VLCT NEWS
A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS
SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS September 2003

STORMWATER REGULATIONS: WHERE ARE WE?

While the 2003 Legislature chose to address few stormwater issues, in other arenas over the last year the subject was front and center.

Cases have been filed in federal and state courts. The Vermont Water Resources Board (WRB) has opened an investigatory docket. New permit standards will soon be in place for stormwater from construction sites between one and five acres in size, and for covering salt and sand piles. The MS-4 communities are moving ahead in their plans for education and upgrades of facilities. But is anything yet certain about stormwater management in Vermont? The answer sure looks like "not much."

WATER RESOURCES BOARD
Investigation Into Developing Clean Up Plans for Impaired Waters
(Docket 03-01)

The WRB recently handed down a decision overturning Agency of Natural Resources (ANR) watershed improvement permits (WIPs) for impaired waters in Chittenden County. The WIPs are designed to clean up water bodies in Chittenden County that are currently impaired due to stormwater runoff. (See Legal Corner in August 2003 *VLCT News.)* In the end, instead of appealing the decision to the Vermont Supreme Court, Governor Douglas stated that he would ask the Legislature to address the issue again. In the interim, the WRB opened a fact-finding docket to address questions regarding the technical feasibility of designing clean up plans for stormwater-impaired waters and the degree of certainty that WIPs or other clean up plans could provide that impaired waters would be restored to meet Vermont Water Quality Standards. The WRB hopes to conclude this docket by November 27, 2003.

In its order opening the docket, the WRB stated:

> *The desired outcome of the docket is to generate a discussion report that would summarize the technical information submitted as part of the investigation and provide recommendations for developing clean*

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SEE YOU AT THE FAIR!

WEDNESDAY, OCTOBER 1 AND THURSDAY, OCTOBER 2, 2003
BARRE MUNICIPAL CIVIC CTR.

A GOLF CART WITH LICENSE PLATES?

With the recent donation of 246 neighborhood electric vehicles (NEVs) to Vermont charities and non-profit organizations by the Global Electric Motors subsidiary of DaimlerChrysler, local officials should be aware of their authority to prohibit the use of NEVs on highways under their jurisdiction.

By definition, a "neighborhood electric vehicle" is a self-propelled, electrically-powered motor vehicle which, according to 23 V.S.A. § 4(73):

A. is emission free;
B. is designed to carry four or fewer persons;
C. is designed to be, and is, operated at speeds of 25 miles per hour or less;
D. has at least four wheels in contact with the ground;
E. has an unladen weight of less than 1,800 pounds; and
F. conforms to the minimum safety requirements as adopted in the Federal Motor

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Katherine B. Roe, Editor, **VLCT News**

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GOLF CARTS -

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Vehicle Safety Standard No. 500, Low Speed Vehicles (49 C.F.R. 571, 500).

Although the maximum speed for NEVs is set by statute at 25 miles per hour (23 V.S.A. § 1007a), NEVs may only be operated on a highway with a speed limit of 35 miles per hour or less (23 V.S.A. § 1043(a)). In addition, an NEV operator may only cross a highway which has a speed limit of 50 miles per hour or less if the crossing begins and ends on a highway authorized for their use and the intersection is controlled by traffic control signals (23 V.S.A. § 1043(c)(1)).

Since NEVs are, for lack of a better term, glorified golf carts, a municipality may decide that the combination of their light weight, open design, and low speed poses a threat to public safety, especially considering the growing size and weight of conventional motor vehicles and the tendency of their operators to drive them above posted speed limits. As a result, under 23 V.S.A. § 1043(b), the legislative body of a municipality may prohibit the use of neighborhood electric vehicles on highways under their jurisdiction when it is deemed to be in the interest of public safety. Alternatively, a municipality can just prohibit NEVs from traversing highways with speed limits greater than 35 miles per hour when deemed in the interest of public safety (23 V.S.A. § 1043(c)(2)).

If your municipality is considering prohibiting the use of NEVs on your highways, VLCT encourages you to contact our Municipal Assistance Center at 800/649-7915. As part of the act which authorized the use of NEVs in the state, the State Traffic Committee (19 V.S.A. § 1(22)), in consultation with VLCT, will prepare and submit to the General Assembly not later than December 31, 2004 a report evaluating the safety of NEV operation in the state. The report will also include recommended amendments, if any, to the provisions of 2003 Vt. Acts & Resolves 8.

- Todd Odit, Associate, VLCT Legislative and Membership Services

Summarizing recent court decisions of municipal interest

LEGAL CORNER

PUBLIC RECORDS EXEMPTION FOR STUDENT RECORDS

STUDENT DISCIPLINARY RECORDS ARE EXEMPT FROM PUBLIC DISCLOSURE

The Vermont Supreme Court recently held that student disciplinary records fall within the "student records" exception of the Vermont Public Records Act. *Caledonian-Record Pub. Co., Inc. v. Vt. State College*, 174 Vt. __ (2003). The case involves a request by the *Caledonian-Record* ("Appellant") for access to student disciplinary records and to minutes from student disciplinary hearings from Lyndon State College and the Vermont College System under the Vermont Public Records Act and the Vermont Open Meeting Law. The case is important for public bodies subject to these statutes because it indicates that the Court will interpret the statutory exemptions to the Public Records Act broadly in order to protect individual privacy rights where the statute does not limit or qualify the exemption.

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The Appellant originally sought access to the daily logs maintained by Lyndon State College's security department, to student disciplinary records, and to student disciplinary hearings relating to allegations of student misconduct in violation of the criminal law and the College's student code of ethics. Lyndon State College provided the security logs to the Appellant but refused to provide the requested student disciplinary records and the records of disciplinary hearings, claiming that they were exempt from the Public Records Act and the Open Meeting Law. The Washington Superior Court agreed with Lyndon State College and issued an order denying the *Caledonian-Record* access to the documents. This appeal followed.

Lyndon State and the Vermont State Colleges are instrumentalities of the state and are therefore considered "public bodies" subject to the Public Records Act and the Open Meeting Law. The purpose of the statutes is to ensure that the public's business is conducted in the open and that records of public bodies are available for public inspection and copying.

With respect to the Public Records Act, the Vermont Supreme Court held that "the express Public Records Act exception for student records is directly on point and plainly exempts the student disciplinary records from disclosure." *Caledonian-Record Pub. Co., Inc. v. Vt. State College*, 174 Vt. __ (2003). Specifically, the Public Records Act exempts "student records at educational institutions funded wholly or in part by state revenue…" from disclosure. 1 V.S.A. § 317 (c) (11). The Court stated that, although the Public Records Act does not define what constitutes a "student record," the language of the exception is "broad and unqualified" and thus includes student *disciplinary* records.

In addition to the student disciplinary records, the Appellant also sought access to the minutes of the executive sessions in which the disciplinary hearings took place. Generally, all public bodies must conduct their business in public. 1 V.S.A. § 311. Under specifically listed exceptions, however, a public body may conduct its business out of the public domain in an "executive session" after following statutorily prescribed procedures. 1 V.S.A. § 313. Public bodies are specifically authorized to enter into executive session to consider "academic records or suspension or discipline of students." 1 V.S.A. § 313 (a) (7). The Appellant did not dispute the propriety of the executive session and only sought access to the minutes of the executive session.

The Court denied the Appellant access to the minutes of the disciplinary hearings under the Open Meeting Law, stating, "we do not believe that disclosure of records generated by disciplinary adjudications such as those at issue here is required when to do so would eviscerate the privacy considerations underlying the student records exception" of the Public Records Act. *Caledonian-Record Pub. Co., Inc. v. Vt. State College*, 174 Vt. __ (2003). In short, the Court made clear that the Open Meeting Law, and its requirement that minutes of public meetings must be made available to the public, cannot be used to obtain information that is otherwise exempted from public disclosure under the Public Records Act.

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LEGAL CORNER -

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This decision is important for all public bodies because it indicates how the Court may interpret other exceptions to the Public Records Law. For instance, the Court's broad interpretation of "student records" indicates that the Court is willing to err on the side of individual privacy when exceptions to the Public Records Act lack limiting or qualifying language. In fact, a significant aspect of the Court's decision was its recognition of "the important privacy interests that underlie the enumerated statutory exceptions to the rule of access." This case indicates that the determination of whether a record is subject to public disclosure under the Public Records Act or whether one of the exceptions of the Act exempts a record from disclosure, will depend on the plain language of the statute and on a balancing of the public's interest in broad access to governmental records and proceedings against individual privacy interests. The Court did, however, acknowledge that "the delicate balance inherent in these competing interests is, and remains, a legislative prerogative to alter or amend."

- Julie Fothergill, Attorney, VLCT Municipal Assistance Center

WORKPLACE POSTERS UPDATED

The Municipal Assistance Center has recently updated its Workplace Poster Packet. The following list of posters must be displayed in the workplace in accordance with state and federal laws. The posters should be placed in a prominent, central location and at all secondary work sites, unless all employees visit the central location on a regular basis.

FEDERAL POSTERS

1) Federal Minimum Wage, effective 9/1/97 (U.S. Dept. of Labor, Wage and Hour Division). *Note*: The Vermont minimum wage currently exceeds and takes precedence over federal law. (*See below.*)
2) OSHA Notice (U.S. Occupational Safety and Health Administration).
3) EEOC (U.S. Equal Employment Opportunity Commission), Consolidated Poster, revised 9/02, as required by the Equal Employment Opportunities Act 42 U.S.C. § 2000e-10 and the Age Discrimination Act 29 U.S.C. § 627. The posting requirement applies to employment agencies and labor organizations as well as to all private and public employers.
4) Americans with Disabilities Act Notice, 42 U.S.C. §12115.
5) Notice to Workers with Disabilities, revised 10/96. Posting required for all employers of workers with disabilities.
6) Employee Polygraph Protection Act, 29 U.S.C. § 2003 (9/98). The posting requirement applies to all employers *except governmental employers on the federal, state, or local level, and any political subdivisions of a state or local government.* 29 U.S.C. § 2006.
7) Family and Medical Leave Act of 1993 (U.S. Dept. of Labor, Wage and Hour Division). Required for all employers of 50 or more employees (6/93).

VERMONT STATE POSTERS

1) Minimum Wage Posters (7/03). *Note*: Effective 1/1/04 the Vermont minimum wage will increase to $6.75 per hour worked (from $6.25), and to $7.00 effective 1/1/05.
2) Safety & Health Protection on-the-job poster. (The Vermont Occupational Safety and Health Code, VOSHA). Title 21 V.S.A. Chapter 3, Sub-Chapters 4 and 5, Title 18 V.S.A. Chapter 28 and the rules adopted thereunder provides job safety and health protection for Vermont workers.
3) Family and Medical Leave Act (1/98). (Vermont Dept. of Labor and Industry), posting pursuant to 21 V.S.A. § 472(d).
4) Sexual Harassment Poster (Vermont Human Rights Commission) required pursuant to 21 V.S.A. § 495h(b)(2).
5) Smoking in the Workplace Poster required by 18 V.S.A. § 1424.
6) Employer's Liability and Workers' Compensation poster (2/03). (Vermont Dept. of Labor and Industry, Workers' Compensation Division)
7) Employer's Reinstatement Liability Poster, pursuant to 21 V.S.A. §§ 643b, 691.
8) Unemployment Compensation Notice (11/01), pursuant to 21 V.S.A. § 1346.
9) Child Labor Law (Vermont Dept. of Labor and Industry). *Note:* Under 21 V.S.A. § 442 the Commissioner must provide employers with a printed form for posting in the workplace describing the child labor rules. This poster is currently under revision due to Legislative amendments to the law in 2001.

A packet containing all of the required posters is available through VLCT at the member rate of $15 and non-member rate of $40. To request a packet, contact the League at 800/649-7915 or info@vlct.org, or order on-line at www.vlct.org.

Questions asked by VLCT members and answered by the League's legal and research staff

Ask The League

State Childcare Planning Goal; Act 60 Appraisal Money; Listers' Records

This year the Vermont Legislature added a 13th planning goal to the Vermont Municipal and Regional Planning and Development Act (24 V.S.A. Chapter 117). How soon must town plans be amended to comply with this law?

July 1, 2003 was the effective date of the new statute (24 V.S.A. § 4302(c)(13)), enacted as part of Act 67, An Act Relating to Job Creation and Development. The text of the new planning goal reads:

> *(13) To ensure the availability of safe and affordable child care and to integrate child care issues into the planning process, including child care financing, infrastructure, business assistance for child care providers, and child care work force development.*

According to law, municipal plans must be consistent with the goals established in § 4302 and compatible with approved plans of other municipalities in the region and with the regional plan. Municipal plans must be updated and readopted every five years. 24 V.S.A. §§ 4382, 4387.

Done correctly, the amendment process is generally lengthy and costly. As a result, many municipalities compete annually for state planning grants to fund this work. In order to be eligible for state planning grants, the regional planning commission (RPC) of which the municipality is a member must approve the municipal plan. As part of this approval process, the municipal plan is evaluated for consistency with each of the state planning goals as specified in § 4302. As of July 1, 2003, those goals now include the 13th planning goal on childcare.

As a result, questions have arisen as to how RPCs should review municipal plans, or revisions to municipal plans, that they are asked to confirm before the next Municipal Planning Grant round of funds. A July 30, 2003 memorandum, reprinted in part below, issued by John Hall, Commissioner, Department of Housing & Community Affairs, provides guidance as to how RPCs and municipalities should proceed:

> *Plans adopted prior to July 1st (2003) had no obligation to consider the new planning goal. As such, it is the Department's view that RPCs should not withhold confirmation because of failure of such plans to include the new planning goal.*
>
> *Towns that have not adopted, but are too far into the adoption process to include § 4302(c)(13) in any meaningful way before they run out of time to apply for Municipal Planning Grants, should follow 24 V.S.A. § 4302(f)(1). This requires the planning body to make a determination on relevance or attainability of any planning goal not included, to provide an explanation as to why the determination was made, and to provide an explanation as to how future action might mitigate any adverse impact from failing to make substantial progress toward attainment of this new goal. The newness of this planning requirement should provide grounds for the relevance or attainability finding. It is the Department's view that RPCs should not withhold confirmation of plans adopted in this manner that are adequate in all other manner.*
>
> *RPCs should continue with this process for plans submitted for confirmation until the end of 2003, after which municipalities should be in a position to submit plans that have incorporated the child care planning goal.*

We thank the Department for clarifying this question.

- Gail Lawson, Associate, Municipal Assistance Center

What can, or should, we do with the $6.00 per parcel that is coming from the state under Act 60 for reappraisal of property?

Title 32 V.S.A. § 4041a(a) provides that "A municipality shall be paid $6.00 per grand list parcel per year … to be used only for reappraisal costs related to reappraisal of its grand list properties and for maintenance of the grand list." 32 V.S.A. § 4101a(a). Some towns have asked how to account for these funds in the budgeting process.

Since the law requires the money to be used only for reappraisal and grand list purposes, it must be separately accounted for to ensure that it is not "lost" in the town's general funds and spent for another purpose. One option is for the money to be separately accounted for in the budget. In many cases, a better option is to ask the voters to authorize the creation of a reserve fund for the money. Reserve funds can be created under 24 V.S.A. § 2804, which provides

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ASK THE LEAGUE -

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that the voters may establish a reserve fund at an annual or special meeting. The fund will be under the control and direction of the selectboard. The money must be kept in a separate account and invested as other public funds are, and may be expended only for the purposes for which the fund was established or for "other purposes" when authorized by a majority of the voters. 24 V.S.A. § 2804.

If your town is planning to do a complete property reappaisal in the next few years, it would be good to ask the voters to authorize the creation of a reserve fund. That way, the state payments could go into it and earn interest during the time the money is being held for future use.

If you choose to create such a reserve fund, suggested wording for an article for your town meeting warning is as follows: "Shall the town authorize the selectboard to maintain a reserve fund for reappraisal and costs of reappraisal of the town's grand list properties and maintenance of the grand list?"

- Julie Fothergill, Attorney, VLCT Municipal Assistance Center

A company named Que-VT is requesting a copy of our computerized appraisal information. We feel that this is sensitive information and we are concerned about disclosing it. Do we have to divulge this information?

Public records requests are routine in any municipal office. This request is different, however, because many towns maintain highly detailed appraisal information that contains information such as the exact footprint of a home, locations of bedrooms, electrical lines, gas lines, phone lines, social security numbers, and other potentially sensitive information.

Appraisal information, such as the listers' cards, or computerized appraisal data, is governed by Vermont's Access to Public Records Law. *See* 1 V.S.A. § 315 et seq. This law grants the public a strong right to look into the affairs of local governments, making virtually every "document" in your office public, with a few specific exceptions. Therefore, it is important to operate on the assumption that virtually every piece of paper, every computer disk, and every other piece of information must be made public if someone requests it. That said, there may be a specific exemption in the law that makes a document exempt from disclosure.

The question most towns are asking is, "do we really have to give Que-VT this information?" Under the current state of the law, the VLCT Municipal Assistance Center believes that this information is a public record, and must be released to those requesting it. On the other hand, some towns believe this information is too susceptible to misuse and have decided not to release it. However, the pitfalls of not releasing this information are many. Let's analyze some of the options towns have and the potential ramifications of taking action:

1. Give Que-VT a CD containing all town appraisal information. Possible outcome: A potential backlash from town property owners. Towns may also want to consider the security issues related to disclosure of this information. This option would most likely prevent a lawsuit from Que-VT.
2. Give Que-VT a data-only format of your town's appraisal information. Possible outcome: Protection of your town's software copyright; though there is still the possibility of a lawsuit from Que-VT, claiming the information is public and not exempted from disclosure. A potential backlash from property owners, citing security concerns.
3. Give Que-VT a paper copy of your town's appraisal information, with sensitive data blacked-out. Possible outcome: Preventing disclosure of sensitive information, though there still exists the possibility of a lawsuit from Que-VT, claiming the information is public. It is important to remember that if someone requests data in a certain format (i.e., electronic), and the town maintains the data in that format, it must be released in the format designated by the requesting party. *See* 1 V.S.A. § 316 (h).
4. Refuse to give Que-VT any appraisal data. Possible outcome: While this would prevent disclosure of sensitive information, a town could probably expect a lawsuit from Que-VT, claiming the information is public.

These are difficult policy choices that towns should make only after carefully weighing the benefits of releasing this information against the potential ramifications of not releasing it. One of the pitfalls for municipalities is that the Access to Public Records Law provides severe penalties for towns which refuse to disclose this information but lose in court: "The court may assess against the public agency reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed." 1 V.S.A. § 319 (d). It is important to understand that these costs could be quite substantial; this is but one of the factors to weigh in considering the release of sensitive information.

Some towns have said that Que-VT technicians have arrived at their municipal offices with computer hardware, demanding to hook their computers up to the town's computers. No law gives anyone a right to simply connect his or her computer to a town computer like this, and towns are well within their rights to refuse such unfettered access.

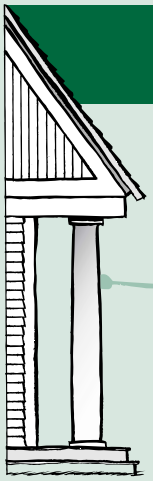
Keep an eye on the *VLCT News*, as VLCT will continue to monitor this issue in the courts as well as in the policy arena, and will keep members updated on the latest developments. Additionally, please call the VLCT Municipal Assistance Center if you would like to discuss this issue.

- Brian Monaghan, Attorney, VLCT Municipal Assistance Center

HEARING ON CHANGES TO PUBLIC RECORDS FEE SCHEDULE

The Secretary of State has proposed changes to the fee schedule for actual costs associated with providing copies of public records (Proposed Rule 03P034). A public hearing will be held on the proposed rule on September 29, 2003 at 9 a.m. at the Secretary's Office, 26 Terrace Street, Montpelier. Written comments may be submitted to Deputy Secretary of State William Dalton, 26 Terrace Street, Montpelier, VT 05609-1101; fax, 802/828-1135; e-mail, bdalton@sec.state.vt.us.

The current fee schedule can be viewed at http://www.sec.state.vt.us/access/records/fees.htm.



CUTS

(COMMUNICATIONS UNDER TEN SENTENCES)

ATTENTION PACIF MEMBERS

Renewal season is fast upon us! Please watch your mail in early October for your 2003 PACIF renewal packet. This year it will be arriving in a large manila envelope along with a copy of the 2002 financial audit. Your renewal applications are due back **Friday, November 7**. Due to tremendous membership growth, your prompt attention to returning the requested information would be greatly appreciated.

WELCOME TO VLCT PACIF

Wallingford Fire District #2, bringing the total number of members to 327.

2003 PHOTO CONTEST

As summer comes to an end, so does the 2nd Annual VLCT Group Services Photo Contest. This is our final call for any photos representing your municipality "At its Best." Deadline: October 1, 2003. First Prize: $100.00; Second Prize: $75.00; Third Prize: $50.00. For more details, call VLCT at 800/649-7915, or email nwhite@vlct.org.

TRIVIAL PURSUIT

Congratulations to the mother-daughter duo of **Diane Mattoon**, Chelsea Town Clerk, and **Jackie Higgins**, Royalton Administrative Assistant, who together answered both parts of last month's trivia question. Jackie called in immediately to let us know that it was John Deere who was born in Rutland and moved to Illinois, where he achieved fame for his better plow design. Diane called a few minutes later with the name of Deere's wife, Demarius Lamb, and her hometown, Granville. Turns out, the Mattoon family is a great fan of old John Deere farm equipment.

Last month's question triggered an avalanche of responses, so we cooked up a really obscure one for September. Here it is:

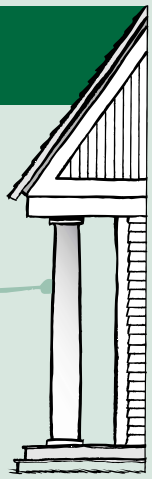
There are three Vermont counties that have NOT had the pleasure of being hit with tornados since 1950. Name them!

Contact us with your answer: VLCT, 89 Main Street, Ste. 4, Montpelier, VT 05602; 800/649-7915; fax, 802/229-2211, e-mail, kroe@vlct.org.

Upcoming Dates

VLCT HEALTH TRUST ANNUAL MEETING

Friday, November 14, 2003
Capitol Plaza Hotel, Montpelier



PERSONAL HYGIENE

REMEMBER THESE SIMPLE BUT VITAL PRECAUTIONS

An important way to protect your health on the job is to prevent exposure to hazardous substances through practicing good personal hygiene at work. True, these precautions may take a few extra minutes. But those few minutes can help ensure many years of good health, so they are worth every second. Remember to:

- Wash thoroughly with soap and water after working with or around any hazardous substance.
- Make a habit of washing your hands before you eat, drink, smoke, apply cosmetics, touch your street clothing, or handle contact lenses. Wash thoroughly before and after using the toilet, too.
- Don't take food, beverages, or their containers into a work area where hazardous substances are kept or used.
- Cover open cuts or sores with bandages before working with or around hazardous substances.
- Don't touch your mouth, nose, or eyes with hands or gloves, even to blow your nose or cover a sneeze, when you've been working with hazardous substances. Wash first.

Safe personal hygiene may also require showering after removing chemically contaminated protective clothing. Don't skip this step, no matter how much of a hurry you're in to get home. Also be sure to keep work clothes and street clothes separate so that chemical contamination doesn't go home with you.

For more information about safety and health programs available to VLCT PACIF and Health Trust members, call the VLCT Safety and Health Promotion department at 800/649-7915; e-mail, info@vlct.org.

EMPLOYEE ASSISTANCE PROGRAM

Whether it is the "back to school rush" or an end of summer case of the blues, EAP is available for you and your family to smooth out the "rough spots." Easy to access and completely confidential, EAP is your benefit. Call anytime at 800/287-2173 or visit EAP on the Web at www.investeap.org. Sponsored by VLCT Health & PACIF Trusts.

STORMWATER -

(Continued from Page One)

up plans for Vermont's stormwater impaired waters based on the technical information exchanged as part of the docket. The purpose of the docket is NOT to address the legal positions of participants in the docket.

VLCT staff participated in the first meeting and argued that the results of this docket must at least help design a permit system that enables towns and businesses around the state to move ahead with mitigation and stormwater management projects.

DOLLARS FOR STORMWATER CLEANUP CAPITAL PROJECTS AND MS-4 COMMUNITIES

The cities of Burlington, South Burlington and Winooski, along with the towns of Essex and Shelburne and the village of Essex Junction are allocated, as MS-4 communities, $1,475,000 in federal monies to perform repairs or construct improvements to (1) municipally-owned stormwater discharges that predate the issuance of state stormwater permits, and (2) discharges for which an individual permit was issued. In many instances, those individual permits have expired, and in no case are the contemplated projects associated with new construction or development.

MS-4 communities are communities that must comply with federal Phase II requirements for stormwater. These municipalities have been meeting on an on-going basis for more than two years to address the requirements of the federal Phase II stormwater program. They are most interested in actually putting infrastructure in place that will meet ANR's 2002 stormwater management standards and contribute to cleaning up the stormwater problems in the impaired waters in Chittenden County.

EXPIRED PERMITS

Beginning last winter, municipalities started to receive notices from ANR that they had expired stormwater permits. Not only municipalities, but also many other public and private entities received similar notices. ANR had a backlog of approximately 1,000 expired permits on which it had taken no action to assure maintenance or renewal in years. Many municipalities did not know that they were the owners of a stormwater permit - of any vintage - and many had to contact ANR to determine exactly where and what kind of facility or permit they should be locating. In fact, the letter to municipalities from ANR suggested they call for specific information.

Municipalities are required to renew permits, certify that stormwater systems are operating in compliance with the terms of their original permits, and undertake repair and maintenance responsibilities (both appropriate, but potentially expensive actions for which no state funding has ever been allocated). If the renewed permit is for a facility that discharges into waters that are not impaired for stormwater, permittees need to comply with General Permit 3-9010. Section B 3 of that permit establishes implementation deadlines. For instance, if a project was built but its associated stormwater management system was never built, then the previous permittee shall, **prior to November 15, 2003**, construct a stormwater management system in accordance with Part III of General Permit 3-9010. Likewise, if the system was built but is seriously deteriorated, the previous permittee shall, by November 15, 2003, repair/upgrade or construct a stormwater management system in accordance with Part III of this general permit. If the system is in need of maintenance, that shall be performed before November 15, 2003. There are a lot of such projects outside of impaired waters in Vermont. Town officials should be working hard to meet this deadline. Permit descriptions, notice of intent forms and application forms are available at the Stormwater Section web site, www.anr.state.vt.us/dec/waterq/stormwaterpermitting.htm, or by contacting the Stormwater Section at 241-4320.

Municipalities that have previously permitted stormwater discharges to impaired waters were initially required to obtain coverage under WIPs. However, permitting requirements for existing discharge to impaired waters are now up in the air after the Water Resources Board (upon appeal by the Conservation Law Foundation and Vermont Natural Resources Council) overturned four of the WIP permits. (See Legal Corner mentioned above, and discussion below.)

SUITS AND APPEALS

Part of the confusion around what exactly is required in terms of stormwater management stems from the eight (count 'em) appeals or suits of ANR permits that have been filed, particularly for large projects, by the Conservation Law Foundation (CLF) and other groups.

1) CLF appealed the decision of the Water Resources Board to affirm a permit for the discharge of treated stormwater from a proposed Lowes store in South Burlington to Shelburne Bay and Potash Brook (Hannaford Lowes). The appeal was to Superior Court, where a decision has been rendered. There is the possibility now of an appeal by CLF to the Vermont Supreme Court.
2) CLF appealed a Department of Environmental Conservation stormwater construction permit for Lowes in South Burlington to the Water Resources Board.
3) CLF filed a citizen's suit action in federal court under the Clean Water Act alleging that the KMart Plaza and neighbors in South Burlington were discharging without a needed National Pollutant Discharge Elimination System (NPDES) permit.
4) CLF requested that ANR require an NPDES permit for all stormwater discharges into several of the impaired streams in Chittenden County.
5) CLF filed appeals of Circumferential Highway construction and operational permits issued by ANR. Included are two individual operational permits, one

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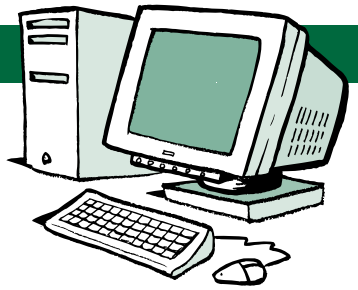
Making technology work for Vermont's municipalities and their citizens

Tech Check



Spam: A Major Headache

Spam – junk e-mail – is a major headache for businesses globally. This problem is a significant threat to employee productivity, perhaps much more than is widely realized. Spam also consumes disk space and its traffic requires bandwidth. Some facts to consider:

- Spam is growing at an alarming rate. It is now estimated that 42% of all Internet traffic today is spam. That number is expected to surpass the 50% mark by early next year. This compares to approximately 8% in 2001.
- In 2003, spam will cost the average organization $874.00 per year per employee.
- The average company will lose 1 out of every 72 employee's productivity to spam.
- The average e-mail user received 2,200 e-mails last year.

With productivity as a significant driver to make businesses and government entities look twice at what can be done about spam, another very real hazard lies within the actual content of these spam e-mails. Obscene, pornographic and offensive e-mails that reach employees' desktops pose yet another liability for the employer.

What are today's organizations doing to combat this menace? There are options and solutions to stanch this flow of unsolicited e-mail. While there are no fixes that can boast a 100% success rate, some come mighty close.

With anti-spam solutions and e-mail filtering products and services now available, businesses and government entities can take measures to address the problem. Through the use of spam identification, tagging and ultimately blocking, filter rules are created that trigger actions. Combating spam requires a process, not just a product. Your information department or IT vendor should develop a methodology that assesses the problem based on your needs and implements a solution, including training of staff and users and on-going support, tuning and re-assessment.

Employees need to be made aware of techniques to avoid becoming targets. A change in habits and a closer look at Web forms and permissions given is needed as a first line of defense. Analysis of how employee e-mail addresses are posted and obtained is another area to scrutinize.

Organizations that implement this encompassing solution reap the benefits of increased employee productivity, reduced liability and exposure to offensive material, and better network performance and efficiency.

Spammers will undoubtedly find creative ways to work through barriers. Continuous tuning and tweaking is needed to keep up with these efforts. Twenty-six states in the U.S. have anti-spam laws and Congress is working on federal regulations. However, with most of the world's spam originating overseas, the onus really falls to the employer.

- Mark Jennings, Manager of Network Engineering, SymQuest Group, Inc.

Interested in More Information?

SymQuest Group Inc. offers spam solutions and deployment strategies for its clients. Training is also available, including a free seminar, "SPAM – How It Happens And What You Can Do About It," on Thursday, October 2, 2003 at its South Burlington, VT office, 8:30 - 10:30 a.m. To register for this seminar, e-mail nfosher@symquest.com or call 802/658-9818.

STORMWATER -

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individual construction permit and two authorizations to discharge under the general construction permit.

6) CLF appealed the MS-4 general permit.
7) WIPs for four impaired streams were appealed by the CLF and VNRC to the Water Resources Board and overturned by the Board. ANR did not appeal the WRB decision; instead Governor Douglas indicated that he would ask the Legislature to address the issues raised in the WRB decision. As an additional measure, the WRB opened its investigatory docket into technical aspects of the stormwater management. (See above section on WRB.)
8) The stormwater permit for the Route 7 reconstruction project has been appealed by the Friends of Rt. 7 to the Water Resources Board.

Salt Sheds and Sand Piles

Last winter, the Department of Environmental Conservation (DEC), Stormwater Section, issued a draft NPDES permit for industrial sites, the Multi-Sector General Permit (MSGP). This meant building covers and impervious barriers for salt piles for those Vermont municipalities that have not already done so.

This is a federally required permit that Vermont, apparently, is the last state to implement. Recently, ANR decided to delay approval and implementation of this permit. A revised draft MSGP permit will be issued for public comment. The implementation date is anticipated to be sometime in March 2004. That draft permit includes a request to EPA that it grant a five-year extension on the covering of salted sand piles. Towns with salted sand piles will need to return a form to the Stormwater Section indicating where the piles are, and that they create no immediate, substantial impact on the waters of the State.

The largest question for municipalities as they wrestled with implementing this new mandate was what would be the cost of compliance. For information on the MSGP, contact Margaret Torizzo at the Vermont Stormwater Section (241-3780).

More Rules and Permits

Municipal projects may be subject to other stormwater general permits, such as Stormwater From Large Construction Sites; Stormwater Discharges from New Development and Redevelopment to non-WIP Waters (General Permit 3-9015); and a (still) draft permit for small construction sites. The best course of action is to call the Stormwater Section of the Deparment of Environmental Conservation (241-3770). In addition, ANR, will be issuing new stormwater rules, including rules on the use of pollution offsets for stormwater permitting in impaired waters.

Backyard Training Opportunities

Finally, if your municipality is about to undertake a project that will require controlling the flow of stormwater from it, Kim Greenwood, DEC Water Quality Engineer, suggests visiting construction sites in your own community to see how effective their erosion control plans are, particularly those your own planning and zoning department may have helped design, or permitted.

- Karen Horn, Director, VLCT Legislative and Membership Services

Trails Grants Available

The Vermont Recreation Trails Grant Program is soliciting proposals from municipalities and non-profit organizations for recreation trail grants under the 2004 round of funding.

Grants are awarded to communities and non-profit organizations for:

- maintenance on existing trails;
- restoration of areas damaged by use of trails;
- development of trail-side and trail-head facilities;
- provision of features which facilitate access to and use of trails by persons with physical challenges;
- construction of new trails on state, municipal or private lands where a recreational need for such construction is shown;
- preparation and printing of trail-related maps, studies, and other educational information and materials related to trails;
- trail protection including fee simple title to property or easement acquisition for recreation trails or recreation trail corridors; and
- purchase of hand tools for trail work.

Applications must be received by **4:30 p.m. on Friday, January 30, 2004** to be considered for this round of funding. For more information on this program, contact Sherry Smecker or Rebecca Brown, Vermont Dept. of Forests, Parks & Recreation, 103 South Main Street, Bldg. 10 South, Waterbury, VT 05671-0604; tel., 802/241-3690 or 802/241-3653.

Fair Labor Standards Act

Sixty-Five Year Old Law Faces Changes

The Fair Labor Standards Act (FLSA), which governs such items as the federal minimum wage level, recordkeeping, child labor laws and overtime payment requirements, was enacted in 1938. In the ensuing 65 years, updates have not kept pace with all the changes in the workplace. This past spring, the U.S. Department of Labor (DOL) attempted to remedy the situation by proposing broad changes to modernize some of the FLSA provisions. Most employers, including Vermont's municipalities, would be affected by these updates.

Not only do current FLSA regulations contain anachronistic provisions and examples, but they also present a source of confusion and conflicting interpretation for employers. Determining which employees are covered (i.e. non-exempt employees) and which employees are exempt can be a difficult exercise. To aggravate the already precarious position in which employers find themselves, costly litigation regarding overtime payment has increased dramatically during the past few years.

While the basics of the FLSA would remain intact and there is ample room for further clarification, the updates more clearly define criteria for "white-collar" exemptions from overtime pay and eliminate outdated job titles such as "key punch operator" and "straw boss." The DOL web site at www.dol.gov provides a quick visual comparison with a chart of the current long and short tests alongside the proposed update for each exempt category. Here is an outline of the major components of the proposed changes:

Minimum Salary Level Increased. Currently, an employee earning only $155 per week might qualify as a "white collar" employee not entitled to pay for overtime worked. Under the DOL proposal, the minimum salary level at which an employee needs to be paid in order to be considered "exempt" is raised to $425 per week (annualized at $22,100.) Below this level, except for outside sales staff, an employee is non-exempt and must be paid overtime for hours worked beyond 40 per week.

Deductions from Pay. Rules on deductions from exempt employees' pay would remain largely the same in that partial day deductions are almost always impermissible while full-day deductions for personal absences, sick leave, disability or for major safety infractions are permissible. Under the new proposal, permissible deductions would be expanded to include full-day suspensions for disciplinary reasons such as harassment or workplace violence. Currently, only non-exempt employees are subject to such disciplinary sanctions while exempt staff may only be subject if sanctions extend to a full week.

Primary Duties Test. The confusing "long" and "short" tests for determining exempt/non-exempt status would be eliminated. It would no longer be necessary to calculate whether an employee spends 20% of his/her time in a workweek performing non-exempt tasks. Rather, simplified duties tests for each of the three exemptions (Executive, Professional, and Administrative) would be instituted, based on "primary responsibilities."

New Exemption for Highly Compensated Employees. The proposed regulations would also implement an overtime exemption for employees whose salary is at least $65,000 per year, who perform office or non-manual work and who perform one or more of the standard job duties required for the executive, administrative or professional exemptions.

There had been hope that the changes might be enacted by the end of 2003. However, objections from some groups such as the AFL/CIO may cause delay and/or modification. If and when the final changes are in place, the implication for municipalities will be to re-evaluate all positions and job descriptions in light of the exempt/non-exempt classification requirements under the new rules. This assessment may be time consuming for some cities and towns but can be viewed as an opportunity to enjoy a more simplified compliance process and, hopefully, will provide further protection from the omnipresent risk of employment-related litigation.

The DOL believes that these changes will provide approximately 1.3 million low wage workers who currently do not have them with overtime protections and will strengthen such protections for an additional 10.7 million workers. It believes the proposal will help employees to better understand their rights as well as help employers to better understand their compliance obligations. Further, the DOL maintains that, by reducing red tape and the costs of litigation, resources may be freed up to stimulate economic growth. Whether or not all these goals, particularly the latter and most ambitious, can be realized remains to be seen. We will keep you posted on the progress of the proposed changes which, at press time, were being reviewed by Congress.

- Jill Muhr, VLCT Human Resources Administrator

Classifieds

For Sale

Fire Truck. The Town of Morristown has for sale a 1968 Maxim Pumper. It has a 1000 gpm Hale pump, a 750-gallon booster tank. It is powered by Detroit Diesel (not original equipment). Body was replaced in early 1980s with a new aluminum one. Fire Department is looking for $5,000. Contact Brian Kellogg at 802/888-5629 or 802/253-4059 for further information.

Dump Truck. 1997 Ford L8000, 80K miles, 250 Cummins, exh. brake, 9-spd Fuller, 12 fnt/23 rear, fnt live hyd. pump, dump body, plow frame, in-body sander. To inspect, call Buzz Audsley at the Barnard, Vermont Town Garage, 802/234-6961. To bid, submit offer to Selectboard, L8000 Bid, P.O. Box 274, Barnard, VT 05031. Bids must be received by 9/30/03.

Police Cruiser. The Town of Richmond, Vermont Police Department has one 2000 Ford CrownVictoria Police cruiser for sale. The vehicle is dark blue in color and has approximately 77,000 original miles. The cruiser is in exceptionally good condition and has no structural or mechanical problems. Richmond vehicles are assigned to an individual officer and are used only one shift per day. The vehicle has a Tomar light bar and head control system with both VHF and UHF radios. In addition, the unit has a prisoner cage, and self-charging flashlight. The vehicle will be sold as a separate unit without attached equipment or can be sold as a complete package with all equipment. The complete package purchase would be for law enforcement agencies only. All bids must be received no later than Monday October 20, 2003. Please make all inquiries to the Richmond Vermont Town Administrator: Mr. Rodjenski, P.O. Box 285, Richmond, VT 05477.

Okidata Microline 591 Wide-Carriage Dot Matrix Printer. 24-pin wide-carriage dot matrix printer. Used only four months. Connects via parallel. 450 CPS in High Speed Draft Mode. Comes with original documentation and software. Drivers to support Windows 95, 98, ME, 2000, NT can be downloaded. Contact Jill George at VLCT, 800/649-7915 or jgeorge@vlct.org.

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CLASSIFIED ADS -

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HELP WANTED

Zoning Administrator. The Town of Fayston, Vermont is seeking applicants for the Zoning Administrator position. Applicants should be willing to work 24 hours a week, including some night meetings. Salary based on experience. Send a letter of interest and resume to Fayston Municipal Office, 866 North Fayston Road, North Fayston, VT 05660, Attn: Selectboard, or email to patti@madriver.com. No phone calls please.

REQUESTS FOR PROPOSALS

Portfolio Management Services. The Town of Manchester, Vermont is soliciting proposals from investment management firms and bank trust departments for portfolio management services governing the Town's Group B, non-operational funds. Investment practices and procedures must comply with federal/state law and must adhere to guidelines set forth in the Town's written Investment Policy. Interested parties may obtain the complete RFP, the Town's Investment Policy and "bid" instructions by contacting Manchester's Finance Office (802/362-1197), 6039 Main Street, Manchester Ctr., VT 05255. Submission deadline: 12 noon on Tuesday, 9/30/03.