secretary, Agency of Natural Resources**  
**Date: October 17, 2014**  
**Subject: ANR Weekly Report**

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**Governor Level Issues:**

**Vermont Yankee Thermal Discharge Permit Issued:** A two-year discharge permit was issued for VY, closing out a file that was first opened when the permit expired in 2006. Jon and Alyssa did a great job managing the various stakeholders. They came up with a permit that works (as a practical matter) for VY while it sets an appropriate precedent related to how to measure and limit thermal discharge which satisfies the enviros. I made sure that VY and CRWC both had a heads up in advance of issuing the decision and both were appreciative and indicated that they saw it as a “win.” Not sure how it could have gone any better! Also – it will have a positive impact on the out-migration of juvenile shade this fall season.

**Warren Dam:** The historic Warren Dam was destroyed during Irene. It was a timber frame dam and would not, if build today, meet any of our permit standards. A couple years ago when community members approached me about rebuilding I was frank with them about the legal barrier (the dam creates added flood risk, among other problems.) They were of the opinion that this was based on a subjective assessment of the stream engineer in the area, and now that this engineer has retired, they are making a fresh effort. (Because I was aware of their opinion of this engineer, I had his determination in this case reviewed by his supervisor – Mike Kline - prior to meeting with the town committee last time around.) I had a good conversation with Paul Bruhn about why the rebuild would not be possible and he asked that I meet again with the group – which I will do once he sends me their names and contacts. Also, Noelle was AWESOME. They tried to work around us by going directly to historic preservation, and she sent them a very strong letter explaining that they could not support a project that could not be permitted and directed them back to me.

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**Michael did a great job for VT tourism!** Foliage story aired last night:  
<http://www.cbsnews.com/news/leaf-peeping-is-big-business-in-vermont/>

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## **EVERYTHING ELSE:**

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

#### **Halloween Wildlife Festival and Jack-O'-Lantern Hike at Kehoe Conservation Camp:**

Looking for a “wild” family-based adventure for Halloween this year? The FWD is inviting families to attend the annual Halloween Wildlife Festival and Jack-o’Lantern Hike at the Education Center of the Edward F. Kehoe Green Mountain Conservation Camp on Point of Pine Road in Castleton on Friday, October 24, from 5 to 8 p.m.

**VT Moose Check Stations Open Oct. 18-23:** The VTFWD reminds moose hunters with permits for the October 18-23 moose hunting season that if they take a moose, they must bring it to one of the five designated biological moose reporting stations within 48 hours.

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

**Flood Hazard Area and River Corridor Protection Procedure:** The Rivers Program released the Draft Flood Hazard Area and River Corridor Protection Procedures for public review and comment. The Procedure outlines how the Agency will define floodways under Act 250 Criterion 1(D) and make recommendations to District Commissions and municipalities on whether proposed developments will cause food or fluvial erosion hazards consistent with Act 250 criteria and municipal bylaws. The new Procedures are an update of the 2003 Floodway Procedure and are consistent with the Flood Hazard Area and River Corridor Rules recently submitted to LCAR for final review. Compensatory storage is a new requirement in flood fringe areas and the new Procedures are brought in line with the State’s policy of encouraging infill and redevelopment in state designated (growth) centers.

**TDI Champlain New England Powerline Project:** Staff participated in an “invite-only” lake symposium hosted by Transmission Developers Inc. where the scope of this project was described by the developers and their consultants. Installation of the line would involve the 24 hour daily operation of large barges on the Lake. As such, previously un-envisioned protections may be needed to authorize this project: for example, refueling and barge waste handling operations; AIS control measures for large barge entry to Lake Champlain from the Hudson; stormwater construction discharges associated with drilling wastes for directional borings at the North and South line terminus. Advocates in the audience questioned how the developers intended to address thermal impacts beyond the limits established by the Water Quality Standards. Applicants responded publicly that they would seek authorization for a mixing zone. They plan to file for Section 248 in December 2014.



**PILOT:** Lands Division staff met late last week with representatives of the Joint Fiscal Committee, Property Valuation and Review, and Vermont League of Cities and Towns to review/discuss alternative approaches for calculating ANR's Payment in Lieu of Taxes (PILOT) for Agency lands. These alternatives are being developed as part of a legislatively-required report which is due to the legislature later this fall. ANR PILOT payments for FY15 were sent out last week to all communities that have ANR lands within their borders. FY15 PILOT payments for Agency lands totaled \$2.24 million.

**New England Army Corps Regional General Permit:** After over a year of tense discussions with New England states, in an amazing about face, the Army Corps of Engineers has decided not to issue a single New England regional general permit, but to work with each state on a separate state Army Corps general permit. This makes sense because each of our state wetland program is somewhat different, and are mostly more protective of wetlands. In many cases states have a consolidated permit program so that the proposed Army Corps regional general permit would have created an extra layer of bureaucracy for developers to jump through and less predictability.

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## **SUMMARY OF KEY DEPARTMENT ACTIVITY**

### **Environmental Conservation**

**Rawsonville Market (Jamaica):** A small business owner is planning to open a new store in Jamaica, and has applied for drinking water, wastewater, and stormwater permits, as well as a permit to install gasoline tanks. There have been a set of complications to date, but things are now moving in the right direction. Originally the consultant drilled a well too close to the gasoline tanks to provide a viable long-term drinking water source. A second well needed to be dug more than 200 feet from the gas tanks. Samples from the second well were incomplete (no VOC test) and showed coliform. The well is being disinfected and a third sample is being taken. Once we receive a clean sample, we can issue the drinking water (source water) and construction permits. Stormwater permits have already been issued. The waste water permit hit a snag because the drainage swales were designed too close to the septic system, which would cause it to fail. In an effort to find a workable solution for this site, staff and the consultant have agreed on modifications to the swale construction that will safeguard the integrity of the mound septic system. Staff will be able to issue the wastewater permit very quickly once the details of the agreed-to safeguards are shown on the project's proposed plans. This project is on the top of the pile.

**Electric Vehicle Tracking:** DEC staff has assumed responsibility for analyzing DMV vehicle registration data to track the growth of plug-in hybrid and full electric vehicles registered in Vermont as part of the Drive Electric Vermont effort. Third quarter results will soon be posted on the Drive Electric Vermont website and show that at the end of Sept, Vermont had 801 plug-in passenger cars registered, an increase of 101 vehicles from July 2014. Plug-in vehicles are now registered in well over half of Vermont communities.

**East Burke Dam:** We received an application from the Passumpsic Valley Land Trust to remove the East Burke Dam on the East Branch of the Passumpsic River. We are anticipating that there will be some local opposition to the removal of this 100+ year old dam. Once we determine the application is complete, we will issue a public notice, likely in a couple of weeks.

**PCBs in Schools Web Page:** Waste Management & Prevention Division had created a page to post the results of the indoor air sampling for PCBs conducted at four Vermont schools over the past year. 78 indoor air samples were collected, showing no detections of PCBs in any sample above the EPA health based standard. There were low level detections of PCBs in seven samples but at concentrations below the action level. A letter will be sent to all schools describing the project and directing readers to the web page for more information. Here's the link to the page: <http://www.anr.state.vt.us/dec/wastediv/spills/SchPCB.html>

### **Fish & Wildlife**

**TransCanada's Study:** Staff submitted comments and recommendations to FERC on TransCanada's study proposal to conduct a hydroacoustics study at the Vernon project for relicensing. In FERC's Study Plan Determination a study to determine the timing, duration, and magnitude of the downstream migration of juvenile American shad and adult silver American eels at the Vernon Project for implementation during the 2015 and 2016 field seasons, was required. However, TransCanada is requesting a rehearing and has since submitted a hydroacoustics study proposal which only includes monitoring the fish pipe. As such, the study proposal did not adequately address the stated study goals. The Agency is in support of FERC's study plan determination. Considering the lack of data on eels, the data obtained via hydroacoustics would provide valuable information relative to eel abundance and downstream migration.

**Finding an almost "historic" population:** Staff traveled to Orwell to survey plants in the low lake level there. They successfully found the long-missing Many-fruited water-primrose (*Ludwigia polycarpa*) population that had been unseen since 1983. The population is very small, but fruiting and moderately healthy. Only 2 populations of the species are known in the state, and the other, on the Connecticut River, has also been unseen since the 1980's. The species (S1), was on the verge of being declared historic, but now with this revisit, we understand more about Ludwigia's biology, and we should be able to find it in future years.

**Deer Issues:** Archery deer hunting season continues. Wardens are responding to and locating many illegally baited hunting stands. Wardens are also working many late night shifts using deer facsimiles; which produced some citations after poachers illegally attempted to shoot them with various archery equipment. Night-time shots fired, spotlighting and poaching complaints continue at high levels. Wardens continue locating illegally killed deer both by firearm and archery equipment. Several illegally taken "spike-horn" deer have been mistakenly killed by archers with hunters self-reporting the violation. In these situations, wardens bring minor charges and allow the hunters to keep hunting. Deer movement has also dramatically increased with resulting high numbers of road kills.

**Moose Issues:** The archery moose hunting season has now ended. Wardens report reasonable success from the hunters with only a few law enforcement issues. Several more moose were killed by motor vehicle on the highway and also illegally killed in by firearms- investigations continue.

**Derby Line Bear in a Tree:** Warden Jason Dukette responded to a complaint of a bear up a tree in a park near playing children. He determined the bear had actually been chased up the tree by the playing children! Once he convinced people to leave the area the bear climbed down the tree and ran into Canada.

**Illegal deer and then some in Milton:** Warden Robert Currier responded to a nighttime shooting from the road complaint. When he arrived on scene, he found the guys looking for a deer with flashlights on posted property! The suspects admitted to shooting from the road. While issuing the paperwork a car did about 5 barrel rolls right in front of him, before going off the road. The driver was intoxicated and blew a .104. The smashed marijuana bong and dope coating the ceiling of the car were also pretty good clues intoxication was likely involved; more paperwork followed.

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

**State Parks Camping Season Winds Down:** Managers and supervisors in every region are closing out the seasonal parks operations in the parks that stayed fully operational through Columbus Day weekend. Five campgrounds will remain operating through this next weekend. The weather remains cooperative as we finish out the busiest season in 25 years.

**Maidstone Updates:** Conceptual planning continues for redesigning Maidstone State Park to meet contemporary needs. The park, which was built during the 1930's and 60's, is in need of infrastructure investment and the process occurring is to assure that improvements are appropriate for current and future Vermonters and their guests.

**State v. Riendeau:** The State and Mr. Riendeau signed a Stipulation of Settlement which has been filed with the Court and is pending the 21 day public notice requirement. The Stipulation is posted on the Attorney General's website at <http://ago.vermont.gov/divisions/environmental-division.php> . The AG's office received a check from Mr. Riendeau for the agreed upon penalty of \$60,000.

**Fall Forest Fire in West Haven:** Lars Lund responded to a stubborn ground fire on Bald Mountain in West Haven on Friday. As of this Tuesday, the fire has been burning for 16 days. Fire had grown from less than 1/10 acre initially to approximately 12 acres. He reports that there are still some hot spots and a lot of smoldering duff in a principally oak-hickory forest.



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**MEMORANDUM**

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

From: Christopher Recchia, Commissioner

Date: October 17, 2014

Subject: Weekly Report

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**Governor Level Issues:**

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

**TO BE PROVIDED...**

**Meetings this Week:**

Oct 13 – Chris and PA conference call with GMP re Elizabeth Mine project; Darren meets with David Mullett/VPPSA; Chris/Darren attend extended cabinet meeting

Oct 15 – Chris meets with DOE/SEP program officer; Darren meets with WEC, speaks at Energy Coop of VT dinner at VEIC

Oct 16 – Chris REV speaker on two panels: Moving to Modern Wooden Heat, and Vermont as a Renewable Energy Transmission Corridor roundtable discussion; Asa REV speaker: Transforming Vermont's Energy Landscape

Oct 17 – Chris attends REV conference; Darren REV speaker: Legislative panel

**Meetings next Week:**

Oct 20 – Chris/Andy Perchlik meet with VEDA re SBE loan

Oct 21 – Chris meets with FERC staff and commissioners in DC (via NESCOE); Darren/Asa meet with Aaron Adler

Oct 22 – Darren meets with Ginny Lyons, attends Solar ribbon cutting in Shelburne

Oct 23 – Darren attends solar event in Waltham

**Media:** VY/SAR – Susan Keese, Rutland Herald and John Herrick, VTD; Fairpoint strike – Hilary Niles, VTD; RPS – John Herrick, VTD

## **Everything Else:**

### ***PERD***

#### **Residential and Commercial Building Energy Standards (RBES & CBES) – Code Update**

- A revised economic impact was completed and included in the economic impact statement submitted to LCAR.
  - For each Prescriptive Package analyzed to establish the minimum requirements for the Base and Stretch Codes, energy savings were determined compared to the minimum requirements in the primary Prescriptive Package listed in the 2011 RBES. For each comparison scenario, energy savings were determined for four heating system fuel types: fuel oil, propane, natural gas, and electricity (with a heat pump system assumed). The energy savings were then weighted across the four fuel types based on the incidence of each fuel in the 2013 Residential New Construction Baseline Study conducted by NMR Group for the VT PSD.
  - The incremental costs for each Prescriptive Package as compared to the minimum requirements in the primary Prescriptive Package listed in the 2011 RBES were calculated. Incremental costs were developed using several sources, including RS Means, US EPA's Cost and Savings Report, NEEP Incremental Cost Study, and the PNNL Building Component Database. Cost estimates were validated by Scott Aiken of Dousevicz, Inc., a family owned and operated development, real estate, and construction firm located in Essex, Vermont.
  - Across all of the individual fuel-specific Base Code scenarios, the simple payback ranges from a low of 4.3 years to a high of 12.4 years. Across all of the individual fuel-specific Stretch Code scenarios, the simple payback ranges from a low of 6.6 years to a high of 15.8 years. Simple Payback does not take into account escalating fuel costs. Therefore, the savings projections are likely to be conservative, with the payback being lower than estimated.
  - The economic impact also includes return on investment scenario estimates, savings to investment ratio scenarios, and cash flow scenarios.
- The RBES and CBES rule was submitted to LCAR and the SOS. We hope to get on the LCAR meeting agenda for October 30<sup>th</sup>.

- The revised energy code language and responses to comments submitted to LCAR and SOS will be posted on the PSD website, with an email notification sent to the distribution list. The email notification will also include information on the delay of the effective date of stretch to December 2015 (which is also included in the comment/response document) as well as information on the updated economic impact analysis and the notification that we will hold some stakeholder meetings to discuss.

#### Thermal Energy Finance Pilot Program

- Completed grant agreements with Opportunities Credit Union (\$300,000) and Vermont State Employees Credit Union (\$400,000)
- Final revisions to Heat Saver Loan marketing materials and pre-approval form to be distributed to residential customers by fuel dealers
- Began preparations for Phase II roll out of augmented set of eligible thermal energy measures

#### Total Energy Study

- Presented some high-level TES results to the REV conference on 10/16.

#### Net Metering

- Responded to records request for documentation associated with the net metering report.
- Two REC-incomplete recommendations were sent to the Board this week.

	Current Week	Previous Week
Incomplete	3.703%	3.7%
Retain	90.74%	92.06
Transfer	5.56%	4.76%
Util		100.00%

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#### **Net Metering Activity 9/20/14 – 10/2/14**

	Registrations*	Applications	CPGs Granted
<b>Count</b>	51	3	51
<b>kWAC</b>	334.260	447.9	336.151
<b>Ave Size kW</b>	6.554	149.3	6.5911

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#### **Cumulative Capacity of Registrations and Applications Submitted**

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Year To Date		Total Since 1999	
2013 kW	2014 kW	1999 – 2014 kW	% of 15% CAP
10192.62	16745.31	55276.14	~ 36.90%

\*Note: As of April 1<sup>st</sup> projects up to 15kW are now eligible for the registration process. Prior to this change, systems larger than 10kW were required to file an application.

### ISO-NE

- Attended NESCOE meeting to discuss state’s desire for NESCOE comments to FERC on the ISO-NE proposed ICR that will be filed with FERC soon. It is likely that NESCOE will comment that expected PV should be treated as load reduction relative to the ICR, that ISO didn’t properly account for the load reduction, and that they should do so for FCA 10. The Department is considering stronger comments that would ask for FERC to require ISO to include the forecast of PV for FCA 9, which takes place in early 2015.

### Heating Fuel

- Crude Oil prices have dropped to \$84.86 v. \$89.70 a week ago
- The natural gas market has traded down and is now at \$3.836 v. \$4.026 a week ago

### ***Engineering***

#### Vermont Yankee Operation

VY continues to operate on a planned power coast down for the remainder of its last power generation cycle. The plant has generated power continuously throughout the reporting period, operating in excess of 92% power during this time. While increasing power following the power reduction reported last week (which was done to allow Turbine Relief Valve and control rod scram testing), VY was able to briefly achieve 99% power last Wednesday afternoon. However, by Thursday morning, the build-in of equilibrium xenon conditions following the power increase gradually reduced power back to the 92% to 93% power level that VY’s core can currently sustain. Excluding the impact of the power coast down and the power changes due to equilibrium Xenon, no additional planned or unplanned power reductions occurred during the reporting period. VY has also conducted planned maintenance and surveillance activities during this period, most notably, the testing of the security lighting back-up diesel generator and the monthly slow start and fast start testing of the “B” Emergency Diesel Generator. In addition to the Quarterly Emergency Drill (discussed below) on October 8, VY conducted an unannounced fire drill on Friday to test the response of the fire brigade and the medical staff were an actual fire to occur on-site. VY has operated continuously for 558 days.

#### NRC Resident Inspector Discusses October 8 VY Quarterly Emergency Drill with State Nuclear Engineer

On Thursday, October 9, State Nuclear Engineer Tony Leshinskie met with the NRC’s VY Resident Inspector, Sarah Rich, to discuss observations from the Quarterly Emergency Drill held

on October 8. Sarah requested this meeting to get Tony's feedback / perspective on the drill. Tony was an active drill participant, assigned to VY's Emergency Operations Facility (EOF). In this role, he received information from Entergy regarding VY's simulated conditions for the drill and relayed this information to the State Emergency Operations Center (SEOC). From this perspective, the drill went smoothly overall. Current information from Entergy / VY was readily available. While clarification of information was necessary at several points during drill, the clarifications were provided quickly. In short, from the perspective of Vermont's Radiological Emergency Response Plan, Entergy provided the required information with minimal delay and in a relatively clear manner.

Sarah was an independent observer for the drill, and was able to move from the VY Simulator to the EOF and the Joint Information Center (JIC) as necessary to observe the proceedings of the drill. From this perspective, the drill did not go as well as it could have. An operator error in sequencing the simulation scenario resulted in an early, unintended (simulated) trip of one of the Reactor Recirculation Pumps. Entergy's communication at the declaration of "Alert" conditions was not clear. Additionally, communications between the VY Simulator and the EOF appeared to break down at times. While the EOF's responses to events during the drill all met the required 15 minute action windows, many of these responses occurred extremely close to their respective time limits. The NRC typically regards such responses times as indicative of potentially slow responses in an actual emergency. (The self-assessment conducted by the EOF staff immediately after the drill noted that taking actions within 15 minutes following a specific event was an area that required improvement.)

The NRC's main concern was that Entergy's Protective Action Recommendations (PARs) came too early in the drill scenario. (This was also discussed at some length during the EOF self-assessment.) The specific concern was that the EOF leadership prematurely concluded that an evacuation action was necessary, potentially when the drill's intended Emergency Action Level conditions still only called for "Site Area Emergency" actions (e.g. shelter in place) rather than a PAR associated with "General Emergency" conditions (i.e. evacuation recommendations). Tony will continue to monitor Entergy and NRC feedback from the drill and provide updates to this report, if appropriate.

#### 2014 Vermont Gas Systems Addison Transmission Pipeline Construction

Contractors retained by Vermont Gas Systems Inc. to construct Phase I of the Addison Natural Gas Pipeline (ANGP) Project have completed 19,673 feet of the project. The Department continued to utilize a contract Gas Pipeline Inspector during this report period. Inspections included a review of designs and specifications related to recent pipeline pressure tests. On site observations in Essex and Williston included pipe welding and pipeline installation. Items of concern included contractor utilization of unverified welding procedures which were not previously provided to the Department and unverified methods for the company's analysis of multiple pipeline anomalies recently discovered (variations from design specifications). The Gas Engineer will be meeting with company representatives to address the status of information requested by the Department and several of these items on Thursday 10/16/14.



### 2015 One-Call (Dig Safe®) Grant Application

The Department submitted an application for a federal grant to partially fund expenses for the administration of the state Underground Facility Damage Prevention Program between April 1, 2015 and March 31, 2016. The Department has requested \$45,000 (the maximum amount) from the US Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) to process cases of underground utility damage by investigation, analysis, development of remedial actions and recommendations for Public Service Board ordered civil penalties. Historically, the Department has utilized similar federal funding to retain a contractor to investigate reports of underground facility (utility) damages and related tasks. A portion of expenses for Department staff to process enforcement actions, education and other associated tasks have also been funded with monies from previous grants.

### Vermont Joint Utilities / State Agencies Emergency Preparation 2014 Annual Meeting

Engineering attended and participated in this annual meeting, which was hosted by DEMHS in the State Emergency Operations Center. Approximately 80 people attended, representing electric, telecommunications, and gas utilities, as well as several State agencies.

### ***Public Advocacy***

VGS Penalty Investigation – Docket No. 8328 – On October 7, AARP filed a notice that it would not intervene in this proceeding. The Department and Vermont Gas both filed briefs on October 14 regarding the scope of the proceeding. The Department offered two approaches. The first is a full investigation split into two phases to match the two areas of inquiry articulated by the Board – whether and when a violation of Rule 5.409 took place and, if so, if the Department's recommended \$35,000 fine is appropriate. The second is a more expedited approach in which the Board would issue a show cause order now. To the extent needed, it could require any additional information needed from Vermont Gas by affidavit or pre-filed testimony. Vermont Gas recommended an initial stage in which the Board should review Rule 5.409 to determine what is actually required of the rule. One individual (Selina Peyser) filed an intervention motion and scoping comments. Her motion seeks, among other things, a Board investigation into the Department's response to the cost update. CLF also filed a motion to intervene. Responses are due on October 21.

Addison Expansion—Docket 7970 – On October 10, the Board issued an order in which it declined to reopen the record in light of the reported capital cost increases. The Board cited the substantial benefits to the State which the Project provided despite its increased costs. Pipeline opponents plan a protest of the Governor and his administration is scheduled for Monday, October 27.

Briefs are due on October 17 on the Old Stage Road re-route; this is post-CPG process regarding alignment. The Department will file in support of VGS's proposed alignment, which was ordered by the Board. VGS is seeking a similar supportive recommendation from ANR.

Addison Expansion Phase 2—Docket 8180- Technical hearings are still scheduled for January

under the Board's most recent scheduling order. Cornwall's motion to have them in February and VGS's request that they not be moved out beyond January remain pending.

The Department is drafting responses to the out-of-time discovery requests of Solar Haven Farm, which were served on October 9. These are due to be filed on October 23. Solar Haven Farms has requested Board permission and intends to file surrebuttal testimony on November 7; the Board has not responded to this request. The Department will not oppose such a filing. Staff met with VGS representatives to discuss an MOU, the substance of which would memorialize the conditions requested in our rebuttal testimony which dealt with provisioning of RNG or some other acceptable renewable alternative (or an alternate compliance payment).

GMP – Actual O&M Review – No Docket – GMP and the Department met to discuss the upcoming O&M cost review, which is due to be filed November 15. The review was ordered by the Board in the recent rate case (Docket No. 8190), which did not investigate actual O&M costs because the O&M costs included in rates are the Base O&M costs established in the merger proceeding. The purpose is to establish actual O&M costs for the purpose of the upcoming rate design and to evaluate the company's post-merger cost structure and savings. The review is not meant to change actual rates paid by customers. Department staff and GMP are beginning discussions well in advance of the filing in order to ensure that expectations are understood in advance.

Rule 4.100 Rate Setting Investigation – Docket No. 8010 – The Department served discovery on VIPPA pertaining to VIPPA's expert testimony on natural gas price projections. Rebuttal testimony is due on October 15. The Department will not file any. A technical hearing is scheduled for October 30.

NextSun Solar – Main Street – Docket 8195 – The PSB issued a second procedural order informing the petitioner that its amended drawing certificate still does not conform with the PSB's requirement and hence the petitioner has not satisfied the corresponding CPG condition. In response the petitioner has filed yet another drawing certificate. Additionally the petitioner has requested the PSB waive the condition and allow it to commence construction while the PSB determines whether to approve this second amended drawing certificate.

NextSun Solar - Park Street – Docket 8194 – Based on the PSB second procedural order in the companion case (8195), the petitioner filed its second amended drawing certificate. Similar to the companion case, the petitioner has requested the PSB waive the condition and allow it to commence construction while the PSB determines whether to approve this second amended drawing certificate.

Barton Solar – Docket 8148 – The PSB approved Leslie Cadwell's motion to withdraw. The petitioner's response basically states it has not been violating the CPG conditions, using supportive findings when possible. Additionally, the petitioner states the Menards' allegation that it has violated the construction hours CPG restriction by mowing the field on a Sunday is not valid since mowing does not constitute construction. The PSB has recently sent a new memo that includes a letter and photographs from the Menards regarding a violation of

allowed delivery activity. The Menards allege that on October 2<sup>nd</sup> a tractor-trailer truck with a delivery for the petitioner turned around in their yard at approximately 9:00 p.m. damaging their lawn and a cedar rail fence. The PSB has requested Barton Solar respond by the close of business on October 17<sup>th</sup> and for the PSD to respond by October 24<sup>th</sup>.

Charter Cable CPG Renewal – Docket 7820 - Following settlement discussions on October 7<sup>th</sup> when the Department and Charter agreed tentatively to many terms of a full settlement, Charter provided a revised list of proposed CPG conditions to the Department on October 14<sup>th</sup>. The Department is negotiating certain items with which it has concerns, but the discussions are moving towards development of a Memorandum of Understanding.

New England Power Searsburg #9 Switching Station – Docket 8138 – The Board issued a CPG for this project on April 9, 2014. On October 6<sup>th</sup>, NEP filed a notice of proposed modifications to the project, which would result the elimination of certain project elements, such as changes to the existing Y-25 line and the addition of a three-pole, dead-end structure. NEP has requested Board approval for these changes by October 17<sup>th</sup>. The Department is reviewing these changes and is in discussions with NEP.

Cold River Solar – Docket 8188 – Petitioner and the neighbor intervenor group filed reply briefs in the proceeding. Petitioner, in its reply brief, requests a downward departure in the decommissioning fund estimate from the level the Department advocated for in initial briefing. The Department did not file a reply brief. A proposal for decision is forthcoming.

Sheffield Wind –Docket 7156 – The Board issued a memorandum seeking an update from the Department on the progress of the Brouha sound attenuation study. Vermont Wind has agreed to provide the Department's sound expert with additional sound data from the King George School monitoring location. VW hopes to have the data available within the next week. The Department expects to complete its analysis within a month upon receipt of the additional data. The Department update to the Board is due by October 16.

Georgia Mountain Community Wind – Docket 7508 – The Board issued a letter to Barbara McDaniels declining to take further investigative action into her noise complaint. The Board justified its decision in large part on the Department's conclusion that a reasonable link between Ms. McDaniels' medical symptoms and operation of the wind facility could not be found. The Vermont Department of Health did not recommend additional investigation at this juncture.

GMP Section 108 Financing Petition – no docket – The Department filed comments on October 9<sup>th</sup>, recommending approval of GMP's request to issue \$110,000,000 in unsecured debt with an additional \$15,000,000 "accordion" feature.

VEC Section 108 Financing Petition – no docket – The Department filed comments on October 9<sup>th</sup>, recommending approval of VEC's request to issue up to \$42,000,000 in secured first mortgage bonds and to enter into a revolving credit agreement to provide an aggregate \$20

million for short-term loans and letters of credit.

VPPSA Section 108 Financing Petition – no docket – The Department filed comments on October 13<sup>th</sup>, recommending approval of VPPSA's request to secure long-term financing in the amount of \$5.9 million for the purpose of purchasing Vermont Transco membership units.

New England Power d/b/a National Grid Harriman #8 Switchyard Upgrade Project – no docket – NEP has submitted a 45-day notice for a proposed 248(j) project which includes a number of upgrades at its Harriman Station #8 Switchyard in Readsboro, Vermont. The Department met with NEP on October 13<sup>th</sup> to discuss the proposed project, and will be providing feedback to the company as it prepares its petition.

Vermont Water Utilities Petition for Proposed Rate Increase – Tariff 8517 – The PSD has been in contact with the petitioner regarding the whereabouts of the supporting documentation. The petitioner has informed the PSD that it has been mailed. Since the PSD recommendation is currently due by October 16<sup>th</sup>, the PSD discussed with the petitioner the option of delaying the rate increase effective date for a month in order to allow more time for settlement conversations after the documents arrive. The petitioner indeed requested the PSB grant a two month extension to the rate increase effective date (until January 1<sup>st</sup>). PSD assumes the petitioner requested the two month extension because some of the proposed work is not scheduled to be in service until December of 2015.

GMP White River Junction Substation Project – Docket 8322 – The PSD is communicating with its aesthetics witness regarding discovery questions and engineering is working on discovery questions as well. The petitioner has responded to some informal discovery. Motions to intervene are due by October 20<sup>th</sup>.

Demand Resource Plan Proceeding - EEU 2013-01 – PSB issued an Order adopting the QPIs as proposed by the parties. This proceeding is now close to completion. The Department is about to begin drafting an Omnibus Order that will summarize all Board rulings on the three year budget and savings obligations for BED and VEIC.

Payments and transfer protocol for provision of AMI data to EEU's- Docket 8316 -The Department filed Reply comments on 10/10/14 reiterating our previously stated positions on the issues under review in this docket. We, along with VEIC, urged the Board to issue an order without further process and while asking them not to rule on AMI data privacy issues in this docket, urged the Board to do so with all deliberate speed in Docket 7307, the original Smart Meter docket, where a draft proposal for decision on those issues was submitted over two years ago.

Commercial and Residential Building Energy Standards (RBES and CBES rules) – The Department filed Final Proposed Rules with the Secretary of State and the Legislative Committee on Administrative Rules on 10/15/14. Assuming the rules are accepted for filing by LCAR, they will be on the agenda for the 10/30/14 LCAR meeting.

CAPI Summit – PA division attended the CAPI Summit, an annual meeting with Customer Service Representatives from all Vermont Distribution Utilities (Electric and Gas) to address a specific set of legal issues dealing with the interpretation of the PSB Rules governing provision of a Physician’s Certificate in conjunction with deferral of disconnection for non-payment. A productive discussion was held and PSD will follow up with a proposed Memorandum of Understanding to be shared with all Distribution Utilities.

### ***Telecommunications***

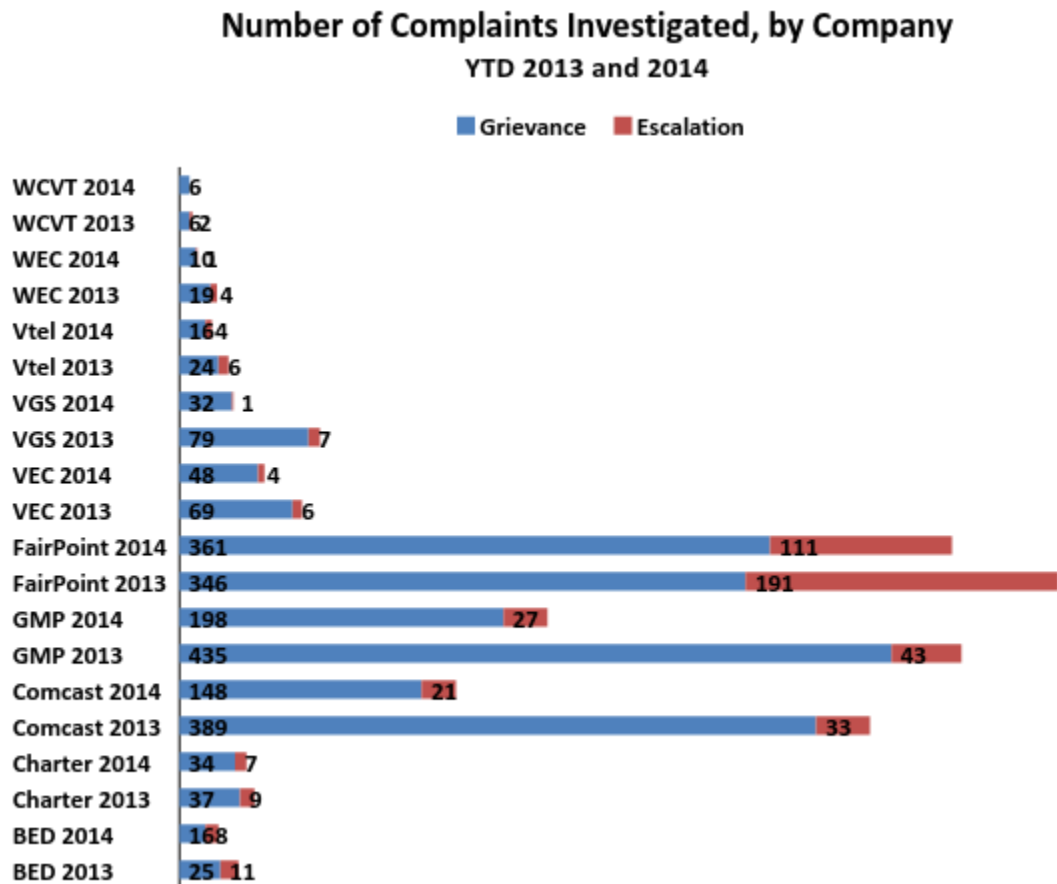
FairPoint Successor Incentive Regulation Plan – Docket No. 8337 – The Department is scheduled to file its testimony on October 15. Technical Hearings are scheduled for November 10. Staff conducted research in preparation of drafting pre-filed testimony with the Board on its proposed Incentive Regulation Plan. The data in support of the plan show that market conditions are substantially similar to what they were four years ago, with slight increases in availability of cable and wireless. However, there is a sharp increase in the number of wireless only households, up to 29% 2012 from 20.3% in 2009. FairPoint continues to suffer dramatic line losses. It appears as though many are abandoning plain old telephone service in favor of other voice solutions. But because competition is not ubiquitous, consumers in rural areas lack effective competitive choice.

Broadbandvt.org website -- This website is funded by an NTIA grant and contains information about broadband, including maps and statistics. It also has an interactive map that lets users see the information submitted by providers. The grant expires at the end of the year, and when it does, so too does the funding for the website. VCGI has determined that the website can continue to be hosted without the interactive map for \$50 per month. VCGI is considering ways to provide the functionality of the broadband map either on the broadbandvt.org website if it is continued to be supported, or on the PSD website if it is not. This will involve significantly changing the way the data is prepared and depicted, as the current process is time consuming and expensive.

<b>Date</b>	<b>Applicant/Location/Type of Filing</b>	<b>Brief Synopsis and if applicable DPS recommendation to the Public Service Board</b>
10/14/2014	AT&T/Brookfield on West Street/full project application	100’ monopole; aesthetics and RF/town recommendation issues, no issues with other 248a criteria; DPS requested to withhold final recommendation until we file experts’ reports in November. The Town filed comments opposing the tower as proposed at 100’ tall and moving to strike statements in AT&T’s prefiled testimony about the aesthetics of the project, because AT&T’s witnesses are not aesthetics experts.

10/15/2014	VTel/Sheffield/project of limited size and scope	90' monopole; DPS recommended approval
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## CAPI



## POST CPG WIND COMPLAINTS

Noise and health-related complaints from one resident against First Wind.

Electric & Gas Utility Summit: CAPI held its annual meeting with electric and gas utilities on 10/10/14. There was broad representation among the utilities, with some attending for the first time or after a period of non-attendance. Topics included disconnection and deposit rules, rules and practices for use of medical notes, programs available through Efficiency Vermont, and low-income assistance. Attendees were also given consumer scenarios for discussion on how utilities could or should respond. Several attendees commented on how useful they found the meeting.

GMP net metering tariff: CAPI reviewed and expressed concern that the tariff states that customers in the former GMP Legacy territory with net metering systems in operation before January 1, 2014 can receive a refund for monetized credits twice a year. However, net metering systems in the former CVPS territory and systems installed in the GMP system after January 1, 2014 will lose any unused credits at the end of the year.

## ***Regional Policy***

### Demand Response in Wholesale Markets

- Background – the D.C. Circuit Court of Appeals ruled that FERC does not have jurisdiction over demand response and therefore vacated a FERC Order requiring that all ISOs incorporate demand response into the energy market. First Energy, a company operating in PJM (the ISO for the mid-Atlantic states), has petitioned FERC to remove demand response from the ancillary services and capacity markets in PJM.
- NESCOE and states had a call with Enernoc, the largest aggregator of demand response in the northeast, regarding future steps with respect to the possibility of demand response being removed from all wholesale markets. Enernoc requested that states send a letter urging FERC to appeal the D.C. Circuit court's decision to the Supreme Court, and also ask ISO-NE to make a clear statement that ISO-NE will continue with business as usual with respect to demand response in the Forward Capacity Market.
- Enernoc disagrees with the draft approach put forth by PJM, in which DR would no longer participate as a supply side resource and instead reduce the procurement obligations of distribution utilities and load-serving entities. Enernoc claims that this approach was tried in Australia and has not resulted in robust participation by demand response. Enernoc is exploring options and asked that states take the lead role in determining how to ensure that demand response continues to be viable.
- Enernoc stated that demand response represents approximately 3% of resources in the Forward Capacity Market. However, the logic of the D.C. Circuit Court's decision could apply equally to energy efficiency, which represents another 7% of resources in the Forward Capacity Market.

### Distributed Generation and the Installed Capacity Requirement

- NESCOE led a discussion of whether states should support ISO-NE's proposed approach of requiring all distributed generation resources to qualify for the Forward Capacity Auction in order to reduce the Installed Capacity Requirement.
- Subsequent to the call, DPS staff circulated a straw proposal that would modify the market rules such that the solar distributed generation forecast (which has already been prepared by ISO-NE) would be used to reduce the peak load forecast, and therefore the Installed Capacity Requirement. Under this approach, there would be a default assumption that all solar resources with a nameplate capacity of less than 5 MW would not participate in the Forward Capacity Auctions but would not prohibit such resources from participating. To the extent that a specific resource decides to participate in the Forward Capacity Auction, the distributed generation forecast would be reduced which

would then raise the peak load forecast. The purpose of the proposal is to ensure that small resources (which could not reasonably be expected to participate in the Forward Capacity Auction under the current rules) to count towards the Installed Capacity Requirement while maintaining flexibility for larger resources that are allowed under state rules to seek capacity payments. States will be discussing this draft proposal further next week.

#### 2014/2015 Winter Reliability Program

- ISO-NE reported the show of interest for the upcoming winter reliability program: 92% oil, 8% LNG, and 0.1% demand response.
- The amount of oil for this winter's program is 4,065,626 barrels, compared to last winter's supply of 3,057,554 (2,700,468 barrels were burned last winter). Despite this increased availability, the program is expected to cost less because rather than paying for the oil in advance, which was done last year, ISO-NE will only pay a certain dollar amount for oil remaining in the tanks this spring.
- The two largest non-gas-fired units that have retired since last winter are Vermont Yankee and Salem Harbor. Together, these two units are capable of producing more energy than the amount procured from last winter's reliability program.
- It is expected that, with Salem Harbor and Vermont Yankee no longer in service, oil-fired generation will likely be dispatched on an economic basis more often than last year.





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**State of Vermont**  
**Department of Public Safety**  
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Waterbury, Vermont 05671-2101  
[www.dps.state.vt.us](http://www.dps.state.vt.us)

**To:** The Honorable Peter Shumlin  
**From:** Keith Flynn, Commissioner of Public Safety  
**Date:** October 17, 2014  
**Subject:** Weekly Report

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## **Vermont State Police**

### **A Troop**

Arrested (3) subjects with 3 total charges. Troopers continued proactive patrols that resulted in (3) DUI arrests.

Five arrests/five charges for the week.

On 10/8/14 at approximately 1026 hours, VSP-St. Albans responded to a two-vehicle crash on US Route 2 in Alburg, involving a motor vehicle and a TT unit. The operator of the motor vehicle, an 83-year-old female, was subsequently pronounced dead.

### **B Troop**

Developed and executed warrant for large cultivation case. approx. 100 plants growing and couple hundred pounds drying. Seized several guns. Multiple cases of counterfeit bills being passed to local stored.

Counterfeit money case follow up assisting Secret Service. Multiple locations have received counterfeit money in the Bradford area and NH.

### **C Troop**

Motor vehicle enforcement on Rt. 7 north of Rt. 17 due to an increase in crashes. Troopers conducted 9 directed patrols and issued 12 warnings and 6 tickets. Troopers made ten arrests this week and 4 of those were for DUI.

Arrested a subject for aggravated assault and reckless endangerment after he fired a gun over a dispute over a horse.

### **D Troop**

Responded to an escape from the prison in Windsor; later located the subject in Weathersfield after a 911 call with a reported sighting of the subject; subject was taken into custody without incident. Corrections, US Marshals, K-9 Teams, Windsor PD, and Sheriff's Units all involved.

Felony heroin arrest from consent search; pursuit to capture two fugitives. EQ 522 smashed up no injuries to him. Vehicle fled to NH. NH State police pursued the vehicle got the two guys in custody.

## **DEMHS**

DEMHS hosted the annual conference with all Vermont utilities this week. General discussions included an overview of VT Outages, understanding weather modeling, new technology being used by the utilities, and IBM Deep Thunder weather analytics and leveraging that technology. This included a press conference with the Governor to announce the Vermont Analytics Center Project.

The city of Montpelier informed DEMHS that it will begin utilizing VTALERT for its emergency notifications to citizens in times of crisis as of 11/15/15. This will require a data migration of 8,000 users from their current "Blackboard" system.

VTALERT was also presented to municipal leaders of the Vermont Yankee Emergency planning zone. VTALERT will replace the existing Code Red system in the months ahead as plant operations decrease. This is an expected data migration of 3,000 additional subscribers into the VTALERT system. A presentation was also provided to the city of Brattleboro. If accepted this would add approximately 8,000 citizens who would create user accounts to receive notifications.

FEMA Region 1 contacted Vermont Fish and Wildlife late last week to inform them that FEMA HQ will not agree to accept "codes and standards" for the Roxbury Fish Hatchery. Accordingly, the PW is currently limited to roughly \$770K, this was a disappointment. Fish and Wildlife staff is working on Second Appeal, due to DEMHS by 11/12.

DEMHS newsletter went out and we have now distributed more than 2,000 Vermont Alert rack cards to 35 libraries around the state. 10,635 Facebook "likes" and 4,446 twitter followers.

## **Fire Safety**

The Division received \$5.5 Million in new plan review construction valuation collecting \$30,500.00 in permit fee revenue.

The first quarter of FY15 is real strong with revenues around 1.5 Million in fees.

We are starting the rule making process for adopting the new plumbing code.

### **Haz Mat:**

A haz-mat strike team responded to a call on Tuesday October 14, 2014. Burlington Coast Guard had run through product on the lake surface and crewmen felt ill. The product was clear, but broke up and foamed with passage of the boat. The crewmen reported smelling something like a chemical, but not a petroleum product. Symptoms of exposure reported were a fruity odor, burning of the eyes and headache. Four crewmen were taken by USCG vehicle to Fletcher Allen Hospital. Potential sources included corn oil used to clean the Ferry Boat and paint thinner. Paint thinner most likely the cause of the eye irritation.

## **Criminal Justice Services**

**Public Safety Wireless Broadband (FirstNet) Commission** – The Deputy Commissioner met this week with former Governor James Douglas to brief him on the status of Vermont's participation in the FirstNet initiative and to offer our assistance to him. Governor Douglas has been appointed by the U.S. Secretary of Commerce to the national FirstNet Board and our Commission felt it was important to reach out to him to let him know that we can be a resource to him if needed and to let him know of our organization.

Also the Deputy Commissioner spoke to 100 people at the Vermont Highway Safety Alliance conference briefing them on the national FirstNet initiative and letting them know what Vermont is doing in the area of FirstNet.



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*Jeb Spaulding, Secretary*

**PRIVILEGED AND CONFIDENTIAL  
MEMORANDUM TO THE GOVERNOR**

**TO:** Governor Peter Shumlin  
**FROM:** Secretary Jeb Spaulding  
**DATE:** October 17, 2014  
**SUBJECT:** Confidential Report to the Governor

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**BUILDINGS AND GENERAL RESOURCES**

**Of Interest to 5<sup>th</sup> Floor from BGS Directors:**

Safety & Security: Ebola virus information starting to surface. Reviewing material from VDH to determine a good information sheet for employees in the workplace.

AG/ANR Collaborative Lab, Randolph: Continuing design meetings this week with the first round of conceptual designs being presented to users' leadership on Wednesday. An all staff presentation is scheduled for Thursday. We have also received the draft Basis of Design (BOD) document for review and comment. Ag/ANR had a productive collaboration meeting with VTC and it appears the opportunities are substantial and extend beyond what was envisioned during the site selection process. I believe Jeff also had a good discussion with VTC, and Sandy and I need to follow-up to see what we need to include and to provide feedback. Finally, the survey work is underway, **but the cows ate the wetland delineation flags** so we need to have them re-installed.

Vermont Health Laboratory, Colchester: Punch list work is still ongoing. We are still experiencing problems with the Differential Pressure Sensors. The original alternate filters were not acceptable, and others are being delivered to the site for testing. If all goes well, we should be in a position to complete commissioning and failure scenarios October 23<sup>rd</sup> and 24<sup>th</sup>. This delays the VDH move until the week of November 10<sup>th</sup>, a week later than previously planned. Ribbon Cutting confirmed for October 22<sup>nd</sup> at 11:00am with the Governor.

Vermont Veterans Memorial Cemetery, Randolph Master Plan: The Grant application for \$4.57M has been tentatively accepted and listed as a priority 2 project.

Montpelier State House Lawn: Shepard's Crook lighting poles have arrived and maintenance plans to start installation on 10/18.

Montpelier 115 State Street Proposed Replacement of Duress & EMS: As appropriated in this year's Capital Bill, a new duress alarm system will be installed by the start of the 2015 session. The system currently being bid is an Innovnic System; other approved equal systems will be reviewed for acceptance. Potential bidders are Control Tech and Mammoth, estimated cost is \$35k. The commissioner and Sergeant-at-Arms have okayed the installation of one test camera at the back loading dock. The test camera will be installed beside the existing monitor camera. The proposed security camera is made by Axis, and the software for the tester camera will be operated by the Capital Police.

## **FINANCE AND MANAGEMENT**

### **Issues Update:**

Commissioner Reardon, Deputy Commissioner Clark and the budget analysts have begun the FY 2016 departmental budget meetings. This week the budget office met with the Green Mountain Care Board, Buildings and General Services, Finance & Management and DII.

The Department conducted its first of two public budget forums. This forum focused on the non-AHS areas of state Government. Four individuals testified with feedback in the areas of training, tourism and the Vermont State College system. The next public budget meeting is scheduled for October 28<sup>th</sup> and will focus on issues related to the Agency of Human Services.

## **HEALTH CARE REFORM**

### **Green Mountain Care Planning/Financing:**

Financing Update: We have adjusted our income tax projections to account for the revenue downgrade. In addition, we adjusted the tax data set to reflect the most recent state demographic forecast, which shows a growing number of seniors who we assume will not be asked to pay the individual Green Mountain Care tax. Staff and consultants will continue to work to refine these numbers. Overall, we will need to bring a recommendation soon on how to address these issues. There are 3 options: 1) Increase the payroll tax rate. In rough terms, the adjustment would cause a needed payroll tax rate to drift from a range of 7-8% to 9+%. 2) All of our modeling has put a special emphasis on keeping the individual tax extremely low for Vermonters making less than \$75,000. We could (and probably should) charge those folks a little more. 3) We could consider taxes beyond the primary business and individual taxes. Michael has assumed that additional small bore taxes are off the table, but he could revisit this assumption to try and keep the payroll and individual tax within a preferred range. We can review these options with the Governor at our Oct. 28<sup>th</sup> meeting with him, unless you'd like to squeeze in a short meeting sooner.

Michael advised Jeb and David Coates to cancel the Business Advisory Council meeting on October 28<sup>th</sup>, as we will not have economic modeling output to share with the council. The modeling delay is due primarily to difficulties in securing self-insured data from Blue Cross (which was about 3 weeks overdue from the timetable we'd requested). We have the data now. Michael is working with Jon Gruber to better understand when we might share outputs with the council. Gruber believes the first

complete runs will occur prior to the end of the month; however, he has concerns about sharing the first model runs with people outside the Administration until we have kicked the tires of the model.

**Benefits Update:** We have shared benefit plan information with the Consumer Advisory Council to solicit feedback on plan design and level of cost-sharing. The consensus of this group, unsurprisingly, is that they would prefer to shoot for a 94% actuarial value plan along the lines of the state employee plan. The group does understand (generally) that this increases the cost pressures on the tax side, but we have not yet shared the financing plans with the group, so their context is limited. In smaller conversations, we believe that there is some interest in the 80% AV with an account idea, although people are concerned that it is complicated to explain. They like the idea, because it gives people a way to save pre-tax funds for services that are not covered by GMC as well as funds to pay for cost-sharing.

**Waiver Update:** Robin is working on scheduling in person visits to DC, getting joint meetings with CMCS and CCIIO scheduled, and finalizing a date with Treasury, OMB, & HHS for a webinar to go over our proposal for how to calculate pass through funds. We have a draft MOU as well, which we are working to finalize as a proposal on all of the assumptions.

### **SIM Update:**

Georgia Maheras and Erin Flynn testified about the care management survey SIM fielded to Health Care Oversight Committee. HCOC was interested in learning about the project's learning collaboratives and how SIM was working with care managers in different regions of the state to address gaps and duplication in these services for Vermonters. The SIM Core Team will also decide the second round sub-grant awardees next week. The Governor held a press conference for the round one awardees and we should determine if we want to hold a press conference for the round two awardees. The SIM team is spending the rest of its time on the year two non-competing continuation application for approval to continue the project in 2015. This includes a significant revision to include the all-payer waiver.

### **Other Significant Meetings:**

Robin is doing a general overview of health care reform at the Vermont State Nurses Association Convention on October 16th. This event was confirmed and scheduled in the early summer. The content has been shared publically previously, including during the legislative session.

### **Press/Media:**

Mike Eldred, Deerfield Valley News re: 10/20 Rep. Moran forum – Deerfield Valley News is promoting the Moran forum in Dover on Monday 10/20. This is the forum that was previously scheduled. As discussed, we have not scheduled any additional forums.

## **HUMAN RESOURCES**

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

Meetings with AOT and DOL regarding HR services. Both meetings very positive. Both organizations were happy with the changes being made to the structure of our investigations unit. DOL is eager to be part of the position pilot program and will want to present such to the legislature this upcoming session.

AOT is doing a very careful analysis of their position needs in light of their authority under the pilot – it looks as if they plan to create 20+ positions.

Meeting with Mike O'Neil from VT Troopers to discuss upcoming contract negotiations and matters of mutual concern. Mike will be attending the meeting tomorrow re: State employee health plan premiums.

Meeting with AHS, Tax and health care reform team to discuss plan administration issues under a single payer model.

Participated in monthly retirement board meeting with State Treasurer. Discussed the need for a more robust process to reemploy state employees who are granted provision disability retirement with a one year review. DHR, Treasurers office and VSEA committed to working together to come up with a meaningful review process.

Meeting with VSEA to discuss state employees health insurance premium increases that will be effective January 1, 2015.

Extended an offer to Michelle Anderson to serve as the new General Counsel of DHR, which she accepted. Michelle has 20 years of experience in personnel and employment law as well as administrative procedure, public records and contract. Michelle currently works as a senior attorney for FEMA in Washington, D.C. Michelle will be transitioning with the current General Counsel in early December.

### **Emerging Issues:**

Working to determine how to handle the Class Action RFRs submitted by VSEA for the LPNs and the RNs at the Veterans' Home. The jobs will be reviewed as part of the classification/market factor project for nursing positions. Therefore it will be important to manage these reviews in light of the larger statewide project. We have some options but it will be important to work with the VVH as well as VSEA to be sure we all agree on the approach.

Continued work on the transition of the investigations unit. Assignments are being finalized. Documenting the business process is next. Also taking a hard looks at our stipulation, grievance and Loudermill processes.

- 2,344 respondents to the Engagement Survey as of today. Field Ops staff working on getting awareness of the survey to employees.
- Met with VSEA to impact bargain the requirement to have existing employees at VPCH and MTCR submit to a physical examination. VSEA continues to object to the requirement.
- Continued discussions with AG and DCF regarding AFT representation petition/election for Early Care and Education Providers. This issue seems well under control.

### **INFORMATION AND INNOVATION**

No report.

## **LIBRARIES**

No report.

## **TAXES**

### **Legislative Update:**

Ag Equipment: The Commissioner has reached out to meet with individual taxpayers, and offered to meet with the group of vendors (together with Diane Bothfeld at Ag). Always an opportunity, and this current dust up is an opportunity to emphasize that our third major initiative at the Department is business process change in our compliance area (first was creation of a new policy & outreach unit for consistency and education; second was our new IT project which included an overhaul of our correspondence).

Compliance Improvements: This past year we have been drafting a new Standard Operating Procedure designed to get cases from assessment to hearing in 18 months, with clear deadlines for staff and taxpayers along the way (no one from the outside would ever imagine how difficult even the drafting has been, this is such a sea change). After the first of the year (post go live of the first phase of the IT project), we will be augmenting management in this area, designing an implementation plan and implementing. In addition to the SOP, we will be reviewing practices from audit selection, development of assessment amount, use of liens, etc.

Homestead Declarations: Based on feedback from Sen. Ashe, Reps. Ancel and Greshin that they did not intend the disruption that will be caused by new residency requirement, the Commissioner has asked General Counsel to work with Peter Griffin on a retroactive technical fix to put in the Misc. Tax Bill. There will be some uncertainty with towns, real estate professionals and homeowners until the matter is settled.

VT College Of Fine Arts Lease: The Department was open to following Montpelier's lead as to whether to allow buildings that are leased to the state to remain exempt or continue a suit already filed by college. However, on further investigation, it appears that there is a specific statutory provision on point, that the proposed lease has a standard tax payment clause, and that it is not a one-off – there is precedent with other buildings leased from colleges. The Commissioner will be meeting with the Commissioner of BGS next week to sort out.

Tax Booklet Distribution: Last year was the first that the Department distribute booklets by bulk to libraries, town offices and post offices, but rather to send the booklet directly by mail when contacted by the taxpayer. Since most of the booklets were not used, this proved a great savings. Although we had done a great deal of publicity around the change, we still got some push back from a few librarians and clerks, so we met with them to debrief and brainstorm any improvements. Mostly constructive meeting.

ACA Taxpayer Reconciliation: JFO called stating that one of the health care oversight committees wanted to know what the Tax Dept. would do to help taxpayers who need to reconcile their ACA subsidy with the feds. I was clear that we don't intend to do anything but refer taxpayers to Health Connect and the Gov's health care office. I explained that Devon Green was doing the presentations to tax preparers, and our only other role might be to help push out general referral information through our channels.



**Operations:**

VTax: Last week, VTax was put through its paces with the first of three rounds of end to end testing – an all hands on deck affair. The project team was generally satisfied, and used this week to do some technical testing in the background to prepare for next week’s second pass. The Commissioner has heard feedback from testers that although they are fairly exhausted with the detailed nature of the work, they are very enthused with the system. Training for employees who have not been involved in testing starts this week in earnest. We are working on a communication strategy as we count down to go live – there will be several pieces to highlight for corp/business tax: the first time availability of e-file, a new simple return for minimum filers, the new look of correspondence, a taxpayer online portal to access accounts and transact business – and on the downside – the clean-up of some returns up to three years old which previously could not be processed.

**CONFIDENTIAL and PRIVILEGED**

**To: Governor Peter Shumlin**  
**From: Michael J. Hogan, Commissioner of Liquor Control**  
**Date: October 17, 2014**  
**Re: Weekly Report**

**Status of Governor's Priorities:**

- Submitted targets for FY2016 budget.
- I will be speaking and moderating a panel on marijuana at a national conference of multiple states this weekend.
- Working with Rand Corp on information regarding other state regulatory approaches to marijuana. Monitoring the process in Washington State. There will be multiple ballot issues across the country on this issue. Regionally, Maine is looking to implement something on a small scale.

**Legislative Issues/Contacts/Updates:**

- Miscellaneous clean up language for Title 7.

**Press Issues/Releases/Contacts:**

- Nothing Now.

**Significant Events/Meetings:** Next Board Meeting 11/12/2014 - Enforcement Hearings.

**Evolving Issues:**

- ERP/POS Project underway. Excellent Progress! Recent meeting with vendors and staff working through the particular functions of the front end and back end systems. Testing new registers next week.
- Preliminary review of department processes for potential licensing and enforcement system. Considering using VIC as they are very familiar with our business processes to help with a statement of work.
- Performance Audit Exit Meeting held this week. A draft report will be coming out in two weeks.
- Planning an alcohol symposium for early December for policy makers, licensees, and industry partners.
- Working with VIC on break open ticket reporting process. Prototype has been developed. Should be beneficial to Tax and DLC to gauge the amount of tickets sold and who they are being sold to. Working with Tax and should roll out this reporting process in January 2015.

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**Summary of Key Department Activity:**

- Reviewing internal controls with staff and department committee.
- Looking closely at more cross training for some of our divisions.

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

## Legislative Prep Worksheet – Natural Resources Board

### 1. Pro-active

- Fee bill
  - i. working on this with Jim Reardon, on a 3-year fee bill cycle
  - ii. Haven't raised main fee in 6 years and 75% of budget comes from fees
  - iii. Currently \$5.40 per \$1000 of construction, new proposed is \$6.25
  - iv. Looking at 20% increase - 10% is inflation, 10% is personnel costs
  - v. Main driver is staff cost – step up, benefit increases
- On the Record type bill
  - i. Ron is having informal conversations to take temperature on this, will let us know how it goes before recommending we move forward. I also said we could consider idea and give him feedback.
  - ii. Sets up new, potentially cheaper/more efficient process for NRB  
Reconsideration of District Environmental Commission decisions (outline of plan attached)
  - iii. Housing VT is going to push it whether we do or not – currently it's a nice collaborative process, if we don't join, unclear what they might come up with on their own
  - iv. Tried to do this 3 sessions ago, very frustrating, VNRC was opposed, lawyers opposed. Now, VNRC is for it, lawyers split. We are in a better position now, more collaborative BUT it's still a thorny issue though, plenty of people will hate. VNRC and Annette Smith hate the court, but unclear what they will like as an alternative – they may like this because it is citizen friendly with safeguards for the little guy, but there is no money for intervener funding, which they won't like. CLF likes litigation, probably won't support or see need to change (he's meeting with Sandy next week)
  - v. Rebecca Ellis interested in sponsoring this
  - vi. David Mears pushing a parallel process at DEC – not the same proposal but very similar, could be linked
  - vii. Ron has talked to David Mears, Pat Moulton, Lucy Leriche, need to close the loop with Deb Markowitz. All think it's good idea, but David doesn't want to get bogged down in Act 250 politics, wants to get his piece through and this might create a roadblock
  - viii. Would need another position to make this work – could increase fees to cover it or figure out another way to get the position in. They charge \$250 per appeal – could supplement a position
- Prime Ag Soils
  - i. Ron suggest that we move forward with a legislative proposal if he garners enough support in his informal conversations (which he has been having, has a few left) and NOT moving forward if he can't pull together informal consensus, given what happened last year . He will get back in touch with us re: feedback

from these conversations. Meanwhile, I said I would check in and get Senior Staff/GPS feedback on our appetite for this.

- ii. Ron has gotten good feedback from VNRC and the Chambers, they are saying House bill that passed last year is better than current policy. House Bill is a good option, we like it, it just didn't go far enough. Much more on same page with Chambers than enviro groups. CLF will be hardest, he is meeting with Sandy next week.
  - iii. Some commercial interests will push this on their own and we will have to deal as defensive if we don't raise it proactively.
  - iv. Ron will likely try to change this by rule if no bill goes through (need to define what "appropriate" means for on-site vs. off-site mitigation). Didn't change rule after last session because wanted to have dust settle, wanted everyone to take a deep breath. Would prefer legislation to rule change because current policy is based on a letter from Ginny Lyons in 2006, so it doesn't get much respect. LCAR shut it down as rule last time they tried, so it's just a policy currently.
- Per Diem
    - i. Lots of push back from Commissioners to bring this up. Currently \$50 per diem, commissioners getting less than minimum wage for the amount of time they put in. They know we are trying to do global revision of per diem, but they continue to ask Ron to push this issue on their behalf. They believe they put in just as much as time/effort as parole board, medical board etc and they get \$150.

## **2. Defensive**

- Prime-Ag Soil (IF we don't bring it up proactively)
- On the Record Bill (IF we don't bring it up proactively)
- Energy Criterion 9F is a mess, but Ron doesn't want to open it up to clean it up in the legislature because he can work with it as is and he doesn't want developers or homeowners trying to take us a step backwards if we open it back up. Not worth risk to clean it up. Suggest asking Chris/Darren if this is worth it.

## **3. House-Keeping/Neutral**

- Change "designated growth centers" to "designated centers" in Criterion 9B, which would include downtowns etc. Technical fix, all in agreement, doesn't involve opening up 9B. Need appropriate vehicle – Act 250 technical corrections bill has been a useful vehicle in the past, hasn't gotten out of control as Christmas tree, has stayed technical.
- Strike provision asking NRB to keep a telecommunications map of all facilities that they permit. Now most are permitted by PSB, they haven't keep map up for last 10 – 15 years, no one has noticed.
- Clarify definition of abandoning a development project – "expire" vs. "abandon" distinction. Very esoteric, but now it is clear when development permits lapse, but it's not clear when subdivision permits lapse. Case pending before Supreme Court now because of ambiguity here with subdivision permit clarity.

#### **4. Interagency**

- Working very well with Public Service Dept, Ag, ANR, ACCD
- Forest fragmentation – ANR lead, would bring up Act 250 issues
- Would love to see Land Use meetings start back up soon

## **Outline of Proposal: NRB reconsideration of District Environmental Commission decisions**

### **-District Commission:**

- process stays the same/remains informal, or as is now, more formal if highly contested
- record of filings and documentary/physical evidence remains the same
- allow/require video in addition to audio (fee for video?)

### **-NRB reconsideration of Commission decision:**


- NRB composed of Chair with expertise and former Commissioners/EB Members or other qualifications (moving forward)
- parties participating before the Commission can seek or participate in reconsideration
- Commission decision and record is starting point and central – not de novo
- record can be supplemented before the NRB
- process:
  - reconsideration limited to specific aspects of Commission decision
  - sufficient time for parties to prepare
  - discovery controlled/authorized by NRB
  - schedule and discovery can be addressed at conference with Chair or General Counsel
  - quasi-judicial, but not contested case
  - ex-parte/separation of functions procedures apply
  - video of any evidentiary proceedings
  - oral argument on legal issues may be requested
  - NRB would promulgate procedural rules

**-Appeal to Environmental Division on the record developed by the District Commission and supplemented by the NRB**

**-Add position to NRB legal staff**

## Legislative Prep Worksheet – Dept. of Financial Regulation

### 1. Pro-active

- Insurance
  - i. Principle-Based Reserving (PBR) accounting formula imposed on life insurance, a National Standard is rolling out away from formulas that we should conform to
  - ii. Adopt NAIC Model Laws on Corporate Governance – Susan Donegan helped craft this national guidance, wants VT to be an early adopter, should sail through, asks for additional disclosure on the corporate governance structure of insurance companies, so more details on senior management and Board level
-  Position – Susan owes her Captives Division an examiner, she raided this vacancy but she really needs this position created and filled as it will help save/recover more money for the state
- Securities - MAYBE Crowd-Funding legislation – might be premature. Probably don't need it given good track record with VISBO, but crowd-funding does do cross-border, but we need to figure out if we need it. If we do it, VISBO does stay relevant and will still exist. DFR report due on this, will get to us by December, not sure yet how it will look, but will answer whether or not we need this

### 2. House-Keeping/Neutral

- **ALL of these are very technical, can move through DFR technical corrections bill, one bill for each main area like they do every year (Captives, Insurance, Banking, Securities)**
- Move a position to Green Mountain Care Board – DFR doesn't do it anymore, was left at DFR by accident, and move ½ of Regulation 903 into statute
- Banking Division – needs technical corrections to match statutes
- Captives – many tweaks needed due to accreditation standards and response to the market
  - i. Adopt 3 new accreditation standards: Form F, Reinsurance collateral modernization, add corporate governance standards for Risk Retention Groups to captive statute
  - ii. Allow landfill operators to use insurance and captive insurance as assurance for closure/post-closure obligations
  - iii. Misc suggestions from VCIA
- Accreditation – talking to Jim Condos, right now the process pings from DFR, to Sec. of State, back to DFR – better to streamline process or let DFR just incorporate companies directly
- Possible amendment to licensed lender statute, could be added to Jobs Bill, report due in January that may suggest changes that would liberalize this statute, it continues to be liberalized each year. Cairn Cross is very interested in this, so is Mayor Lauzon and anyone that engages in entrepreneurial lending

- Banking – Technical corrections needed
- Insurance –
  - i. Repeal 8 V.S.A. 4089b(g0) - correction to something that no longer exists
  - ii. Possible amendment to rate review authority
  - iii. Confidentiality technical correction
  - iv. Possible amendment to Surplus Lines Compact
  - v. Possible amendment to Holding Company law (state jurisdiction of group supervision)
  - vi. Bulletin Authority

### **3. Interagency**

- Secretary of State collaboration on accreditation for captives

### **4. Questions**

- FYI – Tim Ashe a bit hard to work with, wishy washy on DFR issues, hasn't confirmed Susan yet (ever, since she has been in the position!)
- Clare Ayer would be a welcome addition to Senate Finance
- FYI – DFR Securities Division is doing great work! Re-organized and running well.
- Is David Reynolds position still in budget?
- Is it a fee year for DFR? Want to keep fees low, can make more money from "retaliation" using other states rates.