

# VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS

June 2014

## THE NATIONAL FLOOD INSURANCE PROGRAM HOMEOWNERS FLOOD INSURANCE AFFORDABILITY ACT



On March 21, 2014, President Obama signed the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) into law. The HFIAA is the latest modification to the National Flood Insurance Program

*(continued on page 5)*

*(Left) Flooding in Moretown Village following Tropical Storm Irene. Photo courtesy of Amos Horn.*

## FINDING FAULT WHERE IT BELONGS

Fault doesn't always matter, but sometimes, it does.

The workers' compensation system is a no-fault system. An employer's fault doesn't matter. The injured worker doesn't have to prove it was the negligence of the employer that caused the injury.

The employee's fault doesn't matter either, except when it does.

The key instance when fault becomes an issue occurs when an on-the-job injury is caused by an employee's failure to use a safety device provided for his or her use. To promote workplace safety and support, employers try to protect their employees by providing safety equipment, and when reviewing a

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## HOW TO COUNT EMPLOYEES: THE SEQUEL

The federal government has issued its final rules on how employers with 50 or more employees must comply with the "Pay or Play" portion of the Affordable Care Act (ACA). Some of these rules shed light on how employers need to count their employees for the purpose of determining the organization's size and whether the employer is subject to the Pay or Play penalty. During 2014 and 2015, employers might want to be cognizant of how they use seasonal and volunteer workers in case the total of their hours could affect whether the employer exceeds the 50-employee count. (Note, however, that this is separate from the question of to which employees the employer must offer health insurance).

Here is a quick summary of the final rules that are relevant to VLCT members.

- Hours served by *bona fide volunteers* do not need to be counted. *Bona fide volunteers* include firefighters and other first responders who receive deferred compensation benefits, reimbursements, or allowances for reasonable expenses incurred in the performance of services as volunteers, or nominal fees customarily paid in connection with the performance of services.
- Volunteers who receive compensation that is more than nominal, even if it is less than what is paid to full-time firefighters, must be counted as employees.
- A seasonal employee is defined as one in a position for which the "customary" annual employment is six months or less. This "customary"

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## How to Count

*(continued from previous page)*

detail protects the employer if a year happens to have an unusually long stretch of warm or snowy weather.

- Employers are granted a 12-month “look back” period in which to determine whether an employee is full-time or part-time.
- The term full-time equivalent employee (FTE) is defined as “a combination of employees, each of whom individually is not treated as a full-time employee because he or she is not employed on average at least 30 hours of service per week with an employer, but whom, in combination, are counted as the equivalent of a full-time employee solely for purposes of determining whether the employer is an applicable large employer.”

- Any employer who transitions from a small employer to an applicable large employer and provides qualified health care coverage to its employees by April 1 of the same calendar year in which they become a large employer will not be subject to any of the penalties for failing to meet the large employer mandate.
- Two excellent sources on this topic are:
- The final rules as published by the U.S. government: [www.federalregister.gov/articles/2014/02/12/2014-03082/shared-responsibility-for-employers-regarding-health-coverage](http://www.federalregister.gov/articles/2014/02/12/2014-03082/shared-responsibility-for-employers-regarding-health-coverage)
- A convenient compendium of how ACA requires employers to identify full-time employees: [www.vlct.org/rms/faqs/health-insurance-reform/Zy-waveLegBrief\\_ACA\\_CountingEmployees.pdf](http://www.vlct.org/rms/faqs/health-insurance-reform/Zy-waveLegBrief_ACA_CountingEmployees.pdf).

*David Sichel, Deputy Director  
VLCT Risk Management Services*



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# ASK THE LEAGUE

## ABATEMENT OF SCHOOL TAXES

### May a board of abatement abate the state educational portion of taxes?

Yes, but abatement of school taxes does not lessen the town's tax liability to the state.

Abatement is the process by which a town reduces the taxes owed on a parcel of property, without regard to the actual assessed value of the property. Under 24 V.S.A. § 1533, the board of abatement has the authority to reduce town, town-school, district, and statewide property taxes. The board of abatement – which is made up of the board of civil authority, plus the listers and the town treasurer – may abate taxes,

interest, and fees only for one of the statutory reasons set out in 24 V.S.A. § 1535. And although it is true that town school taxes may be abated, abating school taxes does not lessen the town's liability to the state for the education tax.

*"A municipality's liability to the State for education taxes shall not be reduced by any early payment property tax discount or similar discount offered by the municipality." 32 V.S.A. § 5409(8)*

This means that any portion of town

school tax that is abated for a property owner will still need to be paid for by the town.

There are a few instances outlined in statute that will allow the Commissioner of Taxes to abate the statewide education taxes for certain taxpayers who have been granted abatement of municipal taxes under 24 V.S.A. § 1535. These include situations where a municipality fails to issue notices of assessment of the statewide education tax, or where the town fails to enforce the tax 90 days after the installment payment is due.

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

Register for upcoming MAC workshops online at [www.vlct.org/eventscalendar!](http://www.vlct.org/eventscalendar!)

### MAC MUNICIPAL CONSULTANTS

MAC is pleased offer the services of our expert municipal consultants. To learn more or discuss a possible project, contact Abby Friedman at 800-649-7915, extension 1926, or [afriedman@vlct.org](mailto:afriedman@vlct.org).

MAC's consulting team consists of:

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## FLOOD INSURANCE

(continued from page 1)

(NFIP) and amends some of the changes made under the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12), but is in no way a wholesale repeal of the legislation. The changes made under BW-12 were aimed primarily at putting the NFIP on a more solid financial footing by raising artificially low flood insurance premium rates that were subsidized under the NFIP. (See “Change is Coming to the National Flood Insurance Program” in the July 2013 *VLCT News*.) Although a major portion of the HFIAA focuses on flood insurance affordability, the broad intent of Congress remains for the NFIP to cover its own losses and risk.

One provision of BW-12 that gained a lot of attention and played a role in the passage of the HFIAA reform was the impact of an immediate rate increase from a subsidized rate to the full flood risk actuarial rate upon the sale of older buildings in the regulated floodplain built before the Federal Emergency Management Agency (FEMA) issued the municipality’s first Flood Insurance Rate Map (FIRM). These “pre-FIRM” buildings were built before the implementation of the NFIP’s construction site and building standards for properties located in high flood risk areas. Prior to BW-12, these structures could remain as is and be insured at a subsidized rate – a rate that did not reflect the property’s true risk of flooding. A new requirement under BW-12 activated the full actuarial rate upon the sale of these

pre-existing subsidized properties. Likewise, any new policy for a subsidized property or a lapsed policy would be reinstated at the full-risk rate. According to the Association of State Floodplain Managers (ASFPM), the cost of full actuarial rates for subsidized, rated buildings resulted in premium rate increases from 100 percent to more than 1,000 percent over the life of a 30-year mortgage. As expected, these significant rate increases resulted in a flood of opposition from many venues, including unprepared property owners seeking assistance and realtors suddenly unable to execute property transactions in flood hazard areas. In response, Congress passed the HFIAA to implement the rate changes more gradually and avoid major adjustments in insurance costs at the time of sale.

The HFIAA also establishes a new, slower path to full-risk rates after a new Flood Insurance Rate Map has been released showing the property to be located in the mapped flood hazard area. Under the

so-called “grandfathering” provision in the HFIAA, the first year premium for properties newly identified in the flood hazard area would be charged a very favorable flood insurance premium rate equivalent to a property not located in the regulated floodplain, known as a “Preferred Risk Policy.” From this baseline, the flood insurance premium is phased into a full-risk rate by increasing the premium by at least five percent per year, not to exceed a maximum cap of 18 percent per year. For property owners in newly mapped flood hazard areas, this provision in the HFIAA allows the rate to increase more slowly than the rules proposed under the former BW-12, where the new rates would increase by 20 percent per year for five years or until the full-risk actuarial rate was achieved.

In Vermont, FEMA will be releasing new FIRMs in the coming year that depict updated flood hazard areas in the Town of Richmond and in Bennington County.

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### UPCOMING MUNICIPAL ASSISTANCE CENTER WORKSHOPS

#### Wednesday, June 4, Lake Morey Resort, Fairlee SPRING PLANNING AND ZONING FORUM

Land use officials from around the state will discuss important topics in planning and zoning regulation at this workshop. Representatives from the Environmental Division of the Superior Court will discuss decision making with municipal land use officials and present an introduction to the mediation process. Other experts will weigh in on enforcing land use decision and regulations, conducting effective meetings and hearings, and navigating common land use meeting and hearing issues.

#### Thursday, June 19, Capitol Plaza Hotel and Conference Center, Montpelier GOVERNMENTAL ACCOUNTING AND AUDITING SYMPOSIUM

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For registration, agendas, and other information, please visit

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Brief updates on Vermont's changing legal and regulatory environments

# LEGAL AND REGULATORY NOTES



## ANONYMOUS 911 CALL SUFFICIENT BASIS; VERMONT SUPREME COURT AND THE IRASBURG TREASURER CASE

### Uncorroborated, Anonymous 911 Call Proves Sufficient Basis for Traffic Stop

A divided U.S. Supreme Court ruled in January that a traffic stop, made by police officers responding to an anonymous 911 call, did not violate the constitutional right to be free from unreasonable search and seizure, despite the lack of observation of criminal activity by those police officers. *Navarette v. California*, 572 U.S. \_\_\_\_ (2014).

The facts of the case are as follows: California Highway Patrol received information that a 911 caller reported that a silver pick-up truck on Highway 1 had run the caller off the road and was continuing

southbound on that highway. The officers responded to the call, located the truck, and pulled it over. As they approached the truck they detected the smell of marijuana. They searched the truck, discovered 30 pounds of marijuana, and promptly arrested the driver and passenger.

The driver and passenger endeavored to have evidence of the marijuana suppressed from their court case on the basis that the traffic stop violated their rights under the 4<sup>th</sup> Amendment to the U.S. Constitution to be free from unreasonable search and seizure. In theory, the 4<sup>th</sup> Amendment insulates individuals from government/police intrusions. It states “[t]he right of the people to be secure in their persons, houses,

papers, and effects, against unreasonable searches and seizures, shall not be violated. ...” The 11<sup>th</sup> Article of the Vermont Constitution, which was not at issue in this case, contains similar though not identical language.

The U.S. Supreme Court declined the defendants’ challenge and held that the traffic stop was lawful in this circumstance because the officers had reasonable suspicion to believe that the driver was engaged in criminal activity – specifically, that he was driving while intoxicated.

Previous cases have established that a police officer may make a brief investigatory

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## LEGAL AND REG.

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stop when he or she has a “reasonable suspicion” that an individual is engaged in criminal activity. Whether the officer has a “reasonable suspicion” is based on the totality of the circumstances and depends on the content of the information that the officer possesses and the degree of its reliability. Past cases have also established that an anonymous tip is usually not sufficient on its own to establish reasonable suspicion. The present case seems to be a departure from that precedent, as pointed out by the dissenting opinion. This case indicates that a police officer may make a stop based on an anonymous report and without an independent observation by that officer when: (1) there are indications of reliability of the report; and (2) the report creates a reasonable suspicion of ongoing or completed criminal activity.

The “indications of reliability” that the Court articulated were that the caller was an eyewitness to certain conduct (being run off the road); that there was no time lapse between the activity and the report, so the caller had little time to fabricate the report; and that the 911 system has features that safeguard against making false reports without immunity. The Court found that the officers had “reasonable suspicion” of criminal activity because the conduct that was reported may have been a sign of ongoing criminal behavior (drunk driving).

The dissenting decision in this case, written by a clearly frustrated Justice Scalia, states that the majority opinion “serves up a freedom-destroying cocktail.” Scalia states that this decision is an ill-advised departure from the Court’s past cases that held that an anonymous tip must be corroborated and that a single instance of careless or reckless driving does not support a reasonable suspicion of drunk driving. This departure, he maintains, does not allow individuals to be free from unreasonable searches and seizures as the 4<sup>th</sup> Amendment demands.

Although this case is instructive, it is not determinative within the confines of Vermont. In other words, we do not yet know how the Vermont Supreme Court would decide a similar challenge presented to it under Article 11 of Vermont’s Constitution

(which is similar but not identical to the 4<sup>th</sup> Amendment to the U.S. Constitution). It is possible that this kind of case would have a different outcome in the Vermont Supreme Court, as those justices may construe the rights guaranteed under the Vermont Constitution as more protective than those under the U.S. Constitution.

The Court’s decision is archived at [http://www.supremecourt.gov/opinions/13pdf/12-9490\\_3fb4.pdf](http://www.supremecourt.gov/opinions/13pdf/12-9490_3fb4.pdf).

*Sarah Jarvis, Staff Attorney II  
VLCT Municipal Assistance Center*

## Vermont Supreme Court Answers Some Questions, Remands Others in Irasburg Treasurer Case

The legal battle between the Town of Irasburg and its former treasurer, Linda Stone, has been fairly lengthy and complex. A recent Vermont Supreme Court decision in the case resolves some of the issues raised by the lawsuit, but leaves others open to further litigation.

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## ON-SITE WORKSHOPS

### LET THE VLCT MAC STAFF TRAVEL TO YOU!

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

Each workshop costs \$825, though VLCT PACIF members are eligible for a reduced rate of \$415 for many of the topics listed below (except for land use). PACIF members may also be eligible for a PACIF scholarship, which can cover the cost of the training. Please call PACIF Loss Control at 800-649-7915, or visit [www.vlct.org/rms/pacif/pacif-scholarships/](http://www.vlct.org/rms/pacif/pacif-scholarships/) for more information on the program. In addition, MAC can develop custom workshops upon request. To discuss or schedule a workshop, please contact Abigail Friedman or call 800-649-7915.

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# POST-TRAUMA DEBRIEFING FOR FIRST RESPONDER GROUPS

We all rely on first responders to be ready to put themselves in physical danger in order to keep or take other people out of danger. For this they are respected, admired, and – we hope! – thanked. But physical challenges are only part of the experience that first responders accumulate as they perform their duties.

“People have to understand that as hard as this work is, these are humans doing it, and human reactions are normal,” says Frank Silfies, Director of Green Mountain Critical Incident Stress Management

“Physical challenges are only part of the experience that first responders accumulate as they perform their duties.”

## Access to an EAP

An employer assistance program (EAP) can perform an important role in the process of critical incident stress management. PACIF provides its member municipalities with Invest EAP for their employees and all their household members, but not for volunteers. Volunteers might have access to an EAP through their employer or through someone they live with, but organizations that rely heavily on volunteers and want to ensure that their volunteers have access to EAP services can contract directly with an EAP. For contract information, contact Connie Gavin, Account Manager, at [connieg@investeap.org](mailto:connieg@investeap.org) or 802-951-4032.

According to Steve Dickens of Invest EAP, “Stress reactions may not show up for months or years after a traumatic event, and the results of multiple exposures over time can manifest themselves as physical illness, substance abuse, or mental health issues. That’s why being able to meet with a counselor can be really important.” Individuals who realize that they might need emotional support can seek it from a professional counselor, either independently or through an EAP. Employees of PACIF members can learn more about their Invest EAP benefit by visiting [www.investeap.org](http://www.investeap.org) and using the password *vlct*.

(GMCISM). First responders in all categories – police, fire, emergency medical, rescue, and disaster response – get the job done in most cases without showing undue stress, but they can be emotionally affected by traumatic scenes they encounter along the way. This happens to professionals and volunteers, young and old, male and female. To a great extent, teammates can help each other cope with these stresses.

Sometimes a single event is so disturbing or gruesome (a “critical incident”) that it overwhelms the usual coping methods of a group of first responders. When an event causes more than one responder in a team to exhibit signs of considerable distress, impairment, or dysfunction, a group-level crisis intervention, a form of debriefing, is an appropriate way to start addressing all of the team members’ emotional needs.

## Background

In 1974, Jeffrey T. Mitchell, PhD., began developing Critical Incident Stress Debriefing (CISD), an intervention format. In a paper posted at [www.info-trauma.org](http://www.info-trauma.org), Mitchell describes a CISD as “a psycho-educational small group process ... a structured group story-telling process combined with practical information to normalize group member reactions to a critical incident and facilitate their recovery.” Each CISD is run by a mental health professional and a number of trained assistants who serve in the same category as the affected group. Mitchell established the International Critical Incident Stress Foundation (ICISF), which trains mental health professionals in the U.S. and abroad and certifies the most accomplished ones to conduct CISDs.

Frank Silfies, who is based in Windsor County, Vermont, has received ICISF training to lead group CISDs, counsel peers who need support, and teach others in both the group and peer-to-peer techniques. In the early 1990s, as a mental health professional who was also a volunteer firefighter and emergency medical technician (EMT), he

was sent by his employer to a conference about critical incident stress. Silfies found that the conference topics were not just theoretical: he immediately started learning how to deal with aspects of his own fire and EMT experience that he hadn’t realized were bothering him. He was so impressed that he sought more training in critical incident stress management (CISM), and he founded the GMCISMT soon after that. This team is a network of first responders in various fields who make themselves available when the need arises. They operate CISDs free of charge and on short notice for the sake of the emotional well-being of fellow first responders.

Steve Dickens, Director of Vermont’s Invest EAP program, has also used the Mitchell model for years and has worked closely with GMCISMT and Silfies, whose work he greatly admires. Dickens points out that newer debriefing models have been developed, and while “the Mitchell model is particularly well suited to first responders, we at Invest EAP make sure that we provide the response that is best suited to the individuals involved.”

## Logistics

When it becomes apparent that a group of first responders has experienced a critical incident, their leader only needs to call Silfies, who will learn the timing and nature of the incident as well as what category of response (police, fire, medical) was involved. Then he will find two to four debriefing team members in that category and a mental health professional or chaplain who can all meet with the affected group within about 72 hours. The debriefing itself takes one to three hours, which is enough time to share important information within the group. No notes are taken, and everything said during the CISD is confidential. Group members are given contact information in case they decide to seek follow-up support from others

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## POST-TRAUMA DEBRIEFING

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such as peer counselors, EAP, or mental health professionals who specialize in critical incident stress management.

### Effectiveness

Although most people think of Vermont as a quiet, bucolic state where nothing terrible ever happens, they don't realize that Vermont's emergency responders occasionally face horrendous situations. Green Mountain CISM responds to about a dozen incidents a year, all involving first responders; Invest

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#### Essential Concepts in CISD. A

Critical Incident Stress Debriefing (CISD) is small group "psychological first aid." The primary emphasis is to inform and empower a homogeneous group after a threatening or overwhelming traumatic situation. A CISD attempts to enhance resistance to stress reactions, build resiliency or the ability to "bounce back" from a traumatic experience, and facilitate both a recovery from traumatic stress and a return to normal, healthy functions.

The CISD is not a stand-alone process and it is only employed within a package of crisis intervention procedures under the Critical Incident Stress Management umbrella. A CISD should be linked and blended with numerous crisis support services including, but not limited to, pre-incident education, individual crisis intervention, family support services, follow-up services, referrals for professional care, if necessary, and post incident education programs. The best effects of a CISD, which are enhanced group cohesion and unit performance, are always achieved when the CISD is part of a broader crisis support system.

Excerpt from *Critical Incident Stress Debriefing (CISD)*  
by Jeffrey T. Mitchell, PhD.  
[www.info-trauma.org/flash/media/mitchellCriticalIncidentStress-Debriefing.pdf](http://www.info-trauma.org/flash/media/mitchellCriticalIncidentStress-Debriefing.pdf)

## FLOOD INSURANCE

(continued from page 5)

Richmond's new flood hazard maps are scheduled to become effective this August; those of Bennington County are anticipated to be effective in the spring of 2015. The new preliminary maps are posted on the Vermont Natural Resource Atlas (<http://tinyurl.com/vt-floodmap>). To determine the status of any particular building, check the Preliminary Maps on the Atlas against the current effective maps at [www.msc.fema.gov](http://www.msc.fema.gov). The Vermont Agency of Natural Resources is encouraging owners of buildings newly identified to be at high flood risk to get flood insurance. This insurance is available now at the lowest Preferred Risk Policy rates. After the maps become effective, insurance will be required for any structure that is financed through a federally-backed mortgage or loan.

Although the new bill eliminates some automatic triggers that would instantaneously increase subsidized policies to full-risk actuarial rates, flood insurance premiums for subsidized properties will still go up every year under the HFIAA. The flood insurance rate for a primary, owner-occupied residence will go up by five to 18 percent per year until it reaches the full-risk rate. For previously subsidized vacation, rental, and business properties, the premiums will continue to go up by 25 percent a year until reaching the full-risk rate, the same increase mandated under BW-12. The HFIAA also imposes an annual surcharge of \$25 per year for primary residences and \$250 for other property types. The surcharge applies to all properties insured under the NFIP.

According to the Association of State Floodplain Managers (ASFPM), the HFIAA puts properties on a "longer glide path to true risk ratings" than BW-12 did. Organizations such as the ASFPM and other floodplain, environmental, and emergency management professionals – who were

critical of some aspects of the HFIAA – have voiced disappointment that Congress passed up an opportunity to more broadly address flood insurance through hazard mitigation and other mechanisms focused on climate change adaptation. BW-12 definitely sent strong signals to owners about a property's true risk of flooding by using the threat of dramatically increasing flood insurance premiums. That, in turn, led to a justifiable interest from homeowners and communities to learn about their specific risks and to take steps to protect their properties from flooding. Whether the "longer glide path to true risk ratings" provided by the HFIAA lessens that momentum remains to be seen.

Funding is available through FEMA Hazard Mitigation Grants to help buy out or elevate flood-prone buildings for communities that have an approved Local Hazard Mitigation Plan. Contact your Regional Planning Commission for more information.

For more information on the Homeowners Flood Insurance Affordability Act, contact:

- Rob Evans, CFM, State Floodplain Manager and NFIP Coordinator, Vermont Agency of Natural Resources ([rob.evans@state.vt.us](mailto:rob.evans@state.vt.us), 802-490-6152);
- Ned Swanberg, CFM, Flood Hazard Map Coordinator, Vermont Agency of Natural Resources ([ned.swanberg@state.vt.us](mailto:ned.swanberg@state.vt.us), 802-490-6160);
- Rebecca Pfeiffer, CFM, Floodplain Manager, Vermont Agency of Natural Resources ([rebecca.pfeiffer@state.vt.us](mailto:rebecca.pfeiffer@state.vt.us), 802-490-6157); and
- Milly Archer CFM, Water Resources Coordinator, VLCT Municipal Assistance Center ([marcher@vlct.org](mailto:marcher@vlct.org), 802-229-9111, 800-649-7915).

Milly Archer, CFM  
Water Resources Coordinator  
VLCT Municipal Assistance Center

## SAVE THE DATE FOR TOWN FAIR!



Vermont League of Cities & Towns  
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## FINDING FAULT

(continued from page 1)

denied claim the Commissioner of the Vermont Department of Labor will consider the fault of an employee who doesn't use that equipment.

Safety Inc. is a hypothetical workplace where young Sam is a mechanic. As part of his duties Sam is responsible for cleaning down the production floor once a week. Sam uses a pressure washer and a cleaning solution to get the chore done, and he does it well. His coworker is named Sally. Sally works on odd jobs around the plant and

she enjoys it. She is the one person who understands the HVAC system, and everyone looks to her when there is a problem with ventilation.

At Safety Inc. a handbook that was given to all employees outlines when and where safety equipment is required to be used, states that failure to use the safety equipment will result in disciplinary action, and states that if the equipment is not in working condition or is unavailable then a supervisor should be notified immediately. Both Sally and Sam received the manual.

Safety Inc. posted signage in conspicuous places reminding people which protection was needed when. The company

supervisors were adamant about enforcement of the rules and disciplined workers who did not use the equipment when they were supposed to.

Cleaning day arrived, as it does every week. Sam set up the machine to pressure wash the floor. He put on his gloves but not his protective eyewear. He didn't like wearing the glasses because he didn't like how it felt. Sam knew he was supposed to use the protection, and in fact he had been written up twice by his supervisor. However, on this day the supervisor wasn't around and Sam would get the work done with no one the wiser.

(continued on page 15)

## 2014 RMS CALENDAR

**Close of Delta Dental's Open Enrollment Period for members on a Fiscal Year contract. Friday, May 30. Send subscriber-level changes to Northeast Delta Dental Eligibility. For group-level changes, contact Kelley Avery at [kavery@vlct.org](mailto:kavery@vlct.org) or 800-649-7915, ext. 1965.**

**Deadline for Filing New Paperwork for Life and Disability Plans** with the Health Trust. Monday, June 2, 2014. See related item on page 19. For details, email Larry Smith at [lsmith@vlct.org](mailto:lsmith@vlct.org) or Kelley Avery at [kavery@vlct.org](mailto:kavery@vlct.org), or call Larry or Kelley at 800-649-7915.

**3rd Annual Water Quality Conference. Wednesday, June 4, 2014, Main Street Landing, Burlington. Presented by the Vermont Environmental Consortium (VEC).** The main topic will be the US EPA's Total Maximum Daily Load (TMDL) for phosphorus in Lake Champlain. Please join VEC, the Vermont Department of Environmental Conservation, the Vermont Agency of Transportation, the Vermont Agency of Agriculture, Vermont Rural Water Association, municipal leaders, environmental advocates, technical experts, and others to debate the issues and discuss policy changes, funding, and program development. Attendee information will be posted at <http://vectogether.org/vec-events/spring-conference>.

**NSC Defensive Driving Course. 8:00 a.m. to 12:00 noon, Wednesday, June 11, AGC/VT Training Center, Montpelier.** Presented by the Associated General Contractors of Vermont (AGC/VT). \$99 for AGC/VT members. Attendees who complete this course will receive handbooks and certificates of completion from NSC and AGC/VT. For more information, visit [www.agcvt.org](http://www.agcvt.org), call 802-223-2374, or email [info@agcvt.org](mailto:info@agcvt.org). This course will also be held at the same location on Wednesday, July 16.

**Mine Safety and Health Administration (MSHA) 8-hour Refresher. 8:00 a.m. to 4:00 p.m. Thursday, June 12, St. Johnsbury.** Topics include review of accidents, accident prevention, fall protection, transportation and ground controls, and more as applicable and as time allows. Presented by the Associated General Contractors of Vermont (AGC/VT). Cost is \$99.00 for AGC/VT members. Go to [www.agcvt.org](http://www.agcvt.org) for more information or to register.

**2014 Vermont Summer Safety Retreat.** Wednesday, August 20, Camp Ohana, Post Mills. Sponsored by Safety and Health Council of Northern New England. When available, information will be posted at <http://www.shcnne.org/conferences.html>, or call 800-834-6472.

# MENT SERVICES

## PACIF: THESE BUILDING VALUATION AGENTS ARE LEGIT

We are well into the second year of the three-year process of determining the insurance replacement value of all buildings covered by PACIF (i.e., listed on a member's Property Schedule as \$50,000 or more). UIS Group is organizing these building valuations and uses sub-contractors to conduct them. The process is scheduled to continue through December of 2015.

Because some members have been concerned about whether a particular person truly represents UIS Group – and, therefore, PACIF – we offer the following list of legitimate field consultants with whom UIS is currently contracting: Jeff Belrose, Diane Bennink, William Crowther, Walter Fordham, Robert Gilman, Russell Goyette, Warren Harris, Scott Larro, James Marrier, Aaron Mathis, Richie Mears, Geoffrey Nelson, Raymond Royce, Sean Sullivan, Robert Trumper, and Robin Voitle. Each of these people should be able to present proper identification. If you have any further questions, please call a member of PACIF's Underwriting team at 800-649-7915.

## EQUIFAX: WHAT AND WHY

If your municipality is in the Unemployment Insurance (UI) Trust, your office might receive requests (by fax, phone, email, or mail) from a company called **Equifax Workforce Solutions** for information relating to a former employee. Equifax is the UI Trust's third party administrator for processing unemployment claims, and these are legitimate requests that are important to fulfill within the designated time. Why? When a former employee files for unemployment compensation, the Vermont Department of Labor (DOL) requests separation information from Equifax, which in turn must gather this information from you and send it to the DOL. The DOL specifies how quickly it needs the information, and sometimes it's on *very* short notice.

Kelly Storm is the UI Trust's new Unemployment Insurance Consultant at Equifax. She saves you the considerable time and effort of interacting with the DOL, but she does need you to **fulfill her requests quickly and accurately**, because not doing so gives the state cause to impose **financial penalties**, often of **\$100 per occurrence**. Also, if there is reason to protest the claim, Kelly needs time to make your case. UI Trust members benefit individually and at the group level by sending accurate information to Jennifer as quickly as possible.

If you have any questions about this or VLCT UI Trust membership in general, please call VLCT's own Kelley Avery at 800-649-7915, ext. 1965.



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PACIF member employees can log on to PACIF Online University to take a variety of free courses at any time, on any computer, at any pace. Employers can set up required courses and retain records of completion.

For info, see the PACIF Online University page at vlct.org (Quick Search on PACIF Online University to find it), or call Jim Carrien at 802-649-7915, ext. 1946.

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## LEGAL AND REG.

(continued from page 7)

Rather than getting mired down in the various motions and dispositions in the case, this article will focus instead on the issues that the Court did and did not decide in *Stone v. Town of Irasburg*, 2014 VT 43.

First, a little background to provide context. The plaintiff, Linda Stone, was elected treasurer of the Town of Irasburg at its 2010 annual meeting. As the Court tells it, “(t)ension between the selectboard and plaintiff developed almost immediately,” as evidenced by the selectboard’s proposal for regular audits of the treasurer’s work. The town auditors reported to the selectboard that they had difficulties performing the auditing task because of various errors in the treasurer’s reports. On advice of counsel, the selectboard passed a motion to increase the treasurer’s bond limit from the customary \$500,000 to \$1,000,000 if the treasurer could not settle the accounts to the auditors’ satisfaction. The treasurer, admitting that she made some mistakes, sought additional training to carry out her official duties. She also sought to obtain the additional bonding despite feeling that she had been “set up” by the auditors and by the town clerk, who had been her

opponent in the recent election.

Tensions between the selectboard and the treasurer increased when Stone alleged that a selectboard member had opened the town safe in Stone’s absence. The selectboard responded with a heated letter questioning Stone’s character and her ability to perform the job of treasurer and accusing Stone of making false accusations and fabricating evidence. The situation culminated with a notice that if Stone failed to obtain the increased bonding within ten days, the selectboard would consider her office vacant. A copy of this letter was sent to the insurance division of the Vermont League of Cities and Towns, which was the provider of the \$500,000 bond that was in effect at the time.

The treasurer continued to seek out bond coverage from insurance companies who requested that she have her employer provide a particular form to support the bonding request. The selectboard refused to provide the form on the basis that it wasn’t Stone’s employer and that it lacked control over her office.

A letter from the town’s legal counsel informed the insurers that Stone posed an “underwriting risk.” Unable to obtain the requisite bond, the treasurer brought suit against the town raising multiple claims which the Vermont Supreme Court addressed as follows:

**Stigma-plus claim.** This is a procedural due process claim brought by a party alleging that the government has made stigmatizing statements that resulted in reputational damage. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides in part: “nor shall any state deprive any person of life, liberty, or property, without due process of law ...” According to the Court, in order to prevail on a stigma-plus claim, a plaintiff must demonstrate “damage to public standing through governmental action without a hearing or opportunity to contest the action” and “an accompanying tangible loss such as discharge from government employment.” The trial court in this case found sufficient evidence to conclude that the selectboard communicated false statements about Stone in letters and phone calls to insurance carriers, thereby satisfying the “stigma” part of the stigma-plus test. But the trial court also found that the selectboard had given Stone “an adequate opportunity to be heard,” which meant that Stone failed to meet the second part of this legal claim. In reviewing the trial court’s decision on this second part of the test, the Supreme Court found that the trial court acted too hastily because there was still some question of whether the selectboard had adequately protected Stone’s due process rights. The Court held that Stone had to be given more than just a chance to speak; she had to be given an opportunity to clear her name at a post-deprivation hearing “before a body which is sufficiently neutral that a person has some realistic chance of success.” Accordingly, the Court remanded this claim back to the trial court for further proceedings.

**Property interest in elected office.**

Stone claimed that the town deprived her of a property interest in her elected position when the selectboard thwarted her attempts to obtain the increased bond. The Court agreed that the trial court was correct to reject this claim and reiterated its holding from a previous case that elected public officials do not have property interest in their office that is protected by the Fourteenth Amendment outside of the stigma-plus context discussed above.

**Defamation.** In order to prevail on a claim of defamation (slander and/or libel), a party has to prove the following elements as recounted by the Court in this case: (1)

(continued on next page)

**NEED A WRITTEN LEGAL OPINION?**

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- Highway Ordinances



## LEGAL AND REG.

(continued from previous page)

a false and defamatory statement concerning another; (2) some negligence, or greater fault, in publishing the statement; (3) publication to at least one other person; (4) lack of privilege in the publication; (5) special damages, unless actionable per se; and (6) some actual harm so as to warrant compensatory damages. The Court found that the trial court should have addressed and resolved this claim, rather than rejecting it based on a procedural error.

**Violation of the Vermont Constitution.** According to Chapter I, Article 8, of the Vermont Constitution, “all voters ... have a right to ... be elected into office, agreeably to the regulations made in this constitution.” Stone pointed to these words as the basis for her argument that the selectboard’s actions undermined the rights of the town voters. The trial court disagreed, ruling that this provision of the Vermont Constitution “does not create a right to retain the office in derogation of a lawful direction to obtain an increased bond.” Because Stone failed to make any argument to support the claim that the trial court erred in its judgment, the Court ruled that she waived consideration of it on appeal. It is important to note that the question of the legality of vacating an officer’s office for failure to procure an increased bond amount on demand therefore has yet to be answered by the Court.

**Tortious interference with office:** Stone also claimed that the selectboard interfered with the performance of her duties as town treasurer when it declared the position of treasurer vacant due to her failure to obtain an increased bond for her office. The Court granted judgment to the town on this claim because “there is no such enumerated tort [tortious interference with performance of office] in our case law, or in the law of other jurisdictions.” The tort most closely analogous is tortious interference with an employment relationship which requires “intentionally and improperly interfere[ing] with the performance of a contract ... between another and a third person by inducing or otherwise causing the third person not to perform the contract.” This claim requires the interference from some third party between the employment relationship of the selectboard and clerk. Since no third

party was involved in the Irasburg situation, the Court ruled that the plaintiff failed to state a claim and therefore ruled in favor of the town.

### Legal fees under 24 V.S.A. § 901.

Stone claimed that the town should be responsible for her legal fees because she was acting in furtherance of her duties as town treasurer when she brought suit against the town for unlawfully removing her from office. State law with respect to legal fees requires towns to “assume all reasonable legal fees incurred by an officer when the officer was acting in the performance of his duties and did not act with any malicious intent.” The Court disagreed with Stone’s interpretation of the law and held that the intent of the law is not to provide legal fees

to municipal employees who have disputes with towns over their employment, but rather to reimburse for the cost of defending an officer who is sued in the course of his or her work. “(T)he Legislature intended § 901 to cover those actions in which the interest of the officer is coextensive with the interest of the town such that substitution of the town’s name with the officer’s name does not alter the nature of the action.” In short, a town is not required to cover the legal fees of an officer in a legal dispute with the town.

The *Stone* decision is posted online at <http://info.libraries.vermont.gov/supct/current/op2013-125.html>.

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

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## POST-TRAUMA DEBRIEFING

(continued from page 9)

EAP responds to 30-40 incidents a year, some for first responders and many for people in other lines of work. Green Mountain CISM has conducted debriefings for events involving line of duty deaths, the serious injury or death of a child (always a tough call for emergency responders), and

“This team is a network of first responders in various fields who make themselves available free of charge and on short notice for the emotional well-being of fellow first responders.”

multiple deaths in a single incident. Some municipalities, such as Ascutney and Barre, have experienced several traumatic events in a single year.

“We’ve learned over the years that once we hold a debriefing, we generally get a call the next time the same department has another critical incident,” says Silfies. “That tells me the process works – that we’re doing our job to make sure Vermont’s emergency responders stay healthy and available for us.”

“We’re sort of like mutual aid,” he adds. “It’s better to call us and not need us than to need us and not call us.” He points out that not offering stress management can come back to haunt an organization: “To my knowledge, there have been a couple of lawsuits when a debriefing has not been done, but no lawsuits when one *has* been done.”

Dickens underscores the potential benefits to employers in another way. “The debriefing and recovery process supports both the mental health of the individuals and the long-term effectiveness of the organization. Research shows that people who take care of their psychological health not only have better outcomes in their personal lives, but also perform more effectively on the job. That’s why it’s so important for organizations take debriefings seriously.”

To learn more about critical incident stress management, contact either Frank Silfies at 802-674-5717 or Steve Dickens at 802-863-7509.

## ECOSYSTEM RESTORATION PROGRAM GRANTS

The Vermont Department of Environmental Conservation (VTDEC) announces the state FY15 Request for Proposals for grants under the Ecosystem Restoration Program (ERP). These grants are supported by capital construction funds contained in the FY15 state budget. The ERP’s goal in awarding these grants is to restore and protect rivers, streams, lakes, ponds, and wetlands from unregulated nonpoint source runoff and erosion containing nutrient (phosphorus and nitrogen) and sediment pollution.

Vermont municipalities, regional organizations, non-profit associations, citizen groups, and state agencies are eligible to receive ERP grants. Individuals, for-profit entities, and federal agencies are not eligible to receive funds directly, but may partner with an eligible project sponsor. ERP favors projects identified in VTDEC Tactical Basin Plans and associated river corridor plans or stormwater master plans. A map of Vermont river basins with links to contact information for the Watershed Coordinators in each basin is at [www.vtwaterquality.org/planning/html/pl\\_basins.htm](http://www.vtwaterquality.org/planning/html/pl_basins.htm).

**Materials are due by Wednesday, June 4, 2014.** More information is on the Watershed Management Division’s website, <http://watershedmanagement.vt.gov/grants.htm>.

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## FINDING FAULT

(continued from page 10)

Sally also had her hands full that day, as a vent piece was loose making an awful racket. She pulled her safety vest on and climbed the ladder. The vest was required when she was working on the catwalk. When she reached the top she hooked it to the safety line, or so she thought. She started to fix the pipe when she took a misstep. As she started to fall she saw the safety rope dangling loose in the air and she realized she hadn't completely hooked the safety rope on to her vest. She fell to the ground and was injured.

Sam, hearing the crash behind him, quickly spun around. The pressure washer in his hand shot the cleaning spray at a wall and it splashed into his eye causing him to get hurt.

Sometimes fault does matter.

For the employer to prevail by using the defense that the injury was caused by an employee's failure to use a safety appliance provided for his or her use, the Vermont Department of Labor will require:

- The employee must have been given

actual notice of the requirement and an explanation of the danger involved in its violation.

- There must be enforcement of the requirement to use the equipment.
- The equipment must be available and in working order so that use of the equipment would have prevented the injury.
- The employee must have had no valid excuse for the violation.

Here, notice was given in the handbook and through signage. Supervisor enforcement was clear, the equipment was available and in working order, and use of the equipment would have prevented the injury. The Department will focus on whether Sam or Sally had a valid excuse for the violation. While Sam may not be eligible for benefits, the Department has held in a similar case that Sally would be entitled to workers' compensation.

Employers who provide safety equipment for their workers to use should consider giving actual written notice of the requirement, posting signage, enforcing non-use with disciplinary action, and documenting

availability and working condition of the equipment. Those that take those steps will be in a better position if someone is injured while failing to use the equipment.

*John W. Valente  
Ryan Smith & Carbine, Ltd.*

*[John W. Valente, Esq., is a Rutland attorney with Ryan Smith & Carbine, Ltd., who has a monthly column in The Barre-Montpelier Times Argus. This article, reprinted by permission, is for general information only and is not intended as legal advice. Readers should not act upon this information without seeking professional counsel tailored to their specific facts and circumstances.]*

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## 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](mailto: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](http://www.vlct.org/advertising-information).

For answers to specific questions about print advertising, email [vlctnews@vlct.org](mailto:vlctnews@vlct.org).

Visit the VLCT website [www.vlct.org/marketplace/classifiedads/](http://www.vlct.org/marketplace/classifiedads/) to view more classified ads. You may also submit your ad via an email link on this page of the site.

## HELP WANTED

**Executive Director.** The Rutland Regional Planning Commission (RRPC) seeks an Executive Director. The Rutland Regional Planning Commission (RRPC) serves 27 municipalities and 61,000 Vermonters with expertise spanning land use planning and zoning, transportation planning, emergency management, energy projects, economic development, housing, and brownfield redevelopment. The RRPC is known for its extensive GIS and mapping program. The Executive Director oversees a staff of six and is responsible for overall leadership of the Commission in coordination with the Board of Commissioners. The Commission is located in walkable downtown Rutland, Vermont, which serves as the economic center of this picturesque rural region home to three major ski areas, four colleges, a vibrant local food scene, and countless recreational and cultural opportunities. Salary negotiable with an expected hiring range of \$70,000 to \$85,000 per year, plus health, dental, and retirement benefits. Visit [www.rutland-rpc.org](http://www.rutland-rpc.org) for a complete job description and application instructions. **The deadline to apply is Monday, June 16, 2014.** No telephone calls, please. RRPC is an Equal Opportunity Employer. (05-06)

## FOR SALE

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## TRIVIA

It's *mea culpa* time. Last month I asked for readers to name the one town in Vermont whose spelling was unique in all the world. Thanks to alert trivialists John Weir, Heidi Racht, Sandi Murphy, Annette Lorraine, John Hall, Steve Gladczuk, and Herb Durfee (III) of Moretown, Huntington, Enosburgh, Peacham, Saint Johnsbury, the Central Vermont Regional Planning Commission, and Fair Haven, respectively, I learned that *more than* one Vermont municipality met that criterion. There are, in fact, twelve (at least!): Moretown, Fayston, Jamaica, Pawlet, Peacham, Saint Johnsbury, Starksboro, Winhall, Brattleboro, Enosburgh, Ferrisburg, plus my original answer of Tinmouth. Ergo, to my congratulations to those knowledgeable truth-hunters I offer a hundred apologies for my deficient research. No, make that a hundred and eleven!

Anyway. There are many big mountains in Vermont, but **there is only one "Big Mountain"** in the Pocumtuck Indian language. **Where is it, and what is its more common translated name?**

If you know the answer, email it to [dgunn@vlct.org](mailto:dgunn@vlct.org). The answer, assuming there is only one correct one, will appear in the generally jazzed July issue.

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The National League of Cities is THE voice for municipalities of all sizes in Washington, DC, as well as THE resource for local leaders and city staff to find solutions to the most pressing challenges in their communities.

### Did you know...?

NLC shares a close relationship with the 49 state municipal leagues. It was originally formed by a core group of state leagues to ensure representation in Washington for local governments. NLC still counts all of the 49 state leagues as voting members, and cities are required to belong to their state league prior to joining NLC.

Cities who are members of the National League of Cities enjoy distinct benefits from those afforded by membership in the state municipal leagues, including:

- Representation and advocacy on the federal level,
- A vast pool of geographically diverse members to connect with,
- Its own unique set of solutions and programs designed to save your city and residents time and money, and
- Abundant NLC resources, publications, and technical assistance to help your city navigate the most difficult local government challenges.

See for yourself what it's all about! Have your city join today and begin the NLC experience! Contact [memberservices@nlc.org](mailto:memberservices@nlc.org) or (877) 827-2385, or visit [www.nlc.org](http://www.nlc.org) for more information.



# HUGE NEWS IN GROUP LIFE AND DISABILITY!

The VLCT Health Trust Board is pleased to announce **enhanced benefits and significantly lower rates** for the sponsored group Life and Disability Insurance plans it offers to VLCT members.

After a thorough request for proposal (RFP) process and careful comparison and consideration of several competing carriers, the Board voted at their May meeting to change the Trust's provider for these coverages to Lincoln Financial Group, effective July 1, 2014. Lincoln Financial is a proven industry leader with more than 100 years of experience in life and disability insurance. It is rated A+ Superior by A.M. Best and AA- Very Strong by Standard & Poor's.

More importantly, participating groups will benefit in four major ways:

- Members will **save 20 percent** in premiums, and these rates are **guaranteed for three years**.

- Subscribers will have more generous benefits overall.
- Benefit managers will have access to extensive online resources.
- Voluntary employee benefits options will be available in the near future.

The Health Trust has offered life and/or disability – both short-term (STD) and long-term (LTD) – insurance for nearly two decades. Of the eleven carriers that responded to this year's RFP, Lincoln Financial stood out for various reasons, including its innovative claim processing, which uses real-time online systems. This means that employers can easily go online to access forms, view certificates, pay bills, and track the status of claims. Moreover, claims can be submitted either through this online portal or by phone, fax, email, or regular mail.

The July 1 renewal is right around the corner! To ensure a smooth transition, we

need to have **completely new paperwork from every group, current and new, by June 1, 2014**.

VLCT staff members are already working with groups that currently buy life and/or disability insurance from the Health Trust to answer their particular questions and acquire the information needed to process the new paperwork.

We encourage all VLCT members that are interested in adding this excellent coverage to contact Larry Smith or Kelley Avery to request a quotation.

We look forward to the Health Trust's new partnership with Lincoln Financial Group, and we thank you all for your continued participation in our programs! Please give Larry Smith or Kelley Avery a call at 800-649-7915 if you have any questions.



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## Make oral health a priority.

Dental insurance programs prompt health conscious lifestyle behaviors and, by design, emphasize diagnostic and preventive services. Seeking care early is encouraged, which often helps minor problems from escalating.

Through your membership in the Vermont League of Cities and Towns, you have access to Northeast Delta Dental's dental plans designed with you and your employees in mind.

For more information, contact the VLCT Member Relations staff, or Kelley Avery at 1-800-649-7915, or Northeast Delta Dental at 1-800-329-2011.

[www.nedelta.com](http://www.nedelta.com)

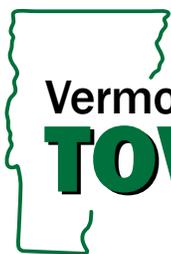


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## UPCOMING EVENTS

Questions? Visit [www.vlct.org/eventscalendar](http://www.vlct.org/eventscalendar) to register and for the most updated information and events.



### Vermont League of Cities & Towns **TOWNFAIR2014**

**SAVE THE DATE FOR TOWN FAIR!**

**Thursday, October 9, 2014**



Town Fair 2014 will be held on October 9 at the Champlain Valley Expo Centre in Essex, Vermont. General Exhibitor registration began Monday, May 12. Attendee registration information will be mailed to VLCT members and posted on our website in July.

**We look forward to seeing you!**

Check out all of the upcoming  
MAC workshops online at  
[www.vlct.org/eventscalendar](http://www.vlct.org/eventscalendar)!

**Spring Planning and Zoning**  
June 4, Lake Morey Resort

**Finance Symposium**  
June 19, Capitol Plaza