

VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS

April 2014

LOCAL GOVERNMENT DAY 2014



Light snow showers greeted Vermont municipal officials as they arrived at the Capitol Plaza Hotel for Local Government Day on February 19th. Montpelier Mayor John Hollar welcomed the attendees and introduced Sen. Tim Ashe, Chair of the Senate Finance Committee, and Rep. David Sharpe, Ranking Member of the House

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(Above) Rep. David Sharpe (in both photos) addresses local officials at the commencement of Local Government Day 2014.

WHAT IS IN THOSE TRAINS SINGING OVER YOUR RAILS?

“Halfway home we’ll be there by morning

*Through the Mississippi darkness rolling
down to the sea*

*And all the towns and people seem to fade
into a bad dream*

And the steel rails still ain’t heard the news...”

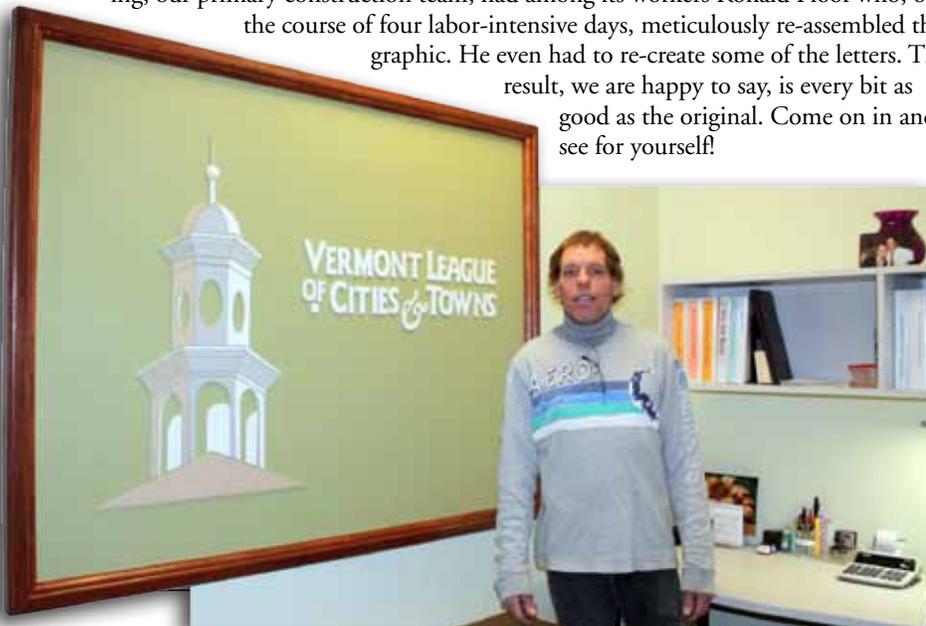
– The City of New Orleans

Railroads are nearly everywhere in Vermont. Their tracks pass through many of our downtown and residential areas. Some towns grew out of 19th century settlements near railway stations, eventually connecting our rural state to the rest of the world. But

(continued on page 15)

VLCT’S CUPOLA RISES AGAIN!

We had hoped to preserve VLCT’s wall graphic from the old office space, but in cutting it off of the sheetrock, it broke into two disparate pieces. Fortunately, CNH Consulting, our primary construction team, had among its workers Ronald Ploof who, over the course of four labor-intensive days, meticulously re-assembled the graphic. He even had to re-create some of the letters. The result, we are happy to say, is every bit as good as the original. Come on in and see for yourself!



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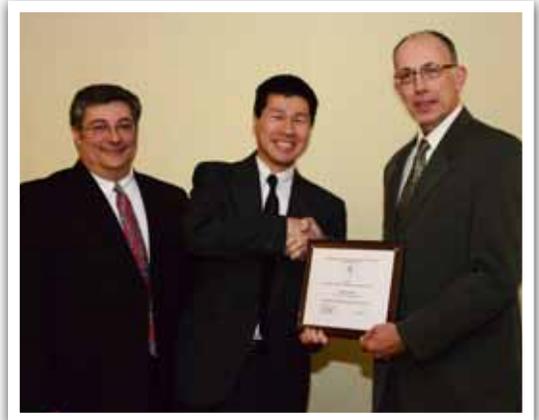
EPA AWARDS ESSEX JUNCTION WATER QUALITY SUPERINTENDENT

James Jutras, who oversees operations at the Essex Junction Wastewater Treatment Plant, was recently honored by the Environmental Protection Agency (EPA) with a Regional Wastewater Treatment Plant Operator Excellence Award for 2013. Jutras was selected because of his exemplary performance over a long career operating and maintaining the facility in Essex Junction, which processes wastewater for Essex, Essex Junction, and Williston homes and businesses. The Vermont Department of Environmental Conservation was instrumental in nominating Jutras for the award.

“The professionals operating these wastewater treatment plants, as well as the municipalities and the state environmental agencies that support them, are essential to keeping our environment healthy by protecting water quality, Curt Spalding, Regional Administrator of EPA’s New England Office, said in a press release. “EPA is proud to acknowledge Mr. Jutras’ outstanding contributions to help protect public health and water quality for so many years and to give him the credit he deserves.”

The EPA Regional Wastewater Awards Program recognizes personnel in the wastewater field who have provided invaluable public service managing and operating wastewater treatment facilities throughout New England, according to the press release.

Reprinted with permission from *The Essex Reporter*, Feb. 27, 2014.



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ASK THE LEAGUE

ZAS AND BUILDING EFFICIENCY STANDARDS; FAILURE TO ELECT; WRITE-IN CANDIDATE

What do zoning administrators need to know about Act 89 and building efficiency standards?

In 2013 the state legislature passed Act 89, which addresses existing energy efficiency programs, including thermal efficiency of existing housing and commercial building stock. Act 89, in part, ties enforcement of the Building Efficiency Standards that were adopted in 2011 to municipal certificates of occupancy in those towns where they are required. As of July 1, 2013, any town that has already adopted bylaws that require a certificate of occupancy for residential or commercial construction under 24 V.S.A. Chapter 117 must obtain a certificate of compliance with the Residential Building Energy Standards (RBES) from the applicant prior to issuing certificates of occupancy. However, even in towns that do not issue certificates of occupancy, zoning administrators still must provide building energy standards material to applicants. Regardless of whether a town has amended its bylaws to

be consistent with this state law, it must issue permits in accordance with it. If a town fails to do so, it faces possible legal action, either as an appeal to the Environmental Court or as a lawsuit instituted by the Vermont Attorney General.

When an applicant seeks a permit for a structure, the zoning administrator must provide the applicant with a copy of the applicable building energy standards of either a residential or commercial building, regardless of whether or not a town issues a certificate of occupancy. The administrative officer may provide a copy of the Department of Public Services' (DPS's) Vermont Residential Building Energy Code Book instead of the entire RBES. An electronic copy can be downloaded from the DPS website, http://publicservice.vermont.gov/topics/energy_efficiency/rbes#2011. The administrative officer need not provide a copy of the standards if the structure is a sign or fence or the application certifies that the structure will not be heated or cooled.

After a project is completed and the

applicant applies for a certificate of occupancy, the zoning administrator must confirm that an RBES certification of compliance has been recorded in the town land records. The zoning administrator must ensure the certification is recorded and indexed in the town records prior to issuing a certificate of occupancy. Provision of a certificate of compliance with the RBES is a condition precedent to issuance of all certificate of occupancies. Although a zoning administrator is not obligated to review the code certification for accuracy, if it is obviously incomplete or incorrect – such as not having a signature – it should be deemed noncompliant and a certificate of occupancy should not be approved. If certification is not issued by a licensed professional engineer, a licensed architect, or an accredited home energy rating organization, it must be issued by the builder. 30 V.S.A. Chapter 2.

Certain projects are exempt from complying with these requirements, the complete list of which can be found in 30 V.S.A. § 51(h):

1. buildings or additions whose peak energy use design rate for all purposes is less than 3.4 BTUs per hour, per square foot, or less than one watt per square foot of floor area;
2. homes subject to Title IV of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§ 5401-5426);
3. buildings or additions that are neither heated nor cooled; and

(continued on next page)

VLCT NEWS ONLINE

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To view the current *VLCT News* or the archives, please go to www.vlct.org/newsletter.



ASK THE LEAGUE

(continued from previous page)

4. residential construction by an owner, if all of the following apply:
- A) The owner of the residential construction is the builder, as defined under 30 V.S.A. Chapter 2.
 - B) The residential construction is used as a dwelling by the owner.
 - C) The owner in fact directs the details of construction with regard to the installation of materials not in compliance with RBES.
 - D) The owner discloses in writing to a prospective buyer, before entering into a binding purchase and sales agreement, with respect to the nature and extent of any noncompliance with RBES. Any statement or certificate given to a prospective buyer shall itemize how the home does not comply with RBES, and shall itemize which measures do not meet the RBES standards in effect at the time construction commenced. Any certificate given under this subsection shall be recorded in the land records where the property is located, and sent to the Department of Public Service, within 30 days following sale of the property by the owner.

If energy code compliance is not required for a project, such as one of those listed above in 30 V.S.A. § 51(h), it is best to ask applicants to provide a written statement that the code does not apply to their project and why. Amending permit applications and certificates

of occupancy to include reference to the energy codes is a good way to remind everyone of the requirements of Act 89 and to document that the town has fulfilled its obligations.

The Energy Code Assistance Center, operated by Efficiency Vermont, is the central clearinghouse for information about the code. It provides printed materials and workshops and maintains a toll-free telephone number (855-877-0673). Municipal officials can call the ECAC at any time. Efficiency Vermont has also issued a "Municipal Guide for Vermont Energy Codes and Above-Code Programs," which explains how municipalities can raise awareness of the code. The guide can be downloaded at

www.efficiencyvermont.com/For-My-Business/Solutions-For/Municipal-State-Government/Overview.

*H. Gwynn Zakov, Staff Attorney I
VLCT Municipal Assistance Center*

What happens when a town fails to elect someone to an open seat in a town office?

The temptation is to say that this would create a vacancy which the selectboard would have to fill by appointment until an election is held. The law of vacancies, however, does not take into account a town's failure to elect

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ON-SITE WORKSHOPS

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Since 2005, VLCT Municipal Assistance Center staff have been conducting customized on-site workshops in municipal offices across the state.

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LEGAL AND REGULATORY NOTES



TAXPAYER'S RIGHT TO DUE PROCESS; DEEMED APPROVAL; PROPERTIES' DEVELOPMENT POTENTIAL ASSESSMENT

Vermont Supreme Court Rules that Town Violated Taxpayer's Right to Due Process

The Supreme Court ruled in February that the Town of Milton violated the due process rights of a taxpayer by conducting a tax sale of his property after a registered notice of the tax sale was returned to the Town as undeliverable and the Town took no further steps to provide notice. *Hogaboom v. Jenkins v. Town of Milton*, 2014 VT 11.

The facts of the case are as follows: Trevor Jenkins of Milton, Vermont, failed to pay his property taxes for two years. The town mailed him three separate delinquent tax notices over the course of 18 months. Finally, in March of 2010, the Town sent Jenkins a "ax Sale Notice, which stated that Milton's delinquent tax collector had submitted

Jenkins' account for tax sale. The document listed the amount due on Jenkins' account, including a calculation of interest due through April 6, 2010. The document did not state that April 6 was the date of the tax sale of the property, nor did it state the time or location of the tax sale.

All of the above notices were sent by first-class mail and, although Jenkins denied having received them, they were not returned to the town. On March 8, 2010, the Town's attorney sent a Notice of Tax Sale to Jenkins by registered mail, return receipt requested. The notice stated that tax sale of Jenkins' property would occur on April 6, 2010, and gave a time and location for the sale. After

two attempts failed to deliver this registered letter to Jenkins, the post office returned it to the Town's attorney as unclaimed.

In addition to the registered letter, the Town also placed a notice of tax sale in the Milton land records, at the Town Office, and in the *Milton Independent* newspaper. Jenkins denied seeing any of these notices.

The tax sale was held as planned on April 6, and Plaintiffs Loren and Kathryn Hogaboom purchased the property. The next day, the Town's attorney sent Jenkins a letter by first-class mail stating that the tax sale had taken place, that the property had been

(continued on next page)

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- Water & Sewer Ordinances
- Zoning Bylaws
- Municipal Charter Amendments
- Highway Ordinances



LEGAL AND REG.

(continued from previous page)

purchased, and that Jenkins had one year to redeem the property. This letter was not returned to the Town or its attorney.

Over a year later, when the redemption period had expired without any action from Jenkins, the Town issued a deed to the Hogabooms and the Hogabooms attempted to evict Jenkins from the property. Jenkins denied having received notice of the tax sale, and brought a complaint against the Town for violating his constitutional right to due process.

The Town's defense in the case was that it followed the notice process outlined in 32 V.S.A. § 5252. That statute requires that, prior to a tax sale, a town must file notice of the sale in the Clerk's office, advertise the sale in a local newspaper, send a registered letter to the taxpayer, provide notice to any mortgagees and lien holders, and post notice of the sale in a public place. The Town also argued that Jenkins should have known that a tax sale was likely after receiving multiple letters about his delinquent taxes. Lastly, the Town argued that any lack of notice was cured when Jenkins was given an opportunity to redeem his property after the sale.

The Court, however, was not swayed by any of the Town's arguments. Most notably, it found that the Town's compliance with the notice process defined in statute was not sufficient to give Jenkins his right to due process before his property was sold.

The due process clause of the U.S. Constitution requires that states and municipalities provide notice and an opportunity for a hearing before depriving an individual of life, liberty, or property. In the context of a tax sale, due process would seem to require notification to a property owner about the potential sale of his property, followed by an opportunity for that person to prevent all or part of the sale. Until recently, it was assumed that due process was afforded when a town followed the steps articulated in 32 V.S.A. §§ 5252 and 5260 (send and post notice before the sale, and provide an opportunity for redemption after the sale). However, it is clear after the *Hogaboom* case that towns must sometimes take additional steps to provide notice before sale. "[O]nce notice of a tax sale is returned unclaimed, a town must take additional reasonable steps to apprise the taxpayer of the impending

tax sale before the sale occurs." *Hogaboom* at ¶27.¹

So what should a town do when a notice of tax sale is returned as undeliverable? Take at least one of the "additional reasonable steps" articulated in the *Hogaboom* case:

- re-send the notice of tax sale by regular mail;
- post the notice on the taxpayer's front door (when safe to do so);
- address otherwise undeliverable mail to "occupant"; or
- have the sheriff serve the notice.

Remember: an individual taxpayer's right to due process does not require that he or

she actually receive notice of a tax sale. If that were the case, the tax payer could prevent a tax sale by merely refusing to accept registered mail. What it does require is an effort to provide notice that is "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of [an] action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

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¹Notably, the League offered this same advice in a 2006 newsletter article, in the wake of a similar case before the U.S. Supreme Court (*Jones v. Flowers*, 547 U.S. 220 (2006)).

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LOCAL GOVERNMENT DAY

(continued from page 1)

Ways and Means Committee. The legislators gave candid views on issues that their committees have been debating during the session, including education funding, property tax exemptions, current use program, and net metering of renewable energy facilities. Sen. Ashe pledged that the legislature would provide an explanation of education funding that could be distributed to and understood by voters in time for Town Meeting on March 4th. There followed three concurrent policy briefing roundtables: property tax increases, hosted by VLCT Executive Director Steve Jeffrey; lakeshores and the Lake Champlain total maximum daily load (TMDL), hosted by Department of Environmental Commissioner David Mears; and pet breeder licensing, co-hosted by VLCT Senior Staff Attorney Garrett Baxter and Agency of Agriculture DVM Kristen Haas.

Later in the morning, local officials attended a joint Senate and House Transportation Committee hearing in the State House. Road commissioners, town managers, selectboard members, and other municipal officials offered their expertise about a variety of transportation related issues. They

noted difficulties in adopting the 2013 Natural Resources and Transportation agencies' Road and Bridge Standards, discussed the distribution and potential shortage of road salt, and endorsed making the Agency of Transportation district technician positions permanent. (District Techs service and respond not only to VTTrans Operations and Maintenance activities but also to ever-increasing requests for assistance from the more than 30 towns within the boundaries of each Transportation District.)

Local officials also packed the House Ways and Means Committee room to talk about property tax exemptions, state financial assistance to help towns defend property tax appeal cases, and education funding. Meanwhile, across the street, Secretary of State Jim Condos and staff welcomed other local officials to their new offices while answering many and varied questions.

An overflow crowd of nearly 200 attendees filled the Capitol Plaza for lunch to meet with their legislators and colleagues from around the state. Following the traditional maple mousse dessert, they listened attentively to postprandial speakers Governor Peter Shumlin and U.S. Senator Bernie Sanders.

The Governor expressed his support for continuing the district techs positions and again lauded Vermont municipalities for

their work in recovering from Tropical Storm Irene in 2012 and other weather related disasters in 2013. Senator Sanders, a member of the Public Works and Environment Committee, has worked diligently to insure that funds are available to maintain Vermont's transportation infrastructure, a strategy that he emphasized will put people to work in these uncertain times.

Both Senator Sanders and Governor Shumlin reminded attendees that they began their work as public servants in Vermont local government – as Burlington mayor and Putney selectperson, respectively.

In the afternoon, the Senate Government Operations Committee heard from local officials, primarily on a proposal to eliminate delinquent tax penalties. The House Government Operations Committee discussed elections legislation (S.86) and a number of proposals affecting local law enforcement, including the certification of police officers.

It was indeed a full and productive day for local officials under the golden dome, proving to many legislators that municipal officials are deeply involved in local governmental affairs.

*Karen Horn, Director
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Member FDIC



ASK THE LEAGUE

(continued from page 5)

someone as a basis for creating a vacancy. A vacancy in a town office can only be created when a town officer:

- resigns his or her office;
- has been “removed” from the office;
- dies;
- becomes insane; or
- “removes from town.”

Since there is no mention of a vacancy created by a failure to elect, we must look to either 17 V.S.A. § 2646 or § 2682(d), depending on the method by which a town elects its officers.

If a town elects its officers from the floor, 17 V.S.A. § 2646 will control. That statute provides that “(a)t the annual meeting, a town shall choose from among its legally qualified voters the following town officers, who shall serve until the next annual meeting and until successors are chosen, unless otherwise provided by law. ...” When voters don’t elect someone at a traditional town meeting, they have failed to choose a successor. Since the previous office holder serves until a new one is chosen, the incumbent will remain in office “until successors are chosen.” This choice of successor occurs either at a special town meeting called by the selectboard or upon receipt of a valid voter-backed petition, but in any event no later than the next annual town meeting.

It should be noted that the holdover incumbent can always resign his or her office, in which case the law governing vacancies would come into play.

If a town elects its officers by Australian ballot, 17 V.S.A. § 2682(d) will usually control. This law provides that a selectboard may appoint a town voter to fill the office until the next annual meeting so long as two conditions are met: (1) no person filed a petition to become a candidate for the office; and (2) no person was “otherwise” elected to the office.¹ Unlike appointments made to fill a vacancy, where service continues until an election is had (24 V.S.A. § 963), an individual appointed under this law will serve until the next annual meeting, 17 V.S.A. § 2682(d). If someone is elected by Australian ballot but refuses to serve (see 17 V.S.A. § 2654), the provisions of 17 V.S.A. § 2646 described above will control.

*Garrett Baxter, Senior Staff Attorney
VLCT Municipal Assistance Center*

not the case with respect to write-in candidates. In order for a write-in candidate to prevail, that person must not only receive more votes than any other candidate, but he or she must also surpass a threshold that is imposed by statute. “(I)n order to be elected, a write-in candidate must receive 30 votes or the votes of one percent of the registered voters in the municipality, whichever is less.” 17 V.S.A. § 2682(c). Because the write-in candidate in our example received only 29 votes, which is less than 1% of the registered voters in the town, he or she did not meet the requirements to prevail over a ballot candidate. Consequently, the ballot candidate won the election despite his or her poor showing.

*Garrett Baxter, Senior Staff Attorney
VLCT Municipal Assistance Center*

Our town elects its officers by Australian ballot. The lone candidate on the ballot received 27 votes, but a write-in candidate received 29 votes (less than 1% of registered voters of the town). Who won?

Oddly enough, the lone ballot candidate. Although the basic principle of any local election is that the candidate receiving the greatest number of votes wins, such is

¹When voting by Australian ballot, a person may still be elected despite not filing a petition to appear on the ballot as a write-in candidate. To prevail, a write-in candidate must receive both the greatest number of voters and 30 votes or the votes of one percent of the town whichever is less. 17 V.S.A. § 2682(c).



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For information on Health Advocate and VLCT's special à la carte group rate for 2014, contact Kelley Avery, Benefits Program Administrator, at kavery@vlct.org or 800-649-7915, ext. 1965.

TRAINING FOR DESIGNATED EMPLOYER REPRESENTATIVES (DERs)

Every workplace that employs even one commercial motor vehicle (CMV) operator – which includes municipalities with CMV drivers – should assign a staff member to be the designated employer representative (DER). The DER will coordinate the workplace's compliance with the federal Department of Transportation laws concerning drug and alcohol testing of these drivers. For PACIF members, the DER is the municipality's primary liaison with Occupational Drug Testing, Inc. (ODT), the vendor that PACIF now uses to conduct these tests. A municipality's DER can be either an employee or an elected official.

On four mornings in April, PACIF will provide training specifically for DERs, whether they are completely new to the role or need a refresher course (which is especially appropriate with our new vendor). Also, because some drug and alcohol testing is time-sensitive, we recommend that each municipality send a second person to be trained as a DER to cover for the primary DER on alternate shifts and vacations. This important training provides the DER with information about drug and alcohol testing requirements and what to expect from ODT. Issues such as hiring new drivers, driver selection, communications, the collection process, and testing requirements will be addressed.

(continued on page 12)

MENT SERVICES

2014 RMS CALENDAR

Unemployment Insurance Trust Deadline for submitting 2013 Wage Reports. Tuesday, April 1. Please be sure to use the new Excel file that is posted at www.vlct.org/rms/unemployment-insurance-trust/. If you have any questions, hindrances, or hesitations, contact Kelley Avery ASAP at kavery@vlct.org or 1-800-649-7915.

DER Training. Various dates and locations listed below. See related item on page 10.

Tuesday, April 8	9:00-11:00 a.m.	Malletts Bay Fire Station, Colchester
Thursday, April 10	10:00 a.m. to 12:00 noon	Westminster Fire Station, Westminster
Wednesday, April 16	9:00-11:00 a.m.	Lyndon Public Safety Building, Lyndonville
Tuesday, April 22	10:00 a.m. to 12:00 noon	Rutland Free Library, Rutland

Certified Playground Safety Inspector Course and Exam. 7:30 a.m. Tuesday, April 8, through 11:15 a.m. Thursday, April 10, Doubletree Hotel, South Burlington. Sponsored by Vermont Recreation and Parks Association in cooperation with National Recreation and Park Association and Certified Playground Safety Instructors. Find information and registration form on the Safety and Health Promotion page at www.vlct.org/pacif.

Deadline to Apply for PACIF Equipment Grant in Round 1 of 2014. April 30. All PACIF members can apply for 50/50 matching funds toward certain safety-oriented equipment. This year's guidelines and application are available through the Safety and Health Promotion page at www.vlct.org/pacif. Completed Round 1 applications must be received by Jim Carrien at VLCT Risk Management Services by **Wednesday, April 30, 2014**. Round 2 applications will be accepted **until Friday, August 29**.

Vermont Municipal Highway Association's Equipment Show and Field Day. 7:30 a.m. to 3:00 p.m., Wednesday, May 14, Barre Civic Center, Barre. The annual field day for municipal road crews, with exhibits all day, the snow plow rally in the morning, a sit-down lunch, and the backhoe competition and awards in the afternoon. To register, call 802-223-2374 or email debbie@acgvt.org.

12th Annual Vermont Workplace Safety Conference and Governor's Safety Awards. 9:00 a.m. to 3:30 p.m., Friday, May 16, Doubletree Hotel and Conference Center, 1117 Williston Road, Burlington. The 2014 Governor's Safety Awards will be presented at 9:00 a.m. (No-cost registration for only the awards portion of the day is available by emailing pcrawford@vtsbdc.org.) Conference topics include Total Worker Health, Return-To-Work Business Success Stories, How to Write a Functional Job Description, OSHA Updates, and Technology in Safety. Sponsored by the Vermont Safety & Health Council, the Vermont Small Business Development Center, Airgas, and Workability PLC. Full conference fee, including lunch: \$85. For an agenda and to register, visit www.vtsbdc.org/small-business-training-workshops/12th-annual-vermont-workplace-safety-conference-and-governors-awards/.

2014 Vermont Safety & Health Retreat. Wednesday, August 20, Camp Ohana, Post Mills. Sponsored by Safety & Health Council of Northern New England. When available, information will be posted at www.shcnne.org/vt_conference.html. Or call 800-834-6472.

THOUSANDS of people DIE every year due to DISTRACTED driving

TEXTING
Eating

Reading

Talking

DIALING

Shaving

putting on makeup

CHECKING E-MAIL

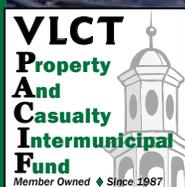
April is Driving Awareness Month

Refresh your awareness
anytime, any pace, any place
– except the driver's seat –

with **Defensive Driving** from
PACIF Online University

at vlct.org/rms/pacif/pacif-online-university/.

Email jcarrien@vlct.org for assistance.



TRUST

Medical, Dental, Vision, Wellness
Life, Disability, COBRA
Long-Term Care, Cafeteria Plan

UI TRUST

Administration, Education
Claims Management
Advocacy, Appeals



PACIF JEOPARDY!

PACIF JEOPARDY! A & Q, PART 5: PROPERTY LOSS CONTROL

Property Loss Control is the topic of this final installment of the PACIF Jeopardy! game that we created for the 2013 Town Fair. In keeping with the real Jeopardy! game, this is an A&Q instead of a Q&A: the board on this page shows the answers, and contestants must supply the questions. When you have read the answers and think you know the questions, turn to page 19 to see if you're correct. There you'll also find an additional explanation of each item. See if you can earn the full 150 points!

(continued on page 19)

Points	Answer (on the Board)
10	Annual testing and inspection of these can greatly reduce losses caused by fire.
20	Placing these items into trash with other shop waste creates a potential fire hazard.
30	This service monitors the status of fire, smoke, heat, sprinkler, and security systems.
40	PACIF members receive free inspections of compressors, boilers, and other pressure vessels from this partner.
50	Recovery from operational disruptions to member facilities can be improved by using this partner's services.

TRAINING FOR DERs

(continued from page 10)

Everyone who is already in or new to the DER role should plan to attend one of these free workshops. Pre-registration is encourage because space is limited at some locations. Training locations, dates and times are:

- **Colchester:** Malletts Bay Fire Station, Tuesday, April 8, 9:00 a.m. to 11:00 a.m.
- **Westminster:** Westminster Fire Station, Thursday, April 10, 10:00 a.m. to 12:00 noon
- **Lyndonville:** Lyndon Public Safety Building, Wednesday, April 16, 9:00 a.m. to 11:00 a.m.
- **Rutland:** Rutland Free Library, Tuesday, April 22, 10:00 a.m. to 12:00 noon

To register or obtain more information, contact Jim Carrien at jcarrien@vlct.org or 802-229-9111.

CALLING ALL UI TRUST ANNUAL WAGE REPORTS!

Kelley Avery is delighted to have received 2013 wage reports from most Unemployment Insurance (UI) Trust members. This is a cheerful reminder to those of you who haven't returned yours yet to get onto the bandwagon ASAP, because the official deadline *was* April 1. The Excel file to start with (because it has special functions that comply with our new in-house software) is posted at www.vlct.org/rms/unemployment-insurance-trust/. If you have any questions, email Kelley at kavery@vlct.org or call 800-649-7915.

APPLY NOW FOR A PACIF EQUIPMENT GRANT

April 30th is the Round 1 deadline to apply for a 2014 PACIF Equipment Grant. The first round is when most of the year's funds are disbursed, so if you are interested in acquiring high-cost equipment that can significantly reduce the risk of injury to people or damage to or loss of property, please visit www.vlct.org/rms/pacif/pacif-equipment-grants/ and learn how these grants work.



LEGAL AND REG.

(continued from page 7)

The decision is archived at <http://info.libraries.vermont.gov/supct/current/op2012-367.html>

Sarah Jarvis, Staff Attorney II
VLCT Municipal Assistance Center

Environmental Court Offers Further Guidance on Deemed Approval

In the recent case *Brisson et al. v. Town of Monkton*, Docket No. 24-2-13 Vtec, the Environmental Court has provided further clarification on the often litigated concept of “deemed approval.” Title 24, Chapter 117, provides that an appropriate municipal panel (AMP) – such as a Development Review Board (DRB) or Zoning Board of Adjustment – that is reviewing a land development application must issue a decision within 45 days after the adjournment of the hearing. When an AMP fails to issue a decision within that time period, the application is “deemed approved” on the 46th day. 24 V.S.A. § 4464(b)(1). Deemed approval, however, is an equitable remedy that must be asserted in the Environmental Court. In this case, the court held that only public hearings, and not deliberative sessions accompanied by nonbinding representations about the status of the evidence, can prevent deemed approval in the absence of a timely decision from an AMP. More simply put, only deliberative sessions that take place after the actual close of a public hearing will trigger the deemed approval remedy.

This case began when applicants appealed the Monkton zoning administrator’s denial of a zoning permit for a gravel extraction operation to the town’s DRB. The public hearing was opened April 24, 2012, and continued six different times until it was finally closed and a decision rendered on January 22, 2013. During this eight-month period, the DRB took more evidence and testimony at its continued hearings; on at least two occasions, it discussed the application in private deliberative sessions. The DRB issued its decision in writing one month after it closed the hearing. The applicants appealed the decision to the Environmental Court claiming they were entitled to deemed approval because the DRB closed the evidentiary portion of the hearing at the conclusion of its fourth continued hearing and failed to issue a decision within 45 days from that date.

The court found that so long as an AMP continues a public hearing to a date certain and actually holds that public hearing pursuant to three explicit factors, the deemed approval clock does not start until the adjournment of that hearing, absent a showing of intentional delay or inaction. In determining whether a “public hearing” has occurred for purposes of deemed approval, the three necessary factors are: (1) the hearing is open to the public, (2) the applicant receives notice of the hearing, and (3) the board offers an opportunity for interested persons to be heard on the issues before it. The court in *Brisson et al.* looked to statute and Vermont Supreme Court precedence in concluding that the “deemed approved” period begins upon the close of the last public hearing and does not wait to commence with the last “deliberative session.” The court further explained that if an AMP continues a public hearing to a date certain with the sole intent of tolling (i.e., delaying) the deemed approval deadline and giving itself more time to make a decision, then deemed approval would be appropriate.

The reasoning in *Brisson et al.* is consistent with Vermont Supreme Court decisions that have consistently stated that applications to AMPs will be deemed approved only when doing so will remedy indecision and protracted deliberations on the part of a zoning board and to eliminate deliberate or negligent inaction by public officials. Further, one of the only court-directed instances in which deemed approval has ever been applied was in *Appeal of McEwing Services, LLC*, a case in which an AMP held multiple deliberative sessions over a period of more than four months after the panel had effectively closed the public hearing on the application pending before it. The Court concluded that the panel’s actions amounted to issuing an “untimely decision that resulted from protracted deliberations,” exactly what the principle of deemed approval is meant to remedy. This case is one of many that concern deemed approval, and it appears the Court will continue to take a conservative approach in applying the deemed approval remedy by refusing to apply the statute in a “wooden fashion.” Rather, courts will most likely reserve it for cases where it clearly implements the statutory purpose of remedying AMP indecision and protracted deliberations. There are many takeaways from this decision, and other deemed approval cases that precede it, that all AMPs should take note of, including:

1. The deemed approval remedy is available to applicants that experience

deliberate or negligent inaction by an AMP. *In re: Appeal of Wesco, Inc. and Simendinger*, (1996).

2. AMPs may withhold decisions and conduct additional hearings without starting the clock if the hearings are open to the public, applicants receive notice, and interested parties are given an opportunity to be heard and are continued to a time and date certain. *In re Fish*, (1988)
3. The deemed approval clock begins with the close of the last public hearing. *In re McEwing Services*, (2004).
4. If a decision is made within the statutory timeframe yet the applicant does not receive notice of the decision within the timeframe, this will not be deemed approved. *Leo’s Motors v. Town of Manchester*, (1992).
5. Deemed approval is inappropriate even though a decision is not reduced to writing. *In re White*, (1990).

(continued on next page)



May is VMHA Expo Time!

Wednesday, May 14
7:30am to 3:00pm
Barre Civic Center

VLCT PACIF will give away one sign package to a PACIF member municipality, and three chainsaw helmets to individuals

Visit the VLCT exhibit to enter!



LEGAL AND REG.

(continued from previous page)

6. An inadequate finding in a decision does not mean a zoning board has failed to act for the purpose of deemed approval. *City of Rutland v. McDonald's Corp.*, (1985).
7. A project may be deemed approved if an insufficient number of board members attend meetings to vote, but deemed approval can be avoided when a board announces a denial within the time allowed and a majority of its members have either voted against approval or abstained from voting due to a conflict of interest. *In re: Appeal of Newton Enterprises*, (1998).
8. An applicant must appeal the AMP's decision to the Environmental Division of Superior Court in order to avail himself or herself of the deemed approval remedy. *In re Ashline*, (2003).

The decision is archived at www.vermontjudiciary.org/GTC/Environmental/ENVCRTOpinions2010-Present/Forms/AllItems.aspx

*H. Gwynn Zakov, Staff Attorney I
VLCT Municipal Center*

Vermont Supreme Court Upholds Town's Tax Assessment of Properties' Development Potential

In a case of statewide import for municipal property tax appraisal purposes, the Vermont Supreme Court late last year reversed a state appraiser's ruling striking down the Town of Monkton's disparate valuation of undeveloped parcels with subdivision permits at a higher rate than those without.

This consolidated appeal to the Court originated with three Monkton taxpayers appealing their 2011 assessment to the Board of Civil Authority (BCA). In Monkton, property may be subdivided, and thereby subsequently conveyed, in one of three ways: by having a road divide the property; by holding multiple contiguous lots in common ownership prior to 1978; and by obtaining a subdivision permit from the Development Review Board (DRB). How property is subdivided in Monkton determines how it is assessed. Property subdivided by a road or prior to 1978 is assessed as having

one house site value with remaining property subject to the Town's land schedule, whereas property subject to a subdivision permit is assessed a house site value for each permitted lot regardless of whether it is developed. This approach allowed the Town to value property at its highest and best use for potential development. The property owners in this case all owned permitted subdivided property. The BCA upheld the listers' approach to appraising their property, which led to an appeal to the state appraiser. The state appraiser sided with the taxpayers and characterized the Town's assessment of these classes of subdivided parcels "arbitrary," resulting in the Town "not treating all properties in Monkton fairly and equitably with other like properties."

On appeal to the Court, the Town argued that in assessing properties with subdivision permits differently from those properties subdivided without such permits it was valuing property at fair market value – its highest and best use. The highest and best use of those properties with subdivision permits it contested was for potential development. The taxpayers countered that the Town's appraisal methodology violated the Proportional Clause of the Vermont Constitution and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution because it treated similarly situated taxpayers – those with subdivided property – differently.

The Court agreed with the Town, holding that "(t)here is sufficient difference between lots with actual permits in place and

lots which are potentially subject to division without a permit to justify the different treatment by the Town." In reaching its decision that the Town's appraisal scheme was constitutionally valid, the Court looked to whether it bore a reasonable relationship to the purpose for which it was created. This requirement is satisfied so long as the Town had a reasonable policy or purpose underlying the classification. The Court found that the Town's purpose was reasonable because, while all parcels (permitted or non-permitted) could be sold as subdivided parcels, those with permits would have greater value than those without because the latter "has not been shown to be physically possible, financially feasible, or likely to result in the highest value. The lots may be unbuildable due to wetland or ledge, or they may be too small or landlocked, preventing residential use. On the other hand, after a taxpayer has gone through the effort of obtaining a permit and recording a subdivision plat, the Town may reasonably conclude that the highest and best use of that land is as a subdivision containing multiple house sites and assess it accordingly."

This case is welcome affirmation from the state's highest court for those towns already utilizing this appraisal approach as well as for those that, after reading this case analysis, are likely to follow suit.

The decision is archived at <http://info-libraries.vermont.gov/supct/current/op2013-026.html>

*Garrett Baxter, Senior Staff Attorney
VLCT Municipal Assistance Center*

LOW-INTEREST LOAN FUNDS AVAILABLE THROUGH THE VERMONT STATE INFRASTRUCTURE BANK (SIB) LOAN FUND



Jointly operated by VEDA and VTrans, the Vermont State Infrastructure Bank (SIB) has low-interest loan funds available for transportation-related projects that enhance economic opportunity and help create jobs. Municipalities, RDCs, and certain private sector companies may qualify for financing to:

- Construct or reconstruct roads, bridges, sidewalks and bike paths;
- Make safety improvements such as highway signing and pavement marking;
- Make operational improvements such as traffic control and signal systems; and
- Construct rail freight and intermodal facilities.

Also, in certain cases, electric vehicle charging stations and natural gas refueling stations for trucks and other vehicles available for public use are eligible for SIB financing.

FOR MORE INFORMATION: www.veda.org ♦ 802-828-5627



RAILROADS

(continued from page 1)

Vermonters know very little about what 21st century freight trains transport across their state. Not knowing their contents – which can be extremely hazardous – can hurt you. Badly.

Train derailments and collisions occur with an unfortunate frequency in the U.S. and Canada, whose rail lines are interconnected. In 2013 alone, rail accidents occurred on April 26, May 17, May 25, May 28 (resulting in fire), June 20 (over a river), July 6 (resulting in fire), Aug. 5, Sep. 16 (bridge collapse over a river), Sep. 19 (resulting in fire), Sep. 30, Oct. 19 (resulting in fire from a cargo of liquefied gas and crude oil), Nov. 8 (resulting in fire from a cargo of crude oil), Nov. 30, Dec. 3, and Dec. 30 (resulting in fire from a cargo of crude oil). The trend continued this year: Jan. 7 (resulting in fire from a cargo of crude oil), Jan. 19, Jan. 20 (transporting crude oil), Jan. 27 (transporting liquefied petroleum gas), Jan. 28 (transporting phosphoric acid), Jan. 30, and Jan. 31 (transporting crude oil, methane, and liquid fertilizer).

The July 6, 2013, accident occurred in Lac-Mégantic, Quebec, when an unattended 74-tank car freight train miles away loaded with crude oil from the Bakken oil fields in North Dakota started to move. Gathering speed, it rolled 7.4 miles into the center of Lac-Mégantic and derailed. Sixty of the 63 derailed cars released approximately 1.6 million gallons of crude oil, which eventually polluted 77 acres of surface area and entered the Chaudière River. Some of that oil ignited and exploded in fire, killing 47 residents and destroying more than 30 buildings in the downtown.

In August 2013, MM&A, the rail company carrying that load of crude oil, filed for bankruptcy in Canada and the U.S. But by December 18, MM&A was again allowed to operate between Sherbrooke and Lac-Mégantic, Quebec, including traveling through the devastated town itself. Rail operations in Lac-Mégantic are subject to numerous restrictions: the transport of dangerous cargo is prohibited; a train's manifest must be released no less than four hours ahead; parking on tracks is banned within two miles of the town center; both a conductor and engineer must be on board the train; and the train's speed must not exceed 10 mph.

The Lac-Mégantic incident was indeed terrible, but, as the list above attests, it wasn't an isolated case. The Dec. 30 accident in Casselton, North Dakota, resulted in the derailment of 13 cars, one of which fell onto an adjacent track. A 106-car freight train carrying crude oil collided with the derailed car, resulting in an horrific fire, the evacuation of the surrounding area, a damage estimate of \$6.1 million, and the release into the environment of more than 476,000 gallons of crude oil.

And many Vermonters may remember October 22, 2007, when a freight train derailed in downtown Middlebury, spilling gasoline into Otter Creek that sparked a fire and forced the evacuation of residents because of fumes. Sixteen cars derailed; some were carrying fuel oil, others gasoline.

Last October, the VLCT Board of Directors signed two resolutions. The first urges action from the U.S. Department of Transportation to protect the public in light of the Lac-Mégantic accident and the ever increasing amount of crude oil and other flammable cargoes that trains now transport. The second establishes the Vermont League of Cities and Towns as a partner of the Cross Border Municipal Coalition for Railway Safety. (The resolutions are posted on our website, www.vlct.org.) VLCT Immediate Past President Hunter Rieseberg travelled to Lac-Mégantic in January to meet with representatives from Quebec, New England, and Illinois to see both the damage and the rebuilding efforts there and to discuss ways to safeguard communities from that kind of disaster.

Indeed. What is being done?

On January 23, the Transportation Safety Board of Canada and the U.S. National Transportation Safety Board (NTSB) issued recommendations to improve the safe transportation of crude oil by rail. Saying that "the greater risk of shipping increasingly more crude oil by rail across North America demands coordinated solutions," they urged:

- tougher standards for all Class 111 tank cars and not just new ones;
- strategic route planning and safer train operations for all trains carrying dangerous goods; and

(continued on page 19)

TRIVIA

Last month only John Weir of Fayston knew that Vermont's first documented forest clearing took place in Bennington in 1761 to make room for the East Bennington sawmill and gristmill. Exceedingly well done! (Pam Stefanek of Middlebury had the Bennington location right, which entitles her to an *Exceedingly*.)

For this month's query, we move forward in time a bit: During the sheep craze of the Nineteenth Century, Vermont was awash in *Ovis aries*: 1.7 million of the woolly critters grazed the countryside. **During the 1840s, in fact, one Vermont county produced more wool per acre than any other in the United States. Which one?** When you know the answer – and I expect some of our *really* senescent readers well remember the craze – email it to dgunn@vlct.org. The answer will appear in the massively multifarious May issue.

Phelps Engineering, Inc.

79 Court Street
P.O. Box 367
Middlebury, VT 05753
(802) 388-7829
info@phelpseng.com
www.phelpseng.com



Town of Waitsfield Water Storage Tank

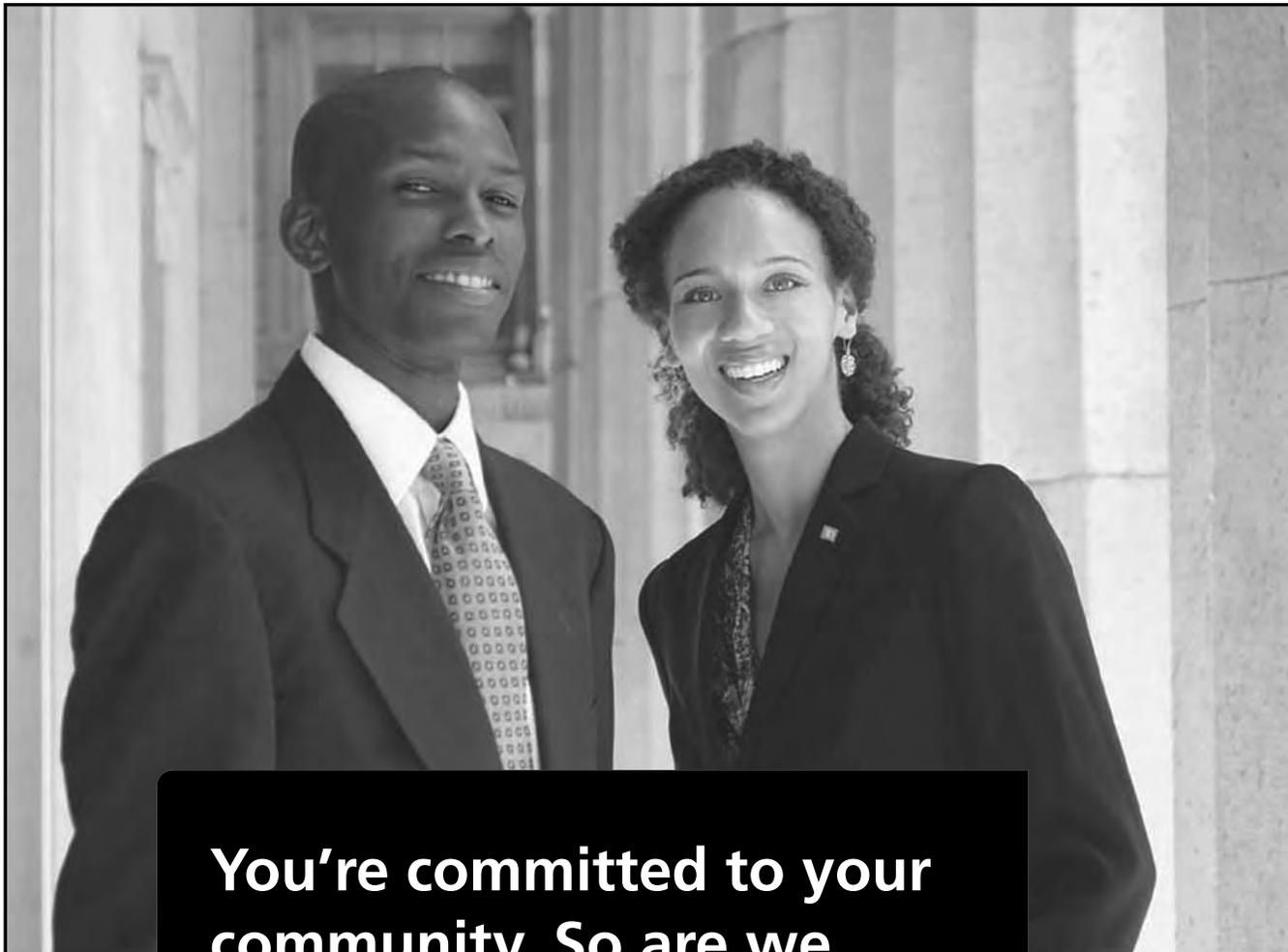


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CLASSIFIEDS

Please visit the VLCT website www.vlct.org/marketplace/classifiedads/ to view more classified ads.

VLCT NEWS Advertising Information

The *VLCT News* is published eleven times per year – the August and September issues are combined – and reaches readers no later than the first week of the month.

Two kinds of advertising are available in the *VLCT News*:

CLASSIFIEDS

(Posted online and also placed in the printed VLCT News)

The *VLCT News* publishes classifieds from municipal entities, public agencies, businesses, and individuals. This service is free for VLCT members (regular, contributing, and associate); the non-member rate is \$41 per ad.

While there is no deadline for posting classifieds online, the print advertisement deadline (below) applies to classifieds that run in the printed VLCT News.

Classifieds are generally limited to 200 words due to limited space in the newsletter, but they may be longer when posted online. The online version can also include hyperlinks to images or other websites.

For more information on placing classifieds, contact classifieds@vlct.org.

DISPLAY ADS

(Placed in the printed VLCT News)

The deadline for submitting display advertisements is the first Friday of the month prior to the issue date.

Download a calendar of print deadlines and find information on print ad requirements, sizes, and prices at www.vlct.org/advertising-information.

For answers to specific questions about print advertising, email vlctnews@vlct.org.

seeking qualified candidates for the position of Assistant Director of Public Works. Applicants should possess prior experience managing a public works department that is comparable to the City's in both size and function. This includes 50+ union and non-union professional, technical and support employees engaged in administration, engineering, landfill, highway (including winter operations), wastewater, water and utility maintenance operations. The Assistant Director coordinates work activities; assigns work crews; manages the day to day maintenance, repair and construction of public ways, facilities, storm water collection systems, cemeteries and other public areas; and prepares and reviews plans, specifications, estimates and contracts. He or she is responsible for managing highly complex, detailed, and regulated public works projects. The City of Lebanon is committed to incorporating the principles of sustainability into the City's work plans and overall mission. Thus, preferred candidates will be familiar with sustainability principles in both theory and practice and will be able to provide demonstrated examples of achievements in this regard. The City welcomes applications from city, town, and county managers, public works directors, and managers and supervisors with demonstrated experience overseeing the daily operations of a complex and diverse public works department. At this time, the City is seeking new applicants for this re-posted position. Prior applicants do not need to reapply. Requirements: Bachelor's of Science degree in Civil Engineering or other related engineering discipline with 7-10 years of experience in public works management, construction, operations and maintenance methods; 7 years of diverse and complex public works supervisory experience; and a valid driver's license. A Bachelor's degree with an equivalent combination of years of professional municipal experience in public works department oversight and management may be considered. Professional Engineer license, particularly in the State of New Hampshire, is beneficial but not

required. Salary, \$1288.20 to \$1801.51 per week, subject to City Council approval. A City of Lebanon Employment Application is required. An application and full job description are available in Human Resources and at <http://www.hr.lebnh.net>. Email completed application to human.resources@lebcity.com, or mail to Human Resources, City of Lebanon, 51 North Park Street, Lebanon, NH 03766. Equal Employment Opportunity Employer. For more information: human.resources@lebcity.com. URL: www.hr.lebnh.net. (2-28)

General Manager. The City of Burlington (pop. 42,000) seeks an experienced and dynamic leader to serve as the General Manager (GM) of the Burlington Electric Department (BED), Burlington's exemplary municipal electric utility with a rich and innovative history. BED is a leader in sustainability, with goals of generating power that is clean and as locally-produced as possible. BED has an operating and capital budget of approximately \$50 million and serves 20,000+ meters. BED manages the McNeil Generating Plant, a 50 MW Biomass Plant. BED will be purchasing the Winooski One Hydroelectric Plant, resulting in BED's portfolio of owned and contracted power being sourced 100 percent from renewable generators. The GM serves as an appointee of the Mayor of Burlington with approval by the 14-member elected City Council. The GM will be a key partner in helping support the Mayor's vision for the future of Burlington – growing good jobs, making the City more affordable, improving City services, creating a vibrant waterfront, making significant capital improvements, and identifying and implementing cost-saving sustainability measures. He or she will be responsible for the overall operation of BED with the assistance of eight direct reports and the policy oversight of a five-member, appointed Electric Commission. The GM will be responsible for planning, scheduling, and implementing a variety of work to effectively and efficiently operate BED within

(continued on next page)

HELP WANTED

Assistant Director of Public Works. The City of Lebanon, New Hampshire, is



CLASSIFIEDS

(continued from previous page)

the parameters of prudent utility practice and applicable federal law, Vermont state law, City Charter provisions, and rules and regulations as adopted by the Electric Commission. Salary range: \$126,139 to \$175,500, commensurate with experience. The total compensation package includes generous health and wellness benefits, paid time off, and a retirement plan. For a complete job description, please visit www.burlingtonvt.gov/HR/jobs. To apply, please submit cover letter, resume, and a City of Burlington application to Human Resources Department, 179 South Winsoski Avenue, Burlington, VT 05401. You can download an application at www.burlingtonvt.gov/HR. The application is available in alternative formats for persons with disabilities. For disability access information or to request an application, contact Human Resources at 802-865-7145 or Vermont Relay 7-1-1 (TTY). (3-06)

Town Manager. The Town of Brattleboro, Vt. (pop. 12,000), seeks an engaging, collaborative, dynamic, and experienced leader to be its Town Manager. As the regional economic hub of southeastern Vermont, Brattleboro has a strong sense of place and enjoys a rich heritage. It is home to a vibrant downtown district, walkable neighborhoods, quality schools, preserved natural areas, varied

recreational opportunities, a strong arts community, and a long tradition of civic engagement. The Town Manager reports to Brattleboro's five-member Selectboard and is responsible for the daily operations of the Town. The Manager directly supervises nine department heads and an assistant manager, administers approximately \$21.8 million in governmental and proprietary funds, and oversees all financial, public works, public safety, personnel, and community relations matters for the Town. Brattleboro employs 135 full-time and 20-50 part-time and seasonal employees. It is nearing completion of \$32 million in renovations to its wastewater treatment facilities, and has begun bonding for and is in the design phase of a \$14 million upgrade to its police and fire facilities. A detailed job description and a link to the Town's governance charter are at www.brattleboro.org. Salary range, \$80,000 to \$95,000, plus an excellent benefits package. A Bachelor's degree in Public Administration, Business Administration, or similar relevant field is required; a Master's degree is preferred. A minimum of five years' experience in executive municipal management and finance or comparable experience is preferred. To apply, please send a confidential cover letter, resume, and three references to Brattleboro Town Manager Search, c/o VLCT, 89 Main Street, Montpelier, VT 05602-2948. You may also email your application to municipal.recruitment@vlct.org with Brattleboro in the subject line. This employment search has been

reopened and **the deadline to apply is Monday, April 21, 2014.** EOE. (03-10)

Police Chief. The Town of Windsor, Vt., seeks a progressive and proactive law enforcement professional with a proven record of leadership, management, and customer service philosophy to serve as its next Police Chief. The Windsor Police Department is responsible for policing a regional police district that includes the towns of Windsor and West Windsor whose combined population is approximately 5,000 residents. Windsor has a town meeting form of government and a five-member Board of Selectmen. The Chief reports to the Town Manager. The Police Department has an authorized strength of nine full-time sworn officers, five part-time sworn officers, and is supported by an administrative assistant. The operating budget for the department is approximately \$1 million. Requirements: The successful candidate will possess excellent interpersonal and communication skills, high integrity, and the ability to promote and maintain organizational excellence and exceptional community service. Ten years of progressive law enforcement experience, with at least five years of command experience and BA/BS degree required, or equivalent combination of education, training, and experience. Advanced degree, FBI National Academy, and CALEA experience preferred. Must possess or be able to obtain Vermont certification within one year of appointment. Salary range: up to \$85K DOQ with a comprehensive benefits package. FLSA exempt position. Additional information is at www.municipalresources.com/career.html. To apply, email resume by **Monday, April 7, 2014**, to recruitment@municipal-resources.com with "Windsor Police Chief" as the subject. Resumes held in confidence throughout the process. EEO. (3-11)

FOR SALE

Snow Plows. The Town of Warren has two 11-foot Everest one-way snow plows for sale. Asking \$1,200 or best offer for each plow. For more information, contact Rae Weston, Road Foreman, at the Warren Town Garage, 802-496-2945. (3-05)

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RAILROADS

(continued from page 15)

- emergency response assistance plans along routes where large volumes of liquid hydrocarbons are being shipped.

As well, the Federal Railroad Administration (FRA) and the Pipeline and Hazardous Materials Administration issued two joint safety advisories to emergency responders and to rail companies that transport Bakken crude oil.

In Maine, the state legislature voted to study the transportation of crude oil through the state, but the governor vetoed the proposal. In Washington, one of Maine's congressmen proposed "The Safe Freight Act," a bill requiring two-person crews on freight trains; the bill has been sent to the House Transportation Committee. The Maine Municipal Association alerted its Congressional delegation to the potential dangers of transporting hazardous cargo via rail. Vermont's Agency of Transportation is studying the NTSB report, though has not yet made any proposal to address any of the issues.

On March 6, the U.S. Senate Committee on Commerce, Science and Transportation held a hearing to discuss ways to enhance rail safety in the wake of the NTSB report noted above to the FRA on transporting hazardous materials via rail. The NTSB Vice Chair testified that for years, three issues have needed to be addressed to improve the safety of the public: (1) tank car design that is insufficient for carrying flammable materials; (2) the obligation to immediately provide accurate information about a derailed tank car's contents to first responders so they can act appropriately; and (3) installing Positive Train Control to ensure train separation, speed enforcement, and rail worker safety, a plan that is required to be operative by December 31, 2015.

"The American Association of Railroads' 2012 *Annual Report of Hazardous Materials Transported by Rail* states that crude oil traffic has increased by 443 percent since 2005 and that this growth is expected to continue for the foreseeable future," said the vice chair in his testimony. "According to the FRA, the volume of crude oil transported by rail has increased dramatically in recent years, from approximately 65,600 carloads in 2011 to approximately 257,450 carloads

in 2012 – an increase of 292 percent. Moreover, not only is more crude oil being transported by rail, but some of the crude oil being moved on the Nation's railroad system – such as that originating in the Bakken formation – may have more volatile properties. Last month, the Pipeline and Hazardous Materials Safety Administration issued a safety alert advising "the general public, emergency responders and shippers and carriers that ... the type of crude oil being transported from the Bakken region may be more flammable than traditional heavy crude oil," with the results of further tests of Bakken crude oil forthcoming."

In the meantime, freight trains continue to rumble through Vermont. If you toss in your bed at night wondering what they're transporting, you have good reason.

Numerous sources contributed to this article:

- National Transportation Safety Board Safety Recommendation to the

Federal Railroad Administration, January 23, 2014, R-14-1 through -3.

- "Explosive Train Derailment Heightens Concerns About Transporting Bakken Crude. Chuck Haga, Reuters, Jan. 3, 2014.
- US and Canada Urge New Safety Rules for Crude Oil Rail Shipments, Jad Mouawad and Ian Austen, Jan. 23, 2014.
- Rail Safety Action Plan, Union des Municipalités du Quebec, December 12, 2013.
- Testimony of Hon. Christopher Hart, Vice Chairman, NTSB, Senate Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security Committee on Commerce, Science and Transportation, U.S. Senate, March 6, 2014.

*Karen Horn, Director
Public Policy and Advocacy*

PACIF JEOPARDY! CONTINUED

(continued from page 12)

Points	Question	More Information
10	What are sprinkler systems ?	Properly functioning sprinkler systems can control or even put out fires. Maintaining them properly, draining "dry system" low spots, and testing them regularly ensures proper operation.
20	What are oily and/or greasy shop rags ?	Oily/greasy shop rags can ignite spontaneously, which is why they should always be stored in a metal container with a tight fitting lid. Other dangerous waste items include paints, thinners, and solvents on rags.
30	What is central station monitoring ?	Central station monitoring is an offsite, 24/7 monitoring of your safety and security systems. If this system notes a trouble condition, it notifies emergency services automatically. Vermont fire code typically requires central station monitoring in new buildings.
40	What is The Travelers Boiler & Machinery Risk Control ?	The Travelers Boiler & Machinery Division performs all pressure vessel related loss control functions, including periodic inspections and new installations as required by the state. PACIF members don't need to pay another company for these services.
50	What is Agility Recovery ?	Agility Recovery is a resource that the PACIF Claims team can mobilize in times of crisis to provide a host of operational elements such as temporary facilities, power generation, and data systems. A PACIF member can learn right away what services are covered and what will involve additional fees.



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UPCOMING EVENTS

Questions? Visit www.vlct.org/eventscalendar to register and for the most updated information and events.

Spring Selectboard Institute

April 12, Holiday Inn, Rutland

Auditors Workshop

April 22, Middlebury Inn, Middlebury

April 24, Lake Morey Resort, Fairlee

Conducting Effective Tax Appeals

May 6, Lake Morey Resort

May 8, Middlebury Inn

Municipal Dog Control

May 29, Capitol Plaza

Spring Planning and Zoning

June 4, Lake Morey Resort

Finance Symposium

June 19, Capitol Plaza

MUNICIPAL MANAGERS TAKE TO THE SLOPES

On a bright, warm Friday in early March, a small group of municipally inclined folks from southern Vermont gathered at the Jackson Gore portion of Okemo Mountain Resort to enjoy packed powder during what they hope will become an annual event. Arranged in front of Mt. Washington are (l-r, or upslope to downslope) Terry Thayne, Lister, Ludlow (and guide for the event); Heidi Joyce, Senior Health Promotion Consultant, VLCT; Karen Horn, Director, Public Policy and Advocacy, VLCT; Phil Swanson, Municipal Manager, Woodstock; Richard Svec, Town Manager, Cavendish; and Frank Heald, Municipal Manager, Ludlow (and host for the event).



Check out all of the upcoming MAC workshops online at www.vlct.org/eventscalendar!