Vermont Department of Health

Draft Request for

US Nuclear Regulatory Commission

Agreement State Status

Date Submitted: 02/15/2019

1.0 Preface

Formal Request for an Agreement

State of Vermont

This document is prepared as the submittal for the State of Vermont's request to become an Agreement State as authorized by the Atomic Energy Act (AEA) of 1954, as amended. This Agreement will provide for the State of Vermont's assumption of regulatory authority over radioactive materials not involved in energy production used in the State of Vermont from the United States Nuclear Regulatory Commission (NRC).

2.0 Introduction

On July 6, 2015, Governor Peter Shumlin sent NRC Chairman Stephen G. Burns a letter of intent for Vermont to enter into an Agreement with the NRC. Since that time, the Radiation Control Program has been granted authority by the Vermont General Assembly for entering into an Agreement and establishing a regulatory program for Radioactive Materials, promulgated regulations for purposes of entering into an Agreement, trained and qualified staff for licensing and inspection responsibilities to be assumed under the Agreement, and developed this Request with the procedures, forms, and other content to meet the criteria and information needs in the NRC's Handbook for Processing an Agreement. References to the content are provided throughout this request. Key documents are available here in their entirety:

- Act No. 82 (2016), the enabling legislation found in Appendix 4.1-1.

- The Radioactive Materials Rule (regulations) found in Appendix 4.1-2

3.0 Overview

This document is prepared using the guidance in the NRC Office of Nuclear Material Safety and Safeguards *Handbook for Processing an Agreement* dated January 26, 2015. The Information Needed and Evaluation Criteria specified in Section 4.0 of the Handbook are addressed herein to ensure that the State of Vermont has a compliant and compatible program for the control of licensees who possess, use, store, transfer, and dispose of radioactive materials in the State of Vermont.

The State of Vermont seeks to enter into an Agreement with the NRC assuming regulatory authority over byproduct materials, source materials, and special nuclear materials in quantities not sufficient to form a critical mass. In addition, the State seeks to regain regulatory authority over those materials transferred to the NRC by the Energy Policy Act of 2005. The following information is provided in support of this application to become an Agreement State.

4.0 Information Needed and Evaluation Criteria

This section addresses the information that the NRC requires, to review an Agreement request and the evaluation criteria that NRC staff will use as a baseline. This is based on *Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement*, known as the Criteria Policy Statement, and described in Section 4.0 of the *Handbook for Processing an Agreement*. The handbook criteria are in bold, and the content to meet the criteria follow.

4.1 Legal Elements

In this section is found the information needed to meet the evaluation criteria in the *Handbook for Processing an Agreement* Subsections:

4.1.1 Authority to Establish a Program and Enter into an Agreement

4.1.2 Organization of the Proposed Program; and

4.1.3 Content of the Proposed Agreement.

The handbook criteria are in bold, and the content to meet the criteria follow.

4.1.1 Authority to Establish a Program and Enter into an Agreement.

4.1.1.1 Information Needed

For all categories of materials for which the State is requesting authority, the State should submit State law that:

4.1.1.1.a. Establishes the Agreement materials program, defines its structure, and authorizes the Governor to enter into an Agreement with the Commission.

The Vermont Department of Health's (hereinafter "the Department") statutory authority to establish the Agreement State program and define its structure is provided in the Vermont Statutes Title 18 Health, Chapter 32: Ionizing and Nonionizing Radiation Control (cited as 18 V.S.A. §§1651-1657). The law authorizes the Governor to enter into an Agreement with the Nuclear Regulatory Commission:

> The Governor, on behalf of the State of Vermont, may enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to by-product, source, and special nuclear materials and the assumption of these responsibilities by the State of Vermont. 18 V.S.A. §1653(a).

The structure of the Agreement Materials Program is provided below in Section 4.1.2.

4.1.1.1.b. Authorizes the program to issue licenses, including the following:

4.1.1.1.b.1. Authorizes the program to impose additional license requirements;

18 V.S.A. §1653(b)(2)(A) provides such authority by specifically stating the Department shall have authority to "impose conditions that are individual to a license when necessary to protect public health and safety."

4.1.1.1.b.2. Authorizes the program to give exemptions from licensing requirements;

18 V.S.A. §1653(b)(2)(D) authorizes the program to:

> [E]xempt certain by-product, source, or special nuclear materials or kinds of uses or users from the licensing or registration requirements set forth in this section when the Department makes a finding that the exemption of such materials or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

4.1.1.1.b.3. Authorizes the program to recognize the licenses of other jurisdictions (that is reciprocity);

18 V.S.A. §1653(b)(2)(B) authorizes the program to "reciprocate in the recognition of specific licenses issued by the NRC or another state that has reached agreement with the NRC pursuant to 42 U.S.C. §2021(b)(agreement state)."

4.1.1.1.b.4. Makes it unlawful to acquire, possess, store, use, transfer, or dispose of materials without a valid license, or to violate the conditions of a license;

18 V.S.A. §1653(b)(7)(A) states:

> A person shall not use, manufacture, produce, transport, transfer, receive, acquire, own, or possess any by-product, source, or special nuclear material unless licensed by or registered with the Department in accordance with the provisions of this chapter or rules adopted under this chapter.

4.1.1.1.b.5. Authorizes the program to recognize licenses transferred from the NRC under the Agreement as State licenses.

18 V.S.A. §1653(b)(5) states:

> Any person having a license immediately before the effective date of an agreement under subsection (a) of this section from the federal government or agreement state relating to by-product material, source material, or special nuclear material and which on the effective date of this agreement is subject to the control of this State shall be considered to have a like license with the State of Vermont until the expiration date specified in the license from the federal government or agreement state or until the expiration date specified in the license from the federal government or agreement state or until the end of the 90th day after the person receives notice from the Department that the license will be considered expired.

This section does not affect NRC or Agreement State licensees based outside of Vermont. The State of Vermont understands that if and when an Agreement between the NRC and Vermont goes into effect, the state will assume regulatory authority for those NRC licensees based in Vermont. Any licensees from other Agreement States or NRC licensees not based in Vermont that are operating in Vermont on the effective date of an Agreement would be subject to reciprocity under Vermont's statutes and regulations.

4.1.1.1.c Authorizes the program to adopt regulations.

4.1.1.1.c.1. Specifies the procedures and requirements for adoption of regulations, including public participation.

The Department may adopt, amend, and repeal rules under Vermont's Administrative Procedures Act (APA). *See* 18 V.S.A. §1652(c) referencing the APA. 18 V.S.A. §1652(c) states that:

> The Department may adopt, amend, and repeal rules under 3 V.S.A. chapter 25 that may provide for licensing and registration for the control of sources of

> ionizing radiation and that may provide for the control and regulation of sources of nonionizing radiation.

More specifically, 18 V.S.A. §1653(b)(1) provides:

> The Department shall provide by rule for general or specific licensing of by-product, source, special nuclear materials, or devices or equipment utilizing such materials. The rule shall provide for amendment, suspension, or revocation of licenses. A rule adopted under this subsection shall be consistent with regulations duly adopted by the NRC except as the Commissioner determines is necessary to protect public health.

The rule will be promulgated in accordance with Vermont's APA as provided in 3 V.S.A. §§836-848. Appendix 4.1-3 is a copy of 3 V.S.A. §§800 – 849 Administrative Procedure.

In addition, the Vermont APA sets forth requirements for rulemaking and public participation. 3 V.S.A. §840 states:

> (a) The agency may hold one or more public hearings for each proposed rule. A public hearing shall be scheduled if so requested by 25 persons, by a governmental subdivision or agency, by the Interagency Committee on Administrative Rules, or by an association having 25 or more members. The first hearing shall not be held sooner than 30 days following the notice required by section 839 of this title.
>
> (b) On request, the agency shall promptly provide a copy of a proposed or final proposed rule. If the copy is mailed, it shall be sent not later than the end of the third working day after the request is received. The agency may charge for copying costs in the amount provided by law.
>
> (c) An agency shall afford all persons reasonable opportunity to submit data, views or arguments, orally or in writing, at least through the seventh day following the last public hearing.
>
> (d) The agency shall consider fully all written and oral submissions concerning the proposed rule, and all submissions on separate requirements for small businesses. The agency shall provide information to all individuals, who submitted written or oral comment, on the procedure for adoption of rules and how to obtain changes in the proposed rule.
>
> (e) If requested by an interested person at any time before 30 days after final adoption of a rule, the adopting authority shall issue an explanation of the proposed rule. The explanation shall include:
>
> > (1) a concise statement of the principal reasons for and against the adoption of the rule in its final form; and
> >
> > (2) an explanation of why the adopting authority overruled the arguments and considerations against the rule.

4.1.1.1.c.2. Allows the program to impose requirements in the form of other generic legally binding requirements, such as license conditions or orders.

The Commissioner of Health has the authority to enforce all the provisions of Title 18, or the rules, permits, or orders issued pursuant to the title. 18 V.S.A. §130. The Commissioner can issue health orders and, in lieu of instituting an action or proceeding against a person, may enter into an assurance of discontinuance with the party which is filed with the Superior Court and becomes an order of the court. *See* 18 V.S.A. §§125 and 126. 18 V.S.A. §125 provides for an Assurance of Discontinuance. This provision allows the Commissioner to enter into a legally binding agreement with specific requirements or conditions. The Department's Radioactive Materials Rule provides for amendment, suspension, or revocation of licenses. *See* section 10 of the Radioactive Materials Rule; 18 V.S.A. §1653(b)(1) (directing the Department to provide by rule for the "amendment, suspension, or revocation of licenses").

Local boards of health, comprised of the select board and local health officer in each town in Vermont, also have authority to issue health orders to mitigate localized public health hazards under 18 V.S.A. §126, but do not have authority with respect to the Radiation Control Program. The statutory authorities that reside with the State Board of Health are described in 18 V.S.A. §§101 – 131 which is copied as Appendix 4.1-4.

4.1.1.1.d Authorizes representatives of the program to enter premises and conduct inspections.

18 V.S.A. §1654 authorizes representatives of the program to enter premises and to conduct inspections:

> The Department or its duly authorized representatives may enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of this chapter and rules and regulations issued thereunder, except that entry into areas under the jurisdiction of the federal government shall be made only with the concurrence of the federal government or its duly designated representative.

4.1.1.1.e Authorizes the program to require compliance with regulatory requirements by both licensees and unlicensed individuals.

18 V.S.A. §1653(b)(2)(C) provides for this by stating the Department shall have authority to "require that licensees and unlicensed individuals comply with the federal statutes and regulations relating to the authority assumed by the Department under this section and with the rules adopted by the Department under this section."

4.1.1.1.f Authorizes the program to impose sanctions for violations of the regulations, orders, or license conditions.

The Commissioner has the authority to enforce all the provisions of Title 18, or the rules, permits, or orders issued pursuant to the title. 18 V.S.A. §130. The Commissioner can issue health orders and, in lieu of instituting an action or proceeding against a person, may enter into

an assurance of discontinuance with the party which is filed with the Superior Court and becomes an order of the court. *See* 18 V.S.A. §§125 and 126.

The Department's Radioactive Materials Rule provides for amendment, suspension, or revocation of licenses. *See* section 10 of the Radioactive Materials Rule; 18 V.S.A. §1653(b)(1) (directing the Department to provide by rule for the "amendment, suspension, or revocation of licenses"). In addition, section 10.1.1 of the Radioactive Materials Rule permits the Department to impose sanctions for violation of the regulations:

> Whenever the Department has reasonable grounds to believe that there has been a violation of any of the provisions of this rule, the Department may take appropriate action as provided in this subsection or otherwise provided in law at 18 V.S.A. Ch. 32, to protect the public health and safety.

In turn, §1657 of 18 V.S.A. Ch. 32 provides for fines and criminal penalties for those in violations of the rules under Ch. 32:

> Any person who violates this chapter or rules in effect pursuant thereto shall, upon conviction thereof, be imprisoned not more than six months or fined not more than $500.00 or less than $100.00, or be both imprisoned and fined. 18 V.S.A. §1657.

18 V.S.A. §1653(b)(2)(A) provides that the Department shall have authority to "impose conditions that are individual to a license when necessary to protect public health and safety."

18 V.S.A. §1653(b)(7)(B) authorizes the Department to impound certain material in the event of an emergency:

> "The Department shall have the authority in the event of an emergency to impound or order the impounding of by-product, source, and special nuclear materials in the possession of any person who is not equipped to observe the provisions of this chapter or any rules adopted under this chapter."

In 18 V.S.A. §1655(a) and (b), further provisions exist to impose sanctions for violations of regulations, orders, or license conditions:

> (a) In any proceeding under this chapter for the issuance or modification of rules relating to control of by-products, source, and special nuclear materials; or for granting, suspending, revoking, or amending any license; or for determining compliance with or granting exemptions from rules and regulations of the Department, the Department shall hold a public hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to the proceeding, subject to the emergency provisions in subsection (b) of this section.
>
> (b) Whenever the Department finds that an emergency exists requiring immediate action to protect the public health and safety, the Department may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that such action be

> taken as necessary to meet it. Notwithstanding any contrary provision of this chapter, the order shall be effective immediately. Any person to whom the order is directed shall comply with the order immediately, but on application to the Department shall be afforded a hearing within ten days. On the basis of the hearing, the emergency order shall be continued, modified, or revoked within ten days after the hearing.

Further, the Attorney General's office shall, at the request of the Department, seek injunctive relief, 18 V.S.A. §1656:

> Whenever, in the judgment of the Department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule issued thereunder, the Attorney General shall make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the Department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

4.1.1.1.g Establishes conflict of interest and ethics regulations or procedures applicable to those portions of the State Radiation Control Program covered by the Agreement.

Appointed officials for the State of Vermont are governed by an executive code of ethics that applies to all executive branch appointees. In addition, all state employees must comply with personnel policies regarding conflicts of interest and employee conduct that when read together are equivalent to the executive code of ethics.

3 Appendix V.S.A. §3-53 incorporates Executive Order No. 3-53, *Executive Code of Ethics* into the statute and describes how the conduct of public officers must be independent and impartial, and not be impaired by conflicts of private or public interests. The rules of general conduct, and specific ethics that apply rules while in state employment and after state employment, extend to the appointees of the Governor, which includes the Deputy Commissioner for Public Health, the Commissioner of Health, and the Deputy Secretary and Secretary of the Agency of Human Services. The Radioactive Materials Agreement State Program exists in lines of authority from these appointees as seen in Figures 4.1-1 through 4.1-5 below. 3 Appendix V.S.A. §3-53 is copied as Appendix 4.1-5.

For the employees under these appointees, there are two primary Vermont Human Resources Department procedures. Procedure 5.2, *Conflicts of Interest Arising from Employment*, applies to all State of Vermont employees, and relates primarily to rules and procedures to prevent conflicts of interest or the appearance of a conflict of interest between State employees and their relatives. Vermont Human Resources Department Procedure 5.6, *Employee Conduct*, applies to all State of Vermont employees, and provides explicit statements of required and prohibited conduct. These two procedures are in Appendix 4.1-6 and 4.1-7.

4.1.1.2 Legal Elements. Authority to Establish a Program and Enter into an Agreement. Evaluation Criteria.

4.1.1.2.a. State law must authorize the Governor to enter into an Agreement. It must also designate a radiation control agency and provide it the necessary legal authority to be effective.

18 V.S.A. §1653(a) authorizes the Governor of Vermont to enter into an Agreement with the Nuclear Regulatory Commission:

> The Governor, on behalf of the State of Vermont, may enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to by-product, source, and special nuclear materials and the assumption of these responsibilities by the State of Vermont.

18 V.S.A. §1652(a) identifies the Vermont Department of Health as the designated radiation control agency:

> The Department is the radiation control agency for the State of Vermont. The Commissioner may designate the Radiation Control Director within the Department as the individual who shall perform the functions vested in the Department by this chapter.

Section 1652(b), (c) and (d) and Section 1653(b)(1) and (2)(C) provide the necessary legal authority to be effective. 18 V.S.A. §1652(c) and (d) state:

> (b) The Department shall, for the protection of the occupational and public health and safety, develop programs for the control of ionizing and nonionizing radiation compatible with federal programs for regulation of by-product, source and special nuclear materials.
>
> (c) The Department may adopt, amend, and repeal rules under 3 V.S.A. chapter 25 that may provide for licensing and registration for the control of sources of ionizing radiation and that may provide for the control and regulation of sources of nonionizing radiation.
>
> (d) The Department shall advise, consult, and cooperate with other agencies of the State, the federal government, other states and interstate agencies, political subdivisions, industries, and with groups concerned with control of sources of ionizing and nonionizing radiation."

With respect to nonionizing radiation referenced in 1652(b), the Vermont General Assembly vested in the Vermont Department of Health authority to address issues related to nonionizing radiation decades ago. That authority is used to evaluate health issues related to laser radiation, ultraviolet radiation, radiofrequency radiation, extremely low frequency electromagnetic fields and other nonionizing radiations and the Department must maintain that authority.

Section1653(b)(1) adds that:

> The Department shall provide by rule for general or specific licensing of by-product, source, special nuclear materials, or devices or equipment utilizing such materials. The rule shall provide for amendment, suspension, or revocation of licenses. A rule adopted under this subsection shall be consistent with regulations duly adopted by the NRC except as the Commissioner determines is necessary to protect public health.

Section 1653(b)(2)(C) adds that the Department shall have authority to "require that licensees and unlicensed individuals comply with the federal statutes and regulations relating to the authority assumed by the Department under this section and the rules adopted by the Department under this section."

4.1.1.2.b State law must not create duplications, gaps, or conflicts in regulation. This includes duplications, gaps, or conflicts between the State and the NRC, state agencies, or state and local agencies. The law must not seek to regulate materials or activities reserved to the NRC.

The State of Vermont is incorporating the required parts of 10 CFR, Chapter I by reference to eliminate the possibility of duplications, gaps, or other conflicts in regulation, including duplications, gaps, or conflicts between the State and the NRC, state agencies, or state and local agencies.

Relative to activities reserved to NRC regulation, §1653(c) states that "this section does not confer authority to regulate materials or activities reserved to the NRC under 42 U.S.C. §2021 (c) and 10 CFR Part 150."

Preventing duplications, gaps, and conflicts between state agencies is addressed at 18 V.S.A. §1652(d) which states that "[t]he Department shall advise, consult, and cooperate with other agencies of the State, the federal government, other states and interstate agencies, political subdivisions, industries, and with groups concerned with control of sources of ionizing and nonionizing radiation."

4.1.1.2.c. State law must authorize issuing licenses as the means of giving the authority to possess and use Agreement materials. It should also authorize the reciprocal recognition of specific licenses issued by the NRC or other Agreement State.

18 V.S.A. §1653(b)(1) authorizes the issuance of licenses to use Agreement materials:

> The Department shall provide by rule for general or specific licensing of by-product, source, special nuclear materials, or devices or equipment utilizing such materials. The rule shall provide for amendment, suspension, or revocation of licenses. A rule adopted under this subsection shall be consistent with regulations duly adopted by the NRC except as the Commissioner determines is necessary to protect public health.

Section 1653(b)(2)(B) authorizes the reciprocal recognition of specific licenses issued by the NRC or other Agreement State in the event Vermont becomes an Agreement State. It states that the Department shall have the authority to "reciprocate in the recognition of specific licenses issued by the NRC or another state that has reached agreement with the NRC pursuant to 42 U.S.C. §2021(b)(agreement state)."

4.1.1.2.d. State law should authorize the use of license conditions to address matters unique to the license. The law should allow license conditions to impose additional requirements when required to protect public health and safety. If the law restricts the use of license conditions, the State should show that they can provide adequate protection under the restrictions. The protection should be at least equivalent to using license conditions and orders.

18 V.S.A. §1653(b)(2)(A) states that the Department shall have the authority to "impose conditions that are individual to a license when necessary to protect public health and safety." State law does not restrict the use of license conditions.

4.1.1.2.e. The law should permit exemptions from licensing requirements if the exemptions do not adversely affect public health and safety. This should include exemptions from the requirement to obtain a license.

18 V.S.A. §1653(b)(2)(D) provides the Department the authority to "exempt certain by-product, source, or special nuclear materials, or kinds of uses, or users from the licensing or registration requirements set forth in this section when the Department makes a finding that the exemption of such materials, or kinds of uses, or users will not constitute a significant risk to the health and safety of the public."

Because Vermont is incorporating relevant parts of 10 CFR by reference, as is the case for the NRC, Vermont will authorize exemptions from licensing substantially equivalent to the requirements of *Handbook for Processing an Agreement* Section 4.1.1.2(e)(4):

> Any other prime contractor (or subcontractors) of DOE or NRC when the State and NRC jointly determine (i) that the terms of the contract provide adequate assurance that the contractor can accomplish the work without undue risk to public health and safety and (ii) that the law authorizes exemptions.

The particular sections of 10 CFR the State of Vermont is incorporating by reference relevant to exempting the above contractors, among others are 10 CFR 30.12, 40.11 and 70.11.

4.1.1.2.f. The law must authorize the Agreement materials program to enforce regulations or generic legally binding requirements other than regulation. The law may authorize another agency (such as a Board of Health) to adopt the regulations. When appropriate, the law should provide for public participation.

18 V.S.A. §1653 (b)(1), 1656, and 1657 authorizes the Department to enforce regulations or generic legally binding requirements other than regulations.

18 V.S.A. §1653(b)(1) provides that in the event of such agreement:

> The Department shall provide by rule for general or specific licensing of by-product, source, special nuclear materials, or devices or equipment utilizing such materials. The rule shall provide for amendment, suspension, or revocation of licenses. A rule adopted under this subsection shall be consistent with regulations duly adopted by the NRC except as the Commissioner determines is necessary to protect public health.

18 V.S.A. §1656 states:

> Whenever, in the judgment of the Department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule issued thereunder, the Attorney General shall make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the Department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

18 V.S.A. §1657 adds that "any person who violates this chapter or rules in effect pursuant thereto shall, upon conviction thereof, be imprisoned not more than six months or fined not more than $500.00 or less than $100.00, or be both imprisoned and fined."

4.1.1.2.g. The law must authorize inspections of licensee operations to ensure compliance with regulatory requirements. It should authorize inspections of unlicensed facilities to assess the risk resulting from accidents or environmental releases of materials. The law should permit access at all reasonable times.

18 V.S.A. §1654 provides for inspection and entry upon any private or public property at all reasonable times:

> The Department or its duly authorized representatives may enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of this chapter and rules and regulations issued thereunder, except that entry into areas under the jurisdiction of the federal government shall be made only with the concurrence of the federal government or its duly designated representative.

4.1.1.2.h The law should provide authority to take prompt enforcement action and should provide a variety of legal sanctions. The law should provide authority to suspend licenses and to impound materials. In cases of an imminent threat

to public health and safety, the law should authorize immediate suspension without prior hearing.

The following sections of Title 18 provide for enforcement action, legal sanctions, license suspension, material impoundment, and immediate suspension without prior hearing (in the case an emergency exists requiring immediate action to protect the public health and safety.)

18 V.S.A. §1655(b) authorizes the Department to take immediate action in an emergency without a prior hearing:

> Whenever the Department finds that an emergency exists requiring immediate action to protect the public health and safety, the Department may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that such action be taken as is necessary to meet it. Notwithstanding any contrary provision of this chapter, the order shall be effective immediately. Any person to whom the order is directed shall comply with the order immediately, but on application to the Department shall be afforded a hearing within ten days. On the basis of the hearing, the emergency order shall be continued, modified, or revoked within ten days after the hearing.

18 V.S.A. §1653(b)(1) mandates that the Department's rule provides for amendment suspension, or revocation of licenses.

> The Department shall provide by rule for general or specific licensing of by-product, source, special nuclear materials, or devices or equipment utilizing such materials. The rule shall provide for amendment, suspension, or revocation of licenses. A rule adopted under this subsection shall be consistent with regulations duly adopted by the NRC except as the Commissioner determines is necessary to protect public health.

In 18 V.S.A. §1653(b)(7)(B) provides the Department with the authority to impound materials:

> The Department shall have the authority in the event of an emergency to impound or order the impounding of by-product, source, and special nuclear materials in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules adopted under this chapter.

18 V.S.A. §1655(a) provides additional enforcement capabilities and provides for a public hearing:

> In any proceeding under this chapter for the issuance or modification of rules relating to control of by-products, source, and special nuclear materials; or for granting, suspending, revoking, or amending any license; or for determining compliance with or granting exemptions from rules and regulations of the Department, the Department shall hold a public hearing upon the request of any person whose interest may be affected by the

> proceeding, and shall admit any such person as a party to the proceeding, subject to the emergency provisions in subsection (b) of this section.

18 V.S.A. §1656 provides the authority for to the Attorney General to immediately petition the court to enjoin any acts or practices that constitute or will constitute a violation of the referenced statutory provisions in Chapter 32 of Title 18:

> Whenever, in the judgment of the Department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule issued thereunder, the Attorney General shall make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the Department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

In addition, section 10.1.1 of the Radioactive Materials Rule permits the Department to impose sanctions for violation of the regulations:

> Whenever the Department has reasonable grounds to believe that there has been a violation of any of the provisions of this rule, the Department may take appropriate action as provided in this subsection or otherwise provided in law at 18 V.S.A. Ch. 32, to protect the public health and safety.

In turn, §1657 of 18 V.S.A. Ch. 32 provides that "any person who violates this chapter or rules in effect pursuant thereto shall, upon conviction thereof, be imprisoned not more than six months or fined not more than $500.00 or less than $100.00, or be both imprisoned and fined."

Additional enforcement actions are available to the Commissioner and are found in 18 V.S.A. §101 -131 in Appendix 4.1-4. The Commissioner may seek search warrants in §121 revocation of permits in §123, health orders in §126, emergency health orders in §127, civil enforcement in §130, and criminal penalty in §131.

4.1.1.2.i. The law should authorize suspension or revocation of a license for repeated or continued noncompliance. The authority to suspend or revoke a license may be conditioned on a prior administrative or judicial hearing. The program should also have authority to seek injunctive relief and refer licensees for criminal prosecution. The program should also consider authority to impose civil or administrative monetary penalties.

If licensees are not in compliance with the statute or rule, the Commissioner can bring an action in the county Superior Court to seek enforcement. The court can levy civil penalties up to $10,000 for each violation, and in the case of a continuing violation, a penalty can be levied each day the violation continues. 18 V.S.A. §130. 18 V.S.A. §131 provides for criminal penalties for any person who refuses to obey or comply with an order. In addition, the Department can enter

into an assurance of discontinuance (AOD) with a licensee requiring specific actions to be taken and imposition of a fine. AODs are filed in Superior Court and become an order of the court. Evidence of a violation of the AOD is prima facie proof of the violation cited in the assurance. 18 V.S.A. §125.

The following sections of Title 18 of the Vermont Statutes authorize suspension or revocation of a license for repeated or continued noncompliance, impose civil or administrative monetary penalties, and allow the Department to seek injunctive relief.

18 V.S.A. §1655(b) allows the Department to take immediate action without notice or hearing to protect the public's health and safety in an emergency:

> Whenever the Department finds that an emergency exists requiring immediate action to protect the public health and safety, the Department may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that such action be taken as is necessary to meet it. Notwithstanding any contrary provision of this chapter, the order shall be effective immediately. Any person to whom the order is directed shall comply with the order immediately, but on application to the Department shall be afforded a hearing within ten days. On the basis of the hearing, the emergency order shall be continued, modified, or revoked within ten days after the hearing.

18 V.S.A. §1656 provides for immediate injunctive relief:

> Whenever, in the judgment of the Department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule issued thereunder, the Attorney General shall make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the Department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

18 V.S.A. §1657 also provides that "any person who violates this chapter or rules in effect pursuant thereto shall, upon conviction thereof, be imprisoned not more than six months or fined not more than $500.00 or less than $100.00, or be both imprisoned and fined."

Additional enforcement actions are available to the Commissioner and are found in 18 V.S.A. §101 -131 in Appendix 4.1-4. The Commissioner may seek search warrants in §121, revocation of permits in §123, health orders in §126, emergency health orders in §127, civil enforcement in §130, and criminal penalty in §131.

4.1.1.3 Additional Criteria for Low Level Waste Agreements.

The law must authorize appropriate restrictions on land ownership and use of sites used for disposal of LLRW for an indefinite period after closure.

The State of Vermont is not requesting regulatory authority on land ownership and the use of sites used for the disposal of low-level radioactive waste depositories in the State of Vermont for an indefinite period after the closure of the site.

4.1.1.4 Additional Evaluation Criteria for 11e. (2) Byproduct Material Agreements.

The law should clearly authorize the Agreement materials program to carry out the requirements of the Uranium Mill Tailings Radiation Control Act of 1978, as amended (UMTRCA).

The State of Vermont is not requesting regulatory authority for the requirements of the Uranium Mill Tailings Radiation Control Act of 1978, as amended (UMTRCA).

4.1.2 Organization of the Proposed Program

The organization of an Agreement materials program provides the basic organizational structure and resources to conduct the program activities. The Agreement materials program organization thus influences the ability of the program to protect public health and safety against radiation hazards.

4.1.2.1 Information Needed. The State should submit a concise narrative description of the materials program.

4.1.2.1.a A brief history of radiation control in the State.

Some of the following is taken from *100 Years of Public Health in Vermont 1886 – 1986*, a calendar produced by the Vermont Department of Health in 1986.

As with many states in the eastern United States, public health has a long history. In Vermont, the roots of what exists today started in 1886 with passage of a bill creating the State Board of Health. Other fixtures that remain today are the Vermont State Laboratory of Hygiene established by the legislature in 1898 and Vermont's Town Health Officer Program in 1899. In the subsequent decades, many laws were passed to improve public health. Some were the responsibility of the Industrial Hygiene Division and the Division of Sanitary Engineering, predecessors to the Environmental Health Division today.

The Industrial Hygiene Division was called the Occupational and Radiological Health Division in the late 1960s when the Yankee Atomic Electric Corporation designed and began to build the Vermont Yankee Nuclear Power Station. It began operations in 1972 and allowed for greater capabilities in other radiological health areas from naturally occurring radioactive materials to x-ray machines. Emergency preparedness, environmental surveillance, and public dose management capabilities were especially enhanced. Machine skills were particularly bolstered by 1994's Mammography Quality Standards Act.

The Vermont Nuclear Power Plant in Vernon ceased operations in December of 2014. Today, many of the Vermont Radiological Emergency Response Plan procedures for state, local, and private Offsite Response Organizations that would respond if an accident occurred at Vermont Yankee have been shelved as the emergency planning zone has been reduced to just within the plant boundaries. The Department of Health continues to prepare for radiological emergencies that might result from industrial accidents at Vermont Yankee or offsite transportation accidents involving radioactive materials leaving the facility. Some of the resources for Vermont Yankee emergencies have been redeployed across the state to provide for coverage for any radiological or nuclear emergency.

The Radiological Sciences Program also continues to train and otherwise support the Vermont Hazardous Materials Response Team (VHMRT) which is the State's primary radiological and nuclear first responders. In addition to being ready for Vermont Yankee incidents, the VHMRT is fully capable of response and initial recovery from almost any radiological or nuclear incident. Part of this is a residual of decades of training and exercising comprehensive skills and knowledge, and part of this comes from Vermont's leadership in national homeland security and emergency preparedness efforts. Dovetailing with this is Vermont's recent development and implementation of a Preventive Radiological Nuclear Detection Program.

Concurrently, Vermont has maintained its role as regulator for occupational and public radiological health and safety relative to radiation machines. The Radiological Sciences Program registers and inspects approximately 500 x-ray facilities, including sixteen inspected under a contract with the U.S. Food and Drug Administration.

4.1.2.1.b A description of the current structure of the program, including regional offices.

The State of Vermont seeks to enter into an Agreement with the NRC for assuming regulatory authority over byproduct radioactive materials, source materials, special nuclear materials in quantities not sufficient to form a critical mass, and those materials transferred to the NRC by the Energy Policy Act of 2005. This authority will reside in the Vermont Department of Health, the radiation control agency for the State of Vermont. Staff administering the program are part of the Department's Radiological Sciences Program. Essentially all required regulatory elements of the Radioactive Materials Program (RMP) are carried out by the staff within the Radiological Sciences Program in the Department of Health. The Attorney General's Office can seek injunctive relief when, in the judgement of the Department, a person has engaged in or is about to engage in any acts or practices in violation of Vermont's Radiation Control statute or rule. 18 V.S. A. §1656. The Department of Health is within the Vermont Agency of Human Services as shown in Figure 4.1-1.

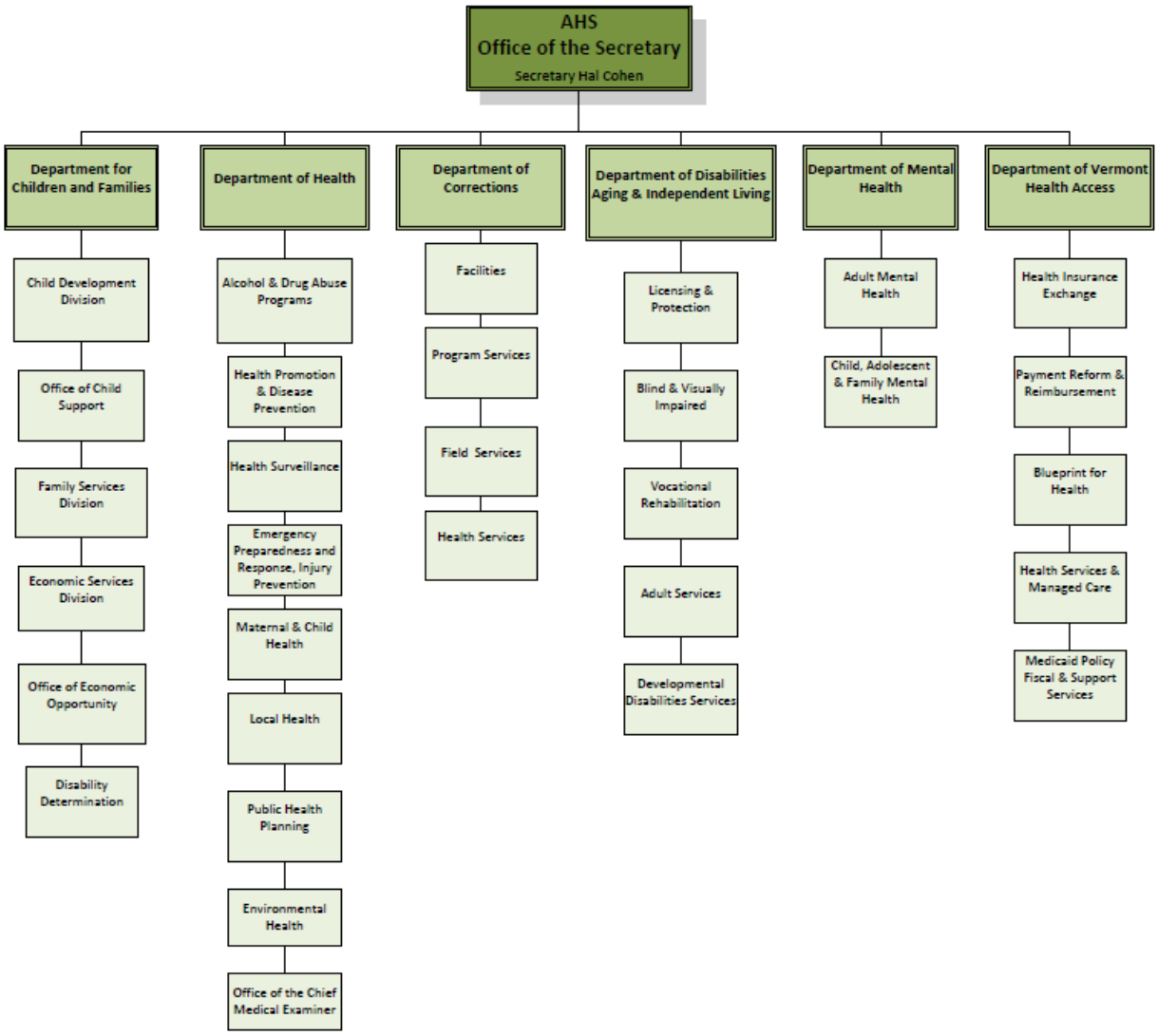

Figure 4.1-1: Agency of Human Services Organization Chart

The Agency of Human Services is Vermont's largest agency and the Secretary of Human Services reports directly to the governor as seen in Figure 4.1-2. More information about the Agency of Human Services may be found at its website: http://humanservices.vermont.gov/.

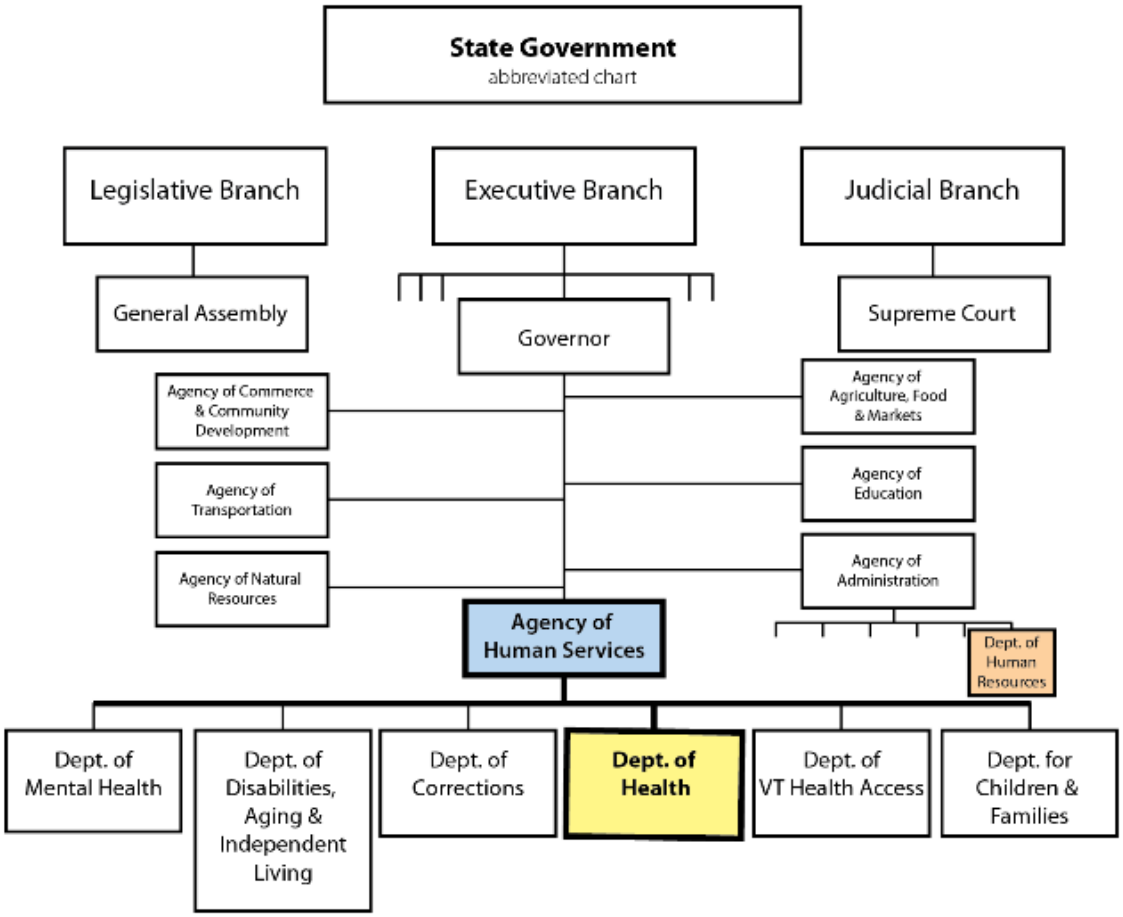

Figure 4.1-2: Vermont State Government Abbreviated Chart

The Department of Health is the largest department in the Agency of Human Services. Its vision is of "healthy Vermonters living in healthy communities", and its mission is to "protect and promote the best health for all Vermonters". More details about the Department may be found at its website: http://healthvermont.gov/. This includes the Department leadership and organizational charts. The Department is organized according to Figure 4.1-3.

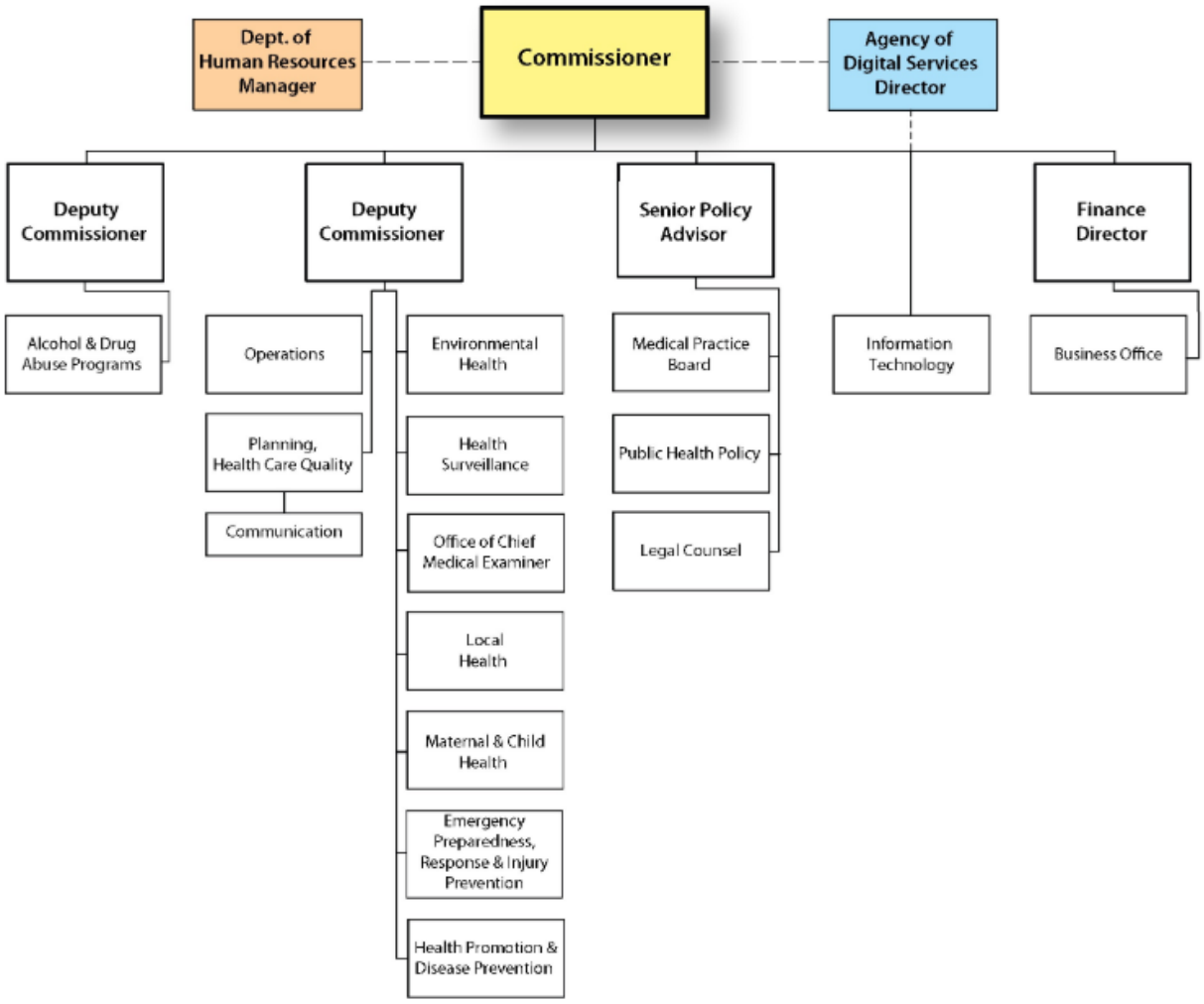

Figure 4.1-3: Vermont Department of Health Organization

The Radiological Sciences Program resides within the Environmental Health Division, one of seven organizations under the Deputy Commissioner of Public Health. These are shown in Figure 4.1-4. The Division of Environmental Health is described by the organization chart in Figure 4.1-5. The Department Local Health Division includes twelve district offices which partner with local organizations and health care providers to provide health services and promote wellness in the communities of Vermont. Staff at Local Health generally do not conduct work directly related to the Agreement State Radioactive Materials Program.

VERMONT
DEPARTMENT OF HEALTH

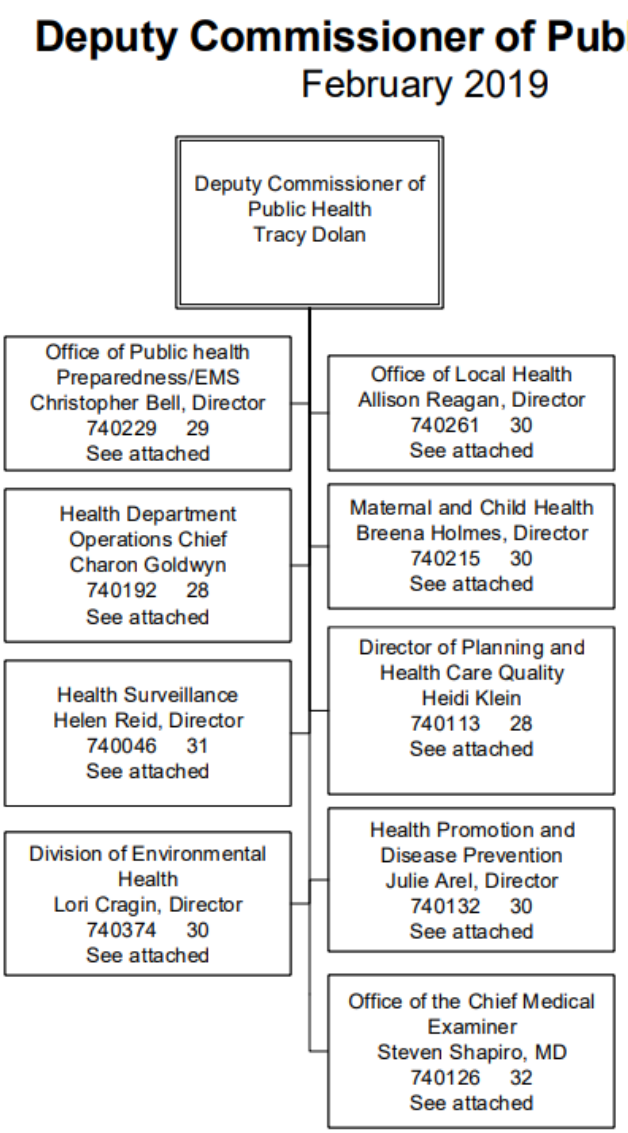

Figure 4.1-4: Deputy Commissioner of Public Health
From VDH Intranet

The Radiation Control Program Director for Vermont is the Radiological Sciences Chief. Within his group are two people who work full-time in radiological health. The Senior Radiological Health Specialist is the Radioactive Materials Program Manager, and the Radiological and Toxicological Scientist is the Radiation Machine Program Manager. The work to maintain the radioactive materials Agreement State Program will be accomplished primarily by these three people. The Senior Radiological Health Specialist, Fran O'Neill, is the program manager, and will devote 100 percent of his time to it. The Radiological and Toxicological Scientist and Radiological Sciences Chief will both be fully qualified to review and process radioactive

materials licenses and perform licensee inspections. Each will devote up to 25 percent of their time to the radioactive materials Agreement State Program. Resumes for each of these three people are attached as Appendix 4.6-3 in Section 4.6 of this Application.

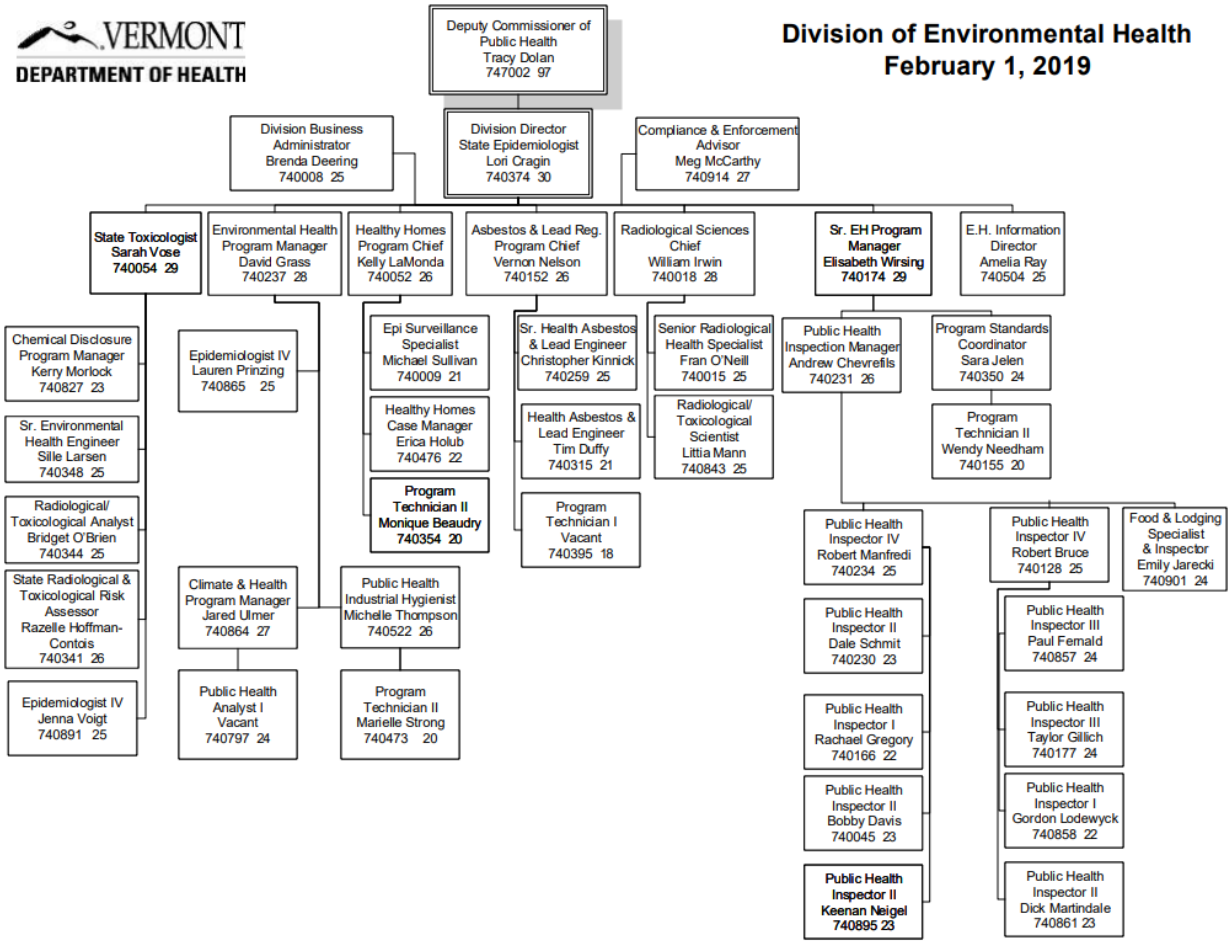

Figure 4.1-5: Division of Environmental Health
From VDH Intranet

Members of the State Toxicologist staff support radiological health programs to varying degrees. The State Radiological and Toxicological Risk Assessor conducts risk analyses for radiological environmental agents and leads the assessment scientists for radiological and nuclear emergencies. The Radiological and Toxicological Analyst devotes most of her time to emergency preparedness, including for radiological and nuclear emergencies. The Senior Environmental Health Engineer is responsible for the Department's private drinking water program and evaluates radiological contaminants in private drinking water and identifies solutions for excessive levels.

The Radiological Sciences Program also engages with others at the Department of Health for radiological health protection issues. This includes assisting the Environmental Health Radon Program and the Public Health Laboratory in the Health Surveillance Division. The Public Health Lab staff are well trained, and proficiency tested for numerous radiochemistry analytical techniques with decades of experience analyzing thousands of environmental surveillance samples from around the shutdown Vermont Yankee Nuclear Power Station. Analyzed samples have been from air, drinking water, surface water, soil, sediments, milk, natural vegetation, fish, packaged foods, and animal feeds. The Public Health Lab radiochemistry capabilities have been very useful for a variety of radiological incidents.

The Radiological Sciences Program also engages with other Departments and Agencies of Vermont government in radiation protection work. This includes the Department of Public Service for issues related to the Texas Low Level Radioactive Waste Compact (Appendix 4.1-8), the Department of Public Safety for radiological emergency preparedness and the preventive radiological nuclear detection program, the Department of Environmental Conservation (DEC) within the Agency of Natural Resources (ANR) for low level radioactive waste management and naturally occurring radioactive materials, ANR's Department of Parks and Recreation and DEC, as well as the Agency of Agriculture, Food, and Markets for radiological impacts on the environment and food.

The Radiological Sciences Program is equipped with significant resources for routine and non-routine radiation protection activity. This includes dozens of portable instruments, large caches of environmental surveillance and emergency response supplies, and a motor vehicle. In addition, the program has created written plans to define policies and methods to meet required capabilities and procedures providing detailed instructions for specific work practices. An instrument inventory, including those at the Public Health Lab, is found in Appendix 4.1-11.

Vermont is a founding member of the New England Radiological Health Compact which is defined in statute. 18 V.S.A. §§1601–1622. The other members are the radiation control programs from Connecticut, Maine, Massachusetts, New Hampshire, and Rhode Island. Copies of the Compact and the enabling statute for Vermont are found in Appendices 4.1-9 and 4.1-10, respectively. The Compact is primarily for radiological or nuclear emergencies but has been activated for non-emergency aid to member states, including for temporary staff support when vacancies exist in other member state radioactive materials or radiation machine programs. Members of the compact have met annually for 47 years in conferences that allow discussion of radioactive materials and other issues of mutual interest.

4.1.2.1.c. Individual discussions of each of the program elements in Section 4.0 of the Handbook.

Legal Elements of the Agreement State Radioactive Materials Program.

The Agreement State Radioactive Materials Program (RMP) is founded in statute described in the Vermont Statutes Title 18: Health, Chapter 32. This is referred to as 18 V.S.A. §§1651–1657.

The statute designates the Vermont Department of Health as the radiation control agency and, among other duties, provides radioactive materials licensing, inspection, and regulatory compliance enforcement authority to the Department. In accordance with 3 V.S.A. §800 – 849, Vermont's Administrative Procedures Act, the Department makes rules to regulate radioactive materials licensees. All the statutory information needed to address the evaluation criteria in the Handbook for Processing an Agreement is provided in Section 4.1.1 of this application.

The Department has chosen to incorporate parts of Title 10 Chapter I of the Code of Federal Regulations (10 CFR) by reference, rather than create separate compatible rules. The Department's rules are found in the Code of Vermont Rules, within those for the Agency of Human Services, the Department of Health as sub-agency, and finally within Chapter 6 for the Environmental Health Division of the Department. The regulations themselves are found in Subchapter 5, Radioactive Materials Rule. The current version of the Radioactive Materials Rule is attached as Appendix 4.1-2.

The Radioactive Materials Rule has four sections. Section I, Overview, contains 10 subsections relating to all radioactive materials licensees and all registrants of radiation generating machines. Those subsections of Section I relating to radioactive materials incorporate 10 CFR by reference. This is seen in Subsection 1.0 General Provisions, Subsection 6.0 Standards for Protection Against Radiation, Subsection 7.0 Notices, Instruction, Reports to Workers, Inspection and Investigations, and Subsection 9.0 Licensing of Radioactive Materials and Registration of Radiation Producing Machines.

Section II Radioactive Materials contains eight subsections that apply only to users of radioactive materials. Each subsection incorporates a part of 10 CFR by reference in accordance with the subject matter. Section III Radiation Producing Machines contains one subsection that applies only to users of radiation producing machines.

Table 4.1-1
Sections of the Radioactive Materials Rule

Section I Overview

1.0 General Provisions
2.0 Compliance Monitoring
3.0 Prohibitions, Restrictions and Additional Requirements
4.0 Exemptions
5.0 Fees
6.0 Standards for Protection Against Radiation
7.0 Notices, Instructions, Reports to Workers; Inspections and Investigations
8.0 Reserved
9.0 Reserved
10.0 Enforcement

Section II Radioactive Materials

11.0 Licensing of Radioactive Materials
12.0 Rules of General Applicability to the Licensing of Radioactive Materials
13.0 Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material
14.0 Medical Use of Byproduct Material
15.0 Radiation Safety for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations
16.0 Licenses and Radiation Safety Requirements for Well Logging
17.0 Licenses and Radiation Safety Requirements for Irradiators
18.0 Packaging and Transportation of Radioactive Material
19.0 Waste Classification, Characteristics and Labeling

Legal elements of the RMP are understood by the staff of the RMP for administrative and operational purposes. When legal assistance is needed, for example with revising statute or regulations, or for routine or escalated enforcement actions, the Office of the Senior Policy Advisor may provide official policy and legal advice. The Office is shown in Figure 4.1-6.

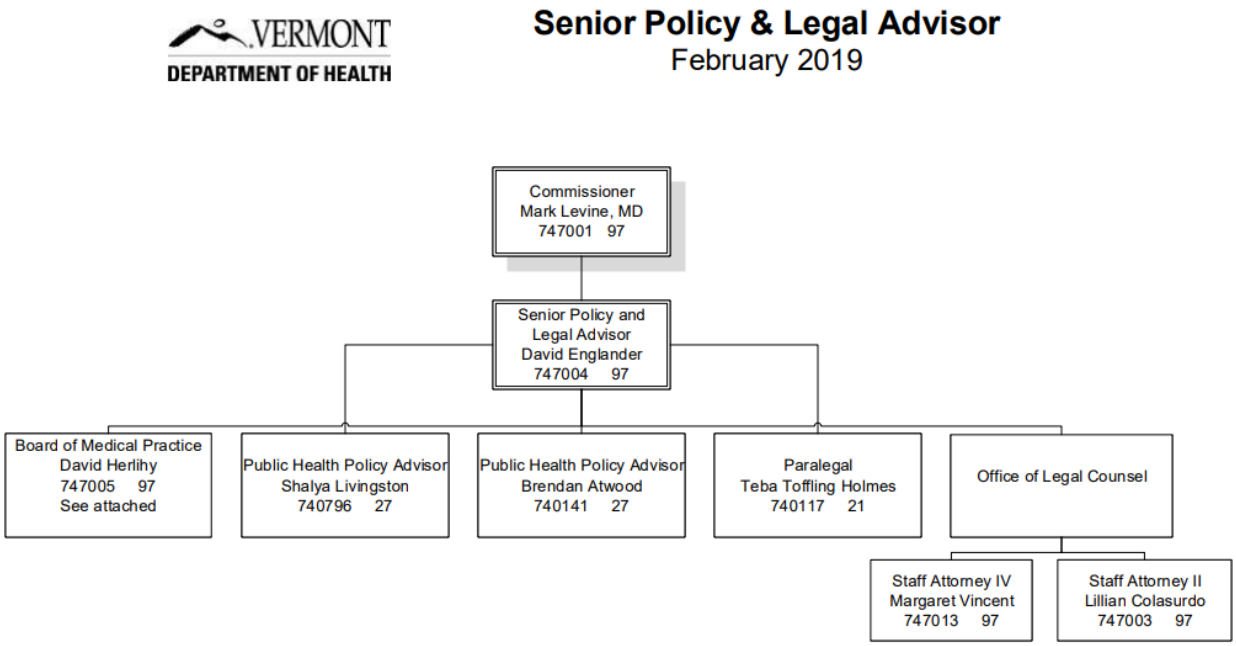

Figure 4.1-6: Senior Policy & Legal Advisor
From VDH Intranet

The office of the Public Health Policy Advisor assists the RMP primarily with rulemaking, while the Staff Attorneys provide legal counsel to RMP staff and conduct legal review and interpretation for the RMP staff. The Senior Policy and Legal Advisor provides legal counsel for the RMP, the Environmental Health Division, the Health Commissioner, and the Department of Health as a whole. The Office of Legal Counsel can assist in the legal matters that arise between Department staff and programs and other state agencies, local agencies, federal agencies, business entities, and the public.

For the Agreement State application process, the office of the Senior Policy and Legal Advisor has worked with RMP staff in revising Vermont Statute to ensure there exists authority to enter into an Agreement, creating the Radioactive Materials Rule to ensure compatibility with NRC regulations and to meet the requirements of Vermont's Administrative Procedures Act (3 V.S.A. §840), and reviewed this Request for an Agreement for legal purposes. The Radiation Control Program Director has direct access to the Senior Policy and Legal Advisor and his staff of attorneys and policy advisors.

4.1.2.1.d. For each program element, cross references to the pertinent portions of the state's supporting documentation for the application.

Table 4.1-2 provides a cross-reference from each of the elements in the *Handbook for Processing an Agreement* to Vermont references.

Table 4.1-2

Cross Reference of Program Elements 4.1 Through 4.7 to Vermont and NRC References

Section	Program Element	Information from Vermont	Criteria Number	References
4.1	Legal Elements			
4.1.1	Statutory Authority	Vermont Statutes Title 18: Health; Chapter 32 (18 V.S.A. §1651–1657).	1, 2, 9b, 12, 13, 14, 17, 19, 21, 23, 24, 25, 27, 28, 29, 30, and 31.	Criteria Policy Statement; Suggested State Legislation; Statement of Principles and Policy for the Agreement State Program.
4.1.2	Program Organization	Application text in Section 4.1.2.	1, 24, and 33.	Criteria Policy Statement; Program descriptions of existing Agreement States from IMPEP reports; MD 5.9; SA-200.
4.1.3	Content of Agreement	Application text in Section 4.1.3, including Proposed Agreement.	27.	Criteria Policy Statement MD 5.8.
4.2	Regulatory Requirements Program Elements			
4.2.1	Radiation Protection Elements	Incorporation of 10 CFR 20 by reference with exceptions and Vermont Radioactive Materials Rule Section 6.0.	2, 3, 4, 5, 6, 9a, 11, 22, and 23.	Criteria Policy Statement MD 5.9; SA-200; 10 CFR Parts 20, 30, 32, 34, 35, 37, 40, 70, and 150; CRCPD SSRs.
4.2.2	Transboundary Requirements	Incorporation of 10 CFR 20 by reference with exceptions and Vermont Radioactive Materials Rule Section 6.0.	9(a) and (b), 10, and 23.	Criteria Policy Statement; MD 5.9; SA-200 Appendix A; 10 CFR Parts 19, 20, 30, 31, 32, 34, 35,

				36, 37, 39, 40, 61, 70, 71, and 150.
4.2.3	Orderly Pattern of Regulation	Incorporation of 10 CFR 20 by reference with exceptions and Vermont Radioactive Materials Rule Section 6.0.	1, 7, 8, 11, 23, and 32	Criteria Policy Statement; MD 5.6; 10 CFR Parts 19, 20, 30, 31, 34, 35, 36, 39, 40, 61, 70, 71, and 150.
4.2.4	Health and Safety Significance	Incorporation of 10 CFR 20 by reference with exceptions and Vermont Radioactive Materials Rule Section 6.0.	1, 7, 8, 11, 23, and 32	Criteria Policy Statement; MD 5.6; 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 61, 70, 71, and 150.
4.3	Licensing Program Elements			
4.3.1	Materials Licensing	RMPP 1.1 *Review of Initial Application for License or an Amendment Request*. RMPP 1.2 *Renewal of Licenses*, RMPP 1.3 *License Termination/Revocation*, RMPP 1.4 *NRC Licenses Affected by Agreement States*, and RMPP 4.1 *Renewal Notices, Receipt and Tracking of Licensing Actions.* The Department is incorporating by reference specific licensing procedures and licensing guidance of the NRC including the NUREG 1556 Series.	1, 7, 8, 9a, 13, 14, 15, 20, and 23.	Criteria Policy Statement; MD 5.6; SA-104; NUREG-1556 series; NUREG-1757; NUREG-1575 (MARSSIM).
4.3.2	Sealed Source & Device Safety Evaluations	N/A	13 and 23.	Criteria Policy Statement; NUREG-1556, Volume 3; MD 5.6.

4.3.3	Low-Level Waste Site Licensing	N/A	9b and 13.	Criteria Policy Statement; NUREG-1199; NUREG 1200; NUREG-1300; NUREG-1274; MD 5.6; SA-109.
4.3.4	Uranium or Thorium Mill Licensing	N/A	29, 30, 31, 32, 33, 34, and 35.	Criteria Policy Statement; Uranium Recovery Regulations, Guidance and Communications; MD 5.6; SA-110.
4.3.5	Licensing Quality Assurance	RMPP 1.1 *Review of Initial Application for License or an Amendment Request*. RMPP 1.2 *Renewal of Licenses*, RMPP 1.3 *License Termination/Revocation*, RMPP 1.4 *NRC Licenses Affected by Agreement States*, and RMPP 4.1 *Renewal Notices, Receipt and Tracking of Licensing Actions.* The Department is incorporating by reference specific licensing procedures and licensing guidance of the NRC including the NUREG 1556 Series.	1 and 13.	Criteria Policy Statement; MD 5.6; SA-104.
4.3.6	Licensing Administrative Procedures	RMPP 1.1 *Review of Initial Application for License or an Amendment Request*. RMPP 1.2 *Renewal of Licenses*, RMPP 1.3 *License Termination/Revocation*,	1, 13, and 25.	Criteria Policy Statement.

		RMPP 1.4 *NRC Licenses Affected by Agreement States*, and RMPP 4.1 *Renewal Notices, Receipt and Tracking of Licensing Actions.* The Department is incorporating by reference specific licensing procedures and licensing guidance of the NRC including the NUREG 1556 Series. Described in Section 4.3 of the Application to Become an NRC Agreement State.		
4.4	Inspection Program			
4.4.1	Inspection Procedures	RMPP 2.1 *Scheduling of Inspections*, RMPP 2.2 *Inspection Preparations*, RMPP 2.3 *Performance-Based Inspections*, RMPP 2.4 *Documentation of Inspection Results*, RMPP 2.7 *Assuring the Technical Quality of Inspections* and RMPP 4.2 *Tracking Inspections*. The Department is incorporating by reference specific inspection procedures and guidance of the NRC including Inspection Manual Chapter 2800. Described in Section 4.4 of the Application to Become	1, 16, 18, and 36.	Criteria Policy Statement; MD 5.6; SA-101; SA-102; IMC 1220; IMC 2800; IMC 2801; NRC Inspection Procedures in the IP 8XXXX series.

		an NRC Agreement State.		
4.4.2	Inspections Quality Assurance	RMPP 2.1 *Scheduling of Inspections*, RMPP 2.2 *Inspection Preparations*, RMPP 2.3 *Performance-Based Inspections*, RMPP 2.4 *Documentation of Inspection Results*, RMPP 2.7 *Assuring the Technical Quality of Inspections* and RMPP 4.2 *Tracking Inspections*. The Department is incorporating by reference specific inspection procedures and guidance of the NRC including Inspection Manual Chapter 2800. Described in Section 4.4 of the Application to Become an NRC Agreement State.	1 and 16.	Criteria Policy Statement; MD 5.6; SA-102; IMC 2800; IMC 2801.
4.4.3	Inspections Administrative Procedures	RMPP 2.1 *Scheduling of Inspections*, RMPP 2.2 *Inspection Preparations*, RMPP 2.3 *Performance-Based Inspections*, RMPP 2.4 *Documentation of Inspection Results*, RMPP 2.7 *Assuring the Technical Quality of Inspections* and RMPP 4.2 *Tracking Inspections*. The Department is incorporating by reference specific inspection procedures	1.	Criteria Policy Statement; IMC 2800; IMC 2801.

		and guidance of the NRC including Inspection Manual Chapter 2800. Described in Section 4.4 of the Application to Become an NRC Agreement State.		
4.5	Enforcement Program			
4.5.1	Routine Enforcement Procedures	RMPP 2.5 *Enforcement, Escalated Enforcement and Administrative Actions.* Described in Section 4.5 of the Application to Become an NRC Agreement State.	18, 19, and 23.	Criteria Policy Statement; NRC Enforcement Policy; IMC 2800; IMC 2801.
4.5.2	Escalated Enforcement Procedures	RMPP 2.5 *Enforcement, Escalated Enforcement and Administrative Actions.* Described in Section 4.5 of the Application to Become an NRC Agreement State.	18, 19, and 23.	Criteria Policy Statement; NRC Enforcement Policy; IMC 2800; IMC 2801.
4.6	Technical Staff			
4.6.1	Technical Staff Organization	RMPP 5.1 *Qualifications and Training*. Described in Section 4.6 of the Application to Become an NRC Agreement State.	20 and 34.	Criteria Policy Statement; MD 5.6; SA-103
4.6.2	Formal Qualification Plan	RMPP 5.1 *Qualifications and Training.* Described in Section 4.6 of the Application to Become an NRC Agreement State.	2, 20, and 34.	Criteria Policy Statement; MD 5.6; IMC 1248; NRC/OAS Training Work Group "Recommendations for Agreement State Training Programs".

4.6.3	Current Technical Staff Qualifications	Described in Section 4.6 of the Application to Become an NRC Agreement State. Staff resumes are in an Appendix in Application Section 4.6 as are the staff Qualification Journals, Course Completion Certificates and Qualification Letter for Time of the Agreement.	20 and 34.	Criteria Policy Statement; MD 5.6; IMC 1248.
4.7	Event & Allegation			
4.7.1	Event & Allegation Response Procedures	RMPP 3.1, *Management of Allegations,* RMPP 3.2 *Incident Response* RMPP 3.3 *Scrap Yard Incident Response.* Described in Section 4.7.1 of the Application to Become an NRC Agreement State.	1 and 11.	Criteria Policy Statement; MD 5.6; MD 8.8; IMC 1301; IMC 1302; IMC 1303; IMC 1330; SA-105; SA-300; SA-400.
4.7.2	Event Reporting Procedures	RMPP 3.4 *Nuclear Materials Event Database (NMED) Input*. Described in Section 4.7.2 of the Application to Become an NRC Agreement State.	1 and 11.	Criteria Policy Statement; SA-300.

4.1.3 Content of the Proposed Agreement

Vermont is applying for a limited Agreement transferring to the State the authority to regulate byproduct materials as defined in section 11e.(1) of the Atomic Energy Act (AEA); byproduct materials as defined in section 11e.(3) of the AEA; byproduct materials as defined in section 11e.(4) of the AEA; source materials; and special nuclear materials, in quantities not sufficient to form a critical mass. The proposed Agreement follows below, and is formatted in accordance with, and with the content from, the Exhibit in NRC Management Directive 5.8.

Vermont is not applying for an Agreement transferring to the State authority to regulate byproduct materials as defined in section 11e.(2) of the AEA; for the regulation of the land disposal of byproduct, source, or special nuclear waste received from other persons; or for the evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided in the regulations or orders of the Commission.

The State of Vermont is requesting regulatory authority for Section 11e.(1) of the AEA.

Byproduct material as defined in section 11e.(1) of the AEA includes "any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material."

The State of Vermont is requesting regulatory authority for Section 11e.(3) of the AEA.

Byproduct material as defined in section 11e.(3) of the AEA includes "any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or. . . any material that (i) has been made radioactive by use of a particle accelerator; and (ii) is produced, extracted, or converted after extraction, before, on, or after the date of enactment of [the EPAct] for use for a commercial, medical, or research activity."

The State of Vermont is requesting regulatory authority for Section 11e.(4) of the AEA.

Section 11e.(4) provides that the term "byproduct material" includes "any discrete source of naturally occurring radioactive material, other than source material, that – (A) the Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of the Department of Energy, the Secretary of the Department of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and (B) before, on, or after August 8, 2005 is extracted or converted after extraction for use in a commercial, medical, or research activity."

The State of Vermont is requesting regulatory authority for source material, and special nuclear material, in quantities not sufficient to form a critical mass.

AN AGREEMENT

BETWEEN

THE UNITED STATES NUCLEAR REGULATORY COMMISSION

AND

THE STATE OF VERMONT

FOR THE

DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY

AND

RESPONSIBILITY WITHIN THE STATE OF VERMONT PURSUANT TO

SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

WHEREAS, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq. (hereinafter referred to as the Act), to enter into an agreement with the Governor of the State of Vermont (hereinafter referred to as the State) providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct material as defined in Sections 11e.(1), 11e.(2), 11e.(3), and 11e.(4) of the Act, source material, and special nuclear material in quantities not sufficient to form a critical mass; and

WHEREAS, The Governor of the State is authorized under 18 V.S.A. §1653 to enter into this Agreement with the Commission; and

WHEREAS, The Governor of the State certified on [DATE] that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on [DATE] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and

WHEREAS, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuming that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and

WHEREAS, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of Vermont acting on behalf of the State as follows:

ARTICLE 1

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct material as defined in Section 11e.(1) of the Act;
B. Byproduct material as defined in Section 11e.(3) of the Act;
C. Byproduct material as defined in Section 11e.(4) of the Act;
D. Source material;
E. Special nuclear material, in quantities not sufficient to form a critical mass.

ARTICLE II

This Agreement does not provide for discontinuance of any authority, and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction, operation, and decommissioning of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material waste as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct material as the Commission from time to time determines by regulation or order should, because of the hazards thereof, not to be disposed without a license from the Commission;
5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear material and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;
6. The regulation of activities not exempt from Commission regulation as stated in 10 CFR Part 150;
7. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material;
8. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

ARTICLE III

With the exception of those activities identified in Article II, paragraphs one through four and six, this Agreement may be amended, upon application by the State and approval by the

Commission, to include the additional areas specified in Article II, paragraphs five, seven, and eight, whereby the State can exert regulatory authority and responsibility with respect to those activities and materials.

ARTICLE IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

ARTICLE V

This Agreement shall not affect the authority of the Commission under Section 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

ARTICLE VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulation, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and the licensee performance that may have generic implication or otherwise be of regulatory interest.

ARTICLE VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed on Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which reciprocity will be accorded.

ARTICLE VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of Vermont, may terminate or suspend all or part of

this agreement and reassert the licensing and regulatory authority vested in it under the Act, if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act, which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

ARTICLE IX

This Agreement shall become effective on [date] and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland this [date] day of [month], [year].

FOR THE UNITED STATES NUCLEAR REGULATORY COMMISSION

_____

, Chairman

Done at Montpelier, Vermont this [date] day of [month], [year].

FOR THE STATE OF VERMONT

_____

, Governor

APPENDICIES

4.1-1 18 V.S.A. §§1651 – 1657, Ionizing and Nonionizing Radiation

4.1-2 Code of Vermont Rules Chapter 6 Environmental Health, Subchapter 5 Radiological Health Rule Part B

4.1-3 3 V.S.A. §§800 – 849 Administrative Procedure

4.1-4 18 V.S.A. §§101 – 131, State Board of Health

4.1-5 3 Appendix V.S.A. App §3-53 Executive Code of Ethics

4.1-6 Vermont Department of Human Resources Procedure 5.2 Conflict of Interest Arising from Employment

4.1-7 Vermont Department of Human Resources Procedure 5.6 Employee Conduct

4.1-8 Texas Low-Level Waste Compact

4.1-9 New England Compact on Radiological Health Protection

4.1-10 18 V.S.A. §§1601 – 1622, New England Compact on Radiological Health Protection

4.1-11 Radiation Survey Instrumentation available for the Radioactive Materials Program

Appendix 4.1-1

V.S.A. §§1651 – 1657, IONIZING AND NONIONIZING RADIATION

The Vermont Statutes Online

Title 18: Health

Chapter 32: Ionizing And Nonionizing Radiation Control

- **§1651. Definitions**

In this chapter:

(1) "By-product material" means each of the following:

(A) Any radioactive material, other than special nuclear material, that is yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(B) The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. However, "by-product material" does not include underground ore bodies depleted by these solution extraction operations.

(C) Any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity.

(D) Any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity.

(E) Any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction for use in a commercial, medical, or research activity, if the Governor, after determination by the NRC, declares by order that the source would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety.

(2) "Commissioner" means the Commissioner of Health.

(3) "Department" means the Department of Health.

(4) "General license" means a license effective under regulations promulgated by the State radiation control agency without the filing of an application to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing by-product, source, or special nuclear materials or other radioactive material occurring naturally or produced artificially.

(5) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, protons, and other nuclear particles.

(6) "Nonionizing radiation" means radiations of any wavelength in the entire electromagnetic spectrum except those radiations defined in this section as ionizing. Nonionizing radiations include ultraviolet, visible, infrared, microwave, radiowave, low frequency electromagnetic radiation; infrasonic, sonic, and ultrasonic waves; electrostatic and magnetic fields.

(7) "NRC" means the U.S. Nuclear Regulatory Commission or any successor agency of the United States to the Commission.

(8) "Radioactive material" means any material, whether solid, liquid, or gas, that emits ionizing radiation spontaneously. The term includes material made radioactive by a particle accelerator, by-product material, naturally occurring radioactive material, source material, and special nuclear material.

(9) "Specific license" means a license, issued to a named person after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing byproduct, source, or special nuclear materials or other radioactive material occurring naturally or produced artificially.

(10) "Source material" means each of the following:

(A) uranium, thorium, or any combination of those elements, in any physical or chemical form;

(B) any other material that the Governor declares by order to be source material after the NRC has determined the material to be source material; or

(C) ores that contain uranium, thorium, or any combination of those elements in a concentration by weight of 0.05 percent or more or in such lower concentration as the Governor declares by order to be source material after the NRC has determined the material in such concentration to be source material.

(11) "Special nuclear material" means:

(A) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the Governor declares by order to be special nuclear material after the NRC has determined the material to be such special nuclear material, but does not include source material; or

(B) any material artificially enriched by any elements, isotopes, or materials listed in subdivision (A) of this subdivision (11), but does not include source material. (Added 1967, No. 27, §1; amended 1977, No. 83, §1; 2015, No. 82 (Adj. Sess.), §1.)

- **§1652. State radiation control**

(a) The Department is the radiation control agency for the State of Vermont. The Commissioner may designate the Radiation Control Director within the Department as the individual who shall perform the functions vested in the Department by this chapter.

(b) The Department shall, for the protection of the occupational and public health and safety, develop programs for the control of ionizing and nonionizing radiation compatible with federal programs for regulation of by-product, source, and special nuclear materials.

(c) The Department may adopt, amend, and repeal rules under 3 V.S.A. chapter 25 that may provide for licensing and registration for the control of sources of ionizing radiation and that may provide for the control and regulation of sources of nonionizing radiation.

(d) The Department shall advise, consult, and cooperate with other agencies of the State, the federal government, other states and interstate agencies, political subdivisions, industries, and with groups concerned with control of sources of ionizing and nonionizing radiation.

(e) Applicants for registration of X-ray equipment shall pay an annual registration fee of $85.00 per piece of equipment.

(f) Fees collected under this section shall be credited to a special fund established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5 and shall be available to the Department to offset the costs of providing services relating to licensing and registration and controlling sources of ionizing radiation. (Added 1967, No. 27, §2; amended 1977, No. 83, §2; 2007, No. 76, §11; 2009, No. 134 (Adj. Sess.), §27; 2011, No. 128 (Adj. Sess.), §4; 2015, No. 57, §8; 2015, No. 82 (Adj. Sess.), §1.)

- **§1653. Federal-State agreements**

(a) The Governor, on behalf of the State of Vermont, may enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to by-product, source, and special nuclear materials and the assumption of these responsibilities by the State of Vermont.

(b) In the event of such agreement:

(1) The Department shall provide by rule for general or specific licensing of by-product, source, special nuclear materials, or devices or equipment utilizing such materials. The rule shall provide for amendment, suspension, or revocation of licenses. A rule adopted under this subsection shall be consistent with regulations duly adopted by the NRC except as the Commissioner determines is necessary to protect public health.

(2) The Department shall have authority to:

(A) impose conditions that are individual to a license when necessary to protect public health and safety;

(B) reciprocate in the recognition of specific licenses issued by the NRC or another state that has reached agreement with the NRC pursuant to 42 U.S.C. §2021(b)(agreement state);

(C) require that licensees and unlicensed individuals comply with the federal statutes and regulations relating to the authority assumed by the Department under this section and with the rules adopted by the Department under this section; and

(D) exempt certain by-product, source, or special nuclear materials or kinds of uses or users from the licensing or registration requirements set forth in this section when the Department makes a finding that the exemption of such materials or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(3) The Department may collect a fee for licenses issued under this section. The fee schedule for these licenses shall be the schedule adopted by the U.S. Nuclear Regulatory Commission and published in 10 C.F.R. §170.31 that is in effect as of July 1, 2016. Fees collected under this section shall be credited to the Nuclear Regulatory Fund established and managed under subdivision (4) of this subsection and shall be available to the Department to offset the costs of providing services under this section.

(4) There is established the Nuclear Regulatory Fund to consist of the fees collected under subdivision (3) of this subsection and any other monies that may be appropriated to or deposited into the Fund. Balances in the Nuclear Regulatory Fund shall be expended solely for the purposes set forth in this section and shall not be used for the general obligations of government. All balances in the Fund at the end of any fiscal year shall be carried forward and remain part of the Fund, and interest earned by the Fund shall be deposited in the Fund. The Nuclear Regulatory Fund is established in the State Treasury pursuant to 32 V.S.A. chapter 7, subchapter 5.

(5) Any person having a license immediately before the effective date of an agreement under subsection (a) of this section from the federal government or agreement state relating to by-product material, source material, or special nuclear material and which on the effective date of this agreement is subject to the control of this State shall be considered to have a like license with the State of Vermont until the expiration date specified in the license from the federal government or agreement state or until the end of the 90th day after the person receives notice from the Department that the license will be considered expired.

(6) The Department shall require each person who possesses or uses by-product, source, or special nuclear materials to maintain records relating to the receipt, storage, transfer, or disposal of such materials and such other records as the Department may require subject to such exemptions as may be provided by rule.

(7) Violations:

(A) A person shall not use, manufacture, produce, transport, transfer, receive, acquire, own, or possess any by-product, source, or special nuclear material unless licensed by or registered with the Department in accordance with the provisions of this chapter or rules adopted under this chapter.

(B) The Department shall have the authority in the event of an emergency to impound or order the impounding of by-product, source, and special nuclear materials in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules adopted under this chapter.

(8) The provisions of this section relating to the control of by-product, source, and special nuclear materials shall become effective on the effective date of an agreement between the federal government and this State as provided in subsection (a) of this section.

(c) This section does not confer authority to regulate materials or activities reserved to the NRC under 42 U.S.C. §2021(c) and 10 C.F.R. Part 150. (Added 1967, No. 27, §3; amended 2015, No. 82 (Adj. Sess.), §1.)

- **§1654. Inspection**

The Department or its duly authorized representatives may enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of this chapter and rules and regulations issued thereunder, except that entry into areas under the jurisdiction of the federal government shall be made only with the concurrence of the federal government or its duly designated representative. (Added 1967, No. 27, §4; amended 2015, No. 82 (Adj. Sess.), §1.)

- **§1655. Hearings and judicial review**

(a) In any proceeding under this chapter for the issuance or modification of rules relating to control of by-products, source, and special nuclear materials; or for granting, suspending, revoking, or amending any license; or for determining compliance with or granting exemptions from rules and regulations of the Department, the Department shall hold a public hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to the proceeding, subject to the emergency provisions in subsection (b) of this section.

(b) Whenever the Department finds that an emergency exists requiring immediate action to protect the public health and safety, the Department may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that such action be taken as is necessary to meet it. Notwithstanding any contrary provision of this chapter, the order shall be effective immediately. Any person to

whom the order is directed shall comply with the order immediately, but on application to the Department shall be afforded a hearing within ten days. On the basis of the hearing, the emergency order shall be continued, modified, or revoked within ten days after the hearing.

(c) Any final order entered in any proceeding under subsections (a) and (b) of this section shall be subject to judicial review in the Civil Division of the Superior Court. (Added 1967, No. 27, §5; amended 1997, No. 161 (Adj. Sess.), §11, eff. Jan. 1, 1998; 2015, No. 82 (Adj. Sess.), §1.)

- **§1656. Injunction proceedings**

Whenever, in the judgment of the Department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule issued thereunder, the Attorney General shall make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the Department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted. (Added 1967, No. 27, §6; amended 2015, No. 82 (Adj. Sess.), §1.)

- **§1657. Penalties**

Any person who violates this chapter or rules in effect pursuant thereto shall, upon conviction thereof, be imprisoned not more than six months, or fined not more than $500.00 or less than $100.00, or be both imprisoned and fined. (Added 1967, No. 27, §7.)

§1658. Repealed. 1977, No. 83, §5.

Appendix 4.1-2

Radiological Health Rule Part B

Radiological Health Rule: Part B – Effective March 1, 2019

Chapter 6 – Environmental Health

Subchapter 5 –

Radioactive Materials Rule

Section I. OVERVIEW

1.0 General Provisions

1.1 Purpose.

This rule establishes requirements for the protection of public health and safety as related to radioactive materials and implements the requirements of 18 V.S.A. §§1652 and 1653.

1.2 Scope.

1.2.1 This regulation, except as otherwise specifically provided, applies to persons who use, manufacture, produce, transport, transfer, receive, acquire, possess, own or dispose of radioactive materials.

1.2.2 A person, when required, shall obtain a license for radioactive materials in the possession or control of the person, and shall comply with the statute and this regulation.

1.2.3 As established in 18 V.S.A. §1653 (c) this rule does not regulate materials or activities reserved to the Nuclear Regulatory Commission (NRC) under 42 U.S.C. §2021 (c) and 10 C.F.R. Part 150.

1.2.4 Notwithstanding the requirements incorporated by reference, nothing in this rule relieves or limits a person from complying with the laws of the State of Vermont, including Vermont Statutes Title 18: Chapter 32, Title 10: Chapter 161, Title 10: Chapter 162 and Title 18: Chapter 31.

1.2.5 Title 10 Chapter I (Nuclear Regulatory Commission) Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 61.55, 61.56, 61.57, 70, 71, 150.1, 150.2, 150.3, 150.11, 150.20, 170, and 171 of the C.F.R. are incorporated by reference with the

exceptions set forth in the relevant subsections, which either do not apply or are under the authority of the NRC. The unofficial version of these parts may be accessed at: **http://www.nrc.gov/.** An official version is also available by hard copy.

1.2.6 To reconcile differences between this regulation and the incorporated sections of Federal regulations and to effectuate their joint enforcement, the following words and phrases shall be substituted for the language of the Federal regulations:

1.2.6.1 With the exception of 10 CFR 30.4 and in the definition of Special Nuclear Material in 10 CFR 20.1003 which are incorporated by reference, a reference to ‘‘NRC’’ or ‘‘Commission’’ means the Vermont Department of Health.

1.2.6.2 A reference to ‘‘NRC or agreement state’’ means the Vermont Department of Health, NRC, or agreement state.

1.2.6.3 A reference to “the Act” means a reference to Vermont statute 18 V.S.A. §1651-1658.

1.2.6.4 The definition of ‘‘sealed source’’ means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

1.2.6.5 A reference to ‘‘byproduct material’’ includes naturally occurring or accelerator-produced radioactive material (NARM). In 10 C.F.R. 40.4, the definition of “Byproduct Material” includes naturally occurring or accelerator-produced material (NARM).

1.2.6.6 In 10 CFR 40.4 the terms “Foreign Obligations” and Reconciliation” are not incorporated. In 10 CFR 40.4, in the definition of “Special Nuclear Material”, the sentence “and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material”, remains preserved.

1.2.6.7 With the exception of criminal history records required by 10 C.F.R. 37.27 (relating to requirements for criminal history checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material), notifications, reports and correspondence referenced in the incorporated parts of 10 C.F.R. shall be directed to the Vermont Department of Health after agreement state status is in effect, and, for NRC licenses, to the NRC until agreement state status is in effect. Criminal history records required by 10 C.F.R. 37.27 are to be sent to the NRC. Communications and reports concerning these regulations and applications filed under it shall be addressed to the Radiological &

Toxicological Sciences Program, Vermont Department of Health, 108 Cherry Street, Burlington, Vermont, 05401.

1.2.6.8 Instructions in 10 C.F.R. to use forms of the NRC means to use forms of the Department, which will be available on the Department website at http://healthvermont.gov

1.2.6.9 In 10 C.F.R. 30.18(d), 30.32(g), 31.5(b)(1)(ii), 31.5(c)(3)(ii), 31.5(c)(8)(i), 31.6, 31.7(a), 31.10(a), 31.10(b)(1), 31.12(c)(4), 32.13, 32.51(a), 32.51(c), 32.56, 32.59, 32.72(b)(5)(ii), 40.13(c)(10), 40.22(e), 40.25(b), 40.25(d)(3), 40.54, 40.55(c), (c)(1), (d)(1)(ii), (d)(2) and (d)(3), where a reference is made to "an Agreement State", it means "an Agreement State or the NRC".

1.2.6.10 In 10 C.F.R. 70.19(a) (1) and 70.19(c)(3), the terms "Commission or the Atomic Energy Commission" remains and does not mean the "Department". In 10 CFR 70.42(b)(1) the word "Department" means the "US Department of Energy".

1.2.6.11 In 10 CFR 150.20, where the words "non-agreement states", "areas of exclusive federal jurisdiction within agreement states", or "offshore waters" are used in 150.20(a)(1)(i), (ii), (iii), (b), (b)(3), and (b)(4) substitute the words "the State of Vermont". Where the words "agreement state license" are used in 10 CFR 150.20, also add the words "Nuclear Regulatory Commission license". Where the words "license issued by an agreement state" are used in 10 CFR 150.20 also add the words "license issued by the Nuclear Regulatory Commission". Where the words "license from an agreement state" are used in 10 CFR 150.20 also add the words "license from the Nuclear Regulatory Commission".

1.2.6.12 In 10 CFR 31, where the words "any non-agreement state" or "offshore waters" are used in 31.6 substitute the words "State of Vermont".

1.2.7 This Part does not regulate x-ray and other radiographic diagnostic or therapeutic equipment use by physicians, dentists, and other health professionals, occupational sources of radiation from machines and the radiation exposure values at the site boundary of the Vermont Yankee Nuclear Power Station.

1.3 Definitions

The definitions in 10 C.F.R. Chapter I, Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 61, 70, 71,150, 170 and 171 are incorporated by reference in this rule unless indicated otherwise.

1.3.1 “Agreement State” means any State with which the Atomic Energy Commission or the Nuclear Regulatory Commission has entered into an effective agreement under subsection 274b. of the Atomic Energy Act of 1954, as amended.

1.3.2 “Department” means the Vermont Department of Health unless the provision of the rule states that the term references the Department of Energy as referenced in 10 C.F.R. 70.42(b)(1).

1.3.3 “Licensed practitioner of the healing arts” means an individual licensed by the State of Vermont pursuant to Title 26 to practice the healing arts, which for the purposes of this rule shall be limited to medicine, surgery, dentistry, osteopathy, podiatry and chiropractic.

1.3.4 “NARM” means a naturally occurring or accelerator-produced radioactive material. The term does not include by-product, source or special nuclear material. In 10 C.F.R. 40.4, the definition of “Byproduct Material” includes NARM.

1.3.5 “Radioactive material” means any material, whether solid, liquid, or gas, that emits ionizing radiation spontaneously. The term includes material made radioactive by a particle accelerator, byproduct material, naturally occurring radioactive material, source material, and special nuclear material.

1.3.6 “Regulated entity” means any individual, person, organization or corporation that is subject to the regulatory jurisdiction of the Department within the scope of this rule.

1.3.7 “Source material” means: (1) uranium or thorium, or any combination thereof, in any physical or chemical form or (2) ores which contain by weight one-twentieth of one percent (0.05%) or more of: (1) uranium, (ii) thorium or (iii) any combination thereof. Source materials does not include special nuclear material.

1.3.8 “Special nuclear material” means: (1) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material; or (2) any material artificially enriched by any of the foregoing.

1.3.9 “Traceable to a National Standard” means a system which has been calibrated by the National Institute of Science and Technology or by a Regional Calibration Laboratory accredited by the American Association of Physicists in Medicine.

1.3.10 Unrefined and unprocessed ore” means ore in its natural form prior to any processing, such as grinding, roasting or beneficiating, or refining. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

1.3.11 The definition of regulated entities in 10 CFR 19.3 is not incorporated by reference.

2.0 Compliance Monitoring

2.1 Records

2.1.1 Licensees shall maintain records showing the receipt, transfer and disposal of radioactive material as described in 10 C.F.R. 30.51, relating to records.

2.1.2 Additional record requirements are specified elsewhere in these regulations.

2.2 Inspections and investigations

2.2.1 The Department may conduct inspections and investigations of the facilities and regulated activities of radioactive material necessary to demonstrate compliance with these regulations.

2.2.2 *Maintenance of records*. Licensees shall maintain records under this rule and have these records available for inspection by the Department at permanent sites or facilities of use identified in a license issued under this regulation.

2.2.3 Licensees will permit the Department to:

2.2.3.1 Have access to, and require the production of, books, papers, documents and other records and physical evidence pertinent to a matter under inspection or investigation.

2.2.3.2 Require a licensee to make reports and furnish information to the Department.

2.2.3.3 Enter the premises of a licensee for the purpose of investigation or inspection of radioactive materials and the premises and facilities where radioactive materials are used or stored, necessary to ascertain the compliance or noncompliance with these regulations and this subsection and to protect health, safety and the environment.

2.2.4 The Department may conduct additional follow-up inspections and investigations if violations of the regulations promulgated thereunder were noted at the time of the original inspection, or if a person presents information, or circumstances arise, which give the Department reason to believe that the health and safety of a person is threatened or that these regulations are being violated.

2.3 Tests

2.3.1 Licensees, upon instruction from the Department, shall perform, or permit the Department to perform reasonable tests as the Department deems appropriate or necessary including, but not limited to, tests of:

2.3.1.1 Radioactive materials.

2.3.1.2 Facilities in which radioactive materials are used or stored.

2.3.1.3 Radiation detection and monitoring instruments.

2.3.1.4 Other equipment and devices in connection with utilization or storage of licensed radioactive materials.

2.4 The Department may impose upon a person, requirements additional to those established in these regulations which it may deem reasonable and necessary to protect the public health and safety. As an example, when necessary or desirable to determine the extent of an individual's exposure to concentrations of radioactive material, the Department may require a licensee to provide to the individual appropriate bioassay services, medical services and the services of a qualified expert and to furnish a copy of the reports of these services to the Department.

3.0 Prohibitions, Restrictions and Additional Requirements

3.1 Sale of radioactive materials.

No person may sell within the State of Vermont radioactive materials which do not meet the requirements of these regulations.

3.2 Human use

3.2.1 No use of radioactive materials on humans may be permitted except under this regulation, and limited to the following license or certificate holders under Vermont Statutes Annotated, Title 26 Professions and Occupations:

Podiatry (Chapter 7); Chiropractic (Chapter 10); Dentists, Dental Hygienists, and Dental Assistants (Chapter 12); Medicine (Chapter 23); Physician Assistants (Chapter 31); Osteopathy (Chapter 33); Radiology (Chapter 51); Radiologist Assistants (Chapter 52).

3.2.2 Auxiliary personnel employed by a licensed practitioner of the healing arts at the location at which the licensed practitioner practices may use radioactive materials in the healing arts provided those individuals comply with the applicable requirements in 3.2.1.

3.2.3 Auxiliary personnel employed by a health care facility regulated by the Department of Health may only use radioactive materials in the healing arts in accordance with written job descriptions and employee qualifications.

3.2.4 Paragraphs 3.2.2 and 3.2.3 notwithstanding, human use of radioactive materials is permitted by individuals enrolled in clinical training programs that satisfy the related accreditation requirements of the boards in paragraph 3.2.1 and who are under the supervision of a licensed practitioner of the healing arts or of auxiliary personnel authorized under paragraphs 3.2.2 and 3.2.3 to use radioactive materials sources in the healing arts.

3.3 Deliberate misconduct.

The requirements under 10 C.F.R. 30.10 (relating to deliberate misconduct) are incorporated by reference. In 10 C.F.R. 30.10(b), the reference to 10 C.F.R. 2, relating to deliberate misconduct, is replaced with 18 V.S.A. §1651 – 1657 and Radioactive Material Program Procedure Section 2.5, Enforcement, Escalated Enforcement and Administrative Actions.

3.4 Employee protections.

The requirements under 10 C.F.R. 30.7 (relating to employee protection) are incorporated by reference.

3.5 Vacating premises.

In addition to the decommissioning requirements of 10 C.F.R. 30.36 (relating to expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas) that are incorporated by reference under Subsection 11.0 (relating to licensing of radioactive material), a licensee shall notify the Department in writing of intent to vacate at least 30 days before vacating or relinquishing possession or control of premises which may have been contaminated with radioactive material as a result of the licensee's activities. When deemed necessary by the Department, the licensee shall decontaminate the premises as the Department may specify.

3.6 Improper use of a monitoring device.

The deliberate exposure of, failure to use, or improper use of, an individual monitoring device or area monitoring device by an individual is prohibited.

3.7 Penalties.

A person who violates this rule is subject to the civil and criminal penalties in 18 V.S.A. §§1651-1657. At a minimum, civil penalties may be assessed in an amount sufficient to recover the costs expended by the Department in the correction of the violation or abatement of the resulting radiological nuisance.

4.0 Exemptions

4.1 Granting exemptions

The Department may, upon application therefore or upon its own initiative, grant exemptions from this regulation when the Department makes a finding that the exemption(s) do not result in significant risk to the health and safety of the public and safeguards that provide equivalent levels of protection in this rule are implemented.

4.2 Exemption Qualifications.

The following sources, uses and types of users are exempt from this subchapter:

4.2.1 Federal government agencies

4.2.1 Electrical equipment

4.2.1.1 Equipment that produces radiation incidental to its operation for other purposes if the dose equivalent rate averaged over an area of 10 square centimeters does not exceed 0.005 mSv (0.5 mrem) per hour at 5 centimeters from an accessible surface.

4.2.1.2 The equipment is not exempt when operated without adequate shielding during testing and servicing if radiation levels exceed those specified. Electron beam welders and electron microscopes are not exempt.

4.2.3 A material, product or use specifically exempted from licensing requirements by the NRC, the Department or an agreement state or authorized for distribution to persons exempt from license requirements.

5.0 Fees

5.1 Scope.

5.1.1 This subsection establishes fees for licensing of radioactive materials and provides for their payment. The fee schedule for licensing materials is found at 18 V.S.A. §1653 (b)(3).

5.1.2 For the purpose of this subsection, radioactive materials under the same administrative control in a single building are licensed as a single facility. Radioactive materials under the same administrative control at the same address or in a contiguous group of buildings may be licensed as a single facility if the Department determines that it is appropriate.

Except as otherwise specifically provided, this subsection applies to a person who: Is an applicant for or holder of a radioactive material license issued under Subsection 11.0 (relating to licensing of radioactive materials).

5.2 Incorporation by reference.

5.2.1 Notwithstanding the requirements incorporated by reference, Sections 170.2(d), 170.2(e), 170.2(g) through 170.2(p), 170.2(r), 170.2(t), 170.4, 170.5, 170.8, 170.11, 170.12(c)(1), 170.12(c)(3), 170.12(d) through 170.12(f), 170.21, 170.51, 171.8, 171.9, 171.11, 171.13, 171.15,

171.16(a)(1)(v), 171.17(a), 171.19, 171.23 and 171.25 are not incorporated by reference.

5.2.2 The following categories of materials licenses and types of fees are also not incorporated from 10 C.F.R. 170.31 and 171.16: 1.A, 1.B, 1.E, 1.F, 2.A.(1), 2.A.(2)(a) – 2.A.(2)(e), 2.A.(3), 2.A.(4), 2.C, 3.D, 3.H, 9, 10, 11, 12, 13, 15, 17 and 18.

5.3 Radioactive Materials fees.

5.3.1 Annual license fees for radioactive material are set forth in 10 C.F.R. 171. Other radioactive materials fees are described in 10 C.F.R. 170.

5.3.1.1 No refund will be made for termination of a license.

5.3.1.2 If, by amendment or otherwise, a license changes to another fee category, the fee for the new category will take effect on the anniversary date of the license.

5.3.2 An initial application for a license or reciprocity shall be accompanied by a check payable to the Department in accordance with the fee schedules in 10 C.F.R. 170 and 171. Thereafter, the Department will issue an annual fee invoice in accordance with the appropriate fee schedule at least 2 months prior to the license expiration. Fees are payable by the last day of the license expiration month as shown on the license fee invoice. This provision is not applicable to full cost recovery licenses.

5.3.3 The Department will not accept an initial application for a license prior to payment of the fees required by paragraphs 5.3.1 and 5.3.2.

5.3.4 If a license involves more than one of the categories in paragraph 5.3.2, the highest applicable fee applies.

5.3.5 Special provisions for calculating annual fees during agreement state transition period.

5.3.5.1 The annual fees for the NRC licenses that are transferred to the State of Vermont on the date the State of Vermont becomes an agreement state will be invoiced on the license's next anniversary date.

5.3.5.2 During the first year after the date the Department attains agreement state status, the annual fee for each NRC license transferred to the State of Vermont will include a proportional amount, based on the schedule of fees in 10 C.F.R. 171, for the period from the date agreement state status is attained until the license's next anniversary date, in addition to the amount assessed for the year following the license's anniversary date.

6.0 Standards for Protection Against Radiation

6.1 Purpose and scope

6.1.1 This subsection establishes standards for protection against ionizing radiation resulting from activities conducted under licenses issued by the Department. Licensees shall comply with this subsection.

6.1.2 The requirements of this subsection are designed to control the receipt, possession, use, transfer and disposal of radioactive materials by a licensee so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in this subsection. This subsection does not limit actions that may be necessary to protect health and safety in an emergency. In the event of an emergency, the Department will provide temporary guidance for dose management and other health protections.

6.1.3 Except as specifically provided in other subsections of this rule, this subsection applies to persons licensed by the Department to receive, possess, use, transfer or dispose of radioactive materials..

6.1.4 The limits in this subsection do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material in accordance with Subsection 14.0 (related to medical use of byproduct material) or to voluntary participation in medical research programs.

6.2 Incorporation by reference

6.2.1 Except as provided in this subsection, the requirements of 10 C.F.R. Part 20 (relating to standards for protection against radiation) are incorporated by reference. An unofficial version can be accessed at http://www.nrc.gov. The official version is also available in hard copy.

6.2.2 Notwithstanding the requirements incorporated by reference, Sections 20.1006; 20.1009; 20.1405(b); 20.1406(b); 20.1905 (g); 20.2203(c); 20.2206(a)(1), (3), (4) and (5); 20.2401 and 20.2402 are not incorporated.

6.2.3 Effect of incorporation of 10 C.F.R. 20.1403 ‘‘Criteria for license termination under restricted conditions.’’

The Department will not terminate a license under the conditions of restricted release as provided for in 10 C.F.R. 20.1403 (relating to criteria for license termination under restricted conditions) until a license termination plan (LTP), approved by the Department, has been in effect for a period of time demonstrating to the Department that continued implementation of

the plan will be effective in maintaining compliance with the required conditions of the plan. The Department may choose to implement the license termination process in one or more of the following steps:

6.2.3.1 The license is amended to authorize activities necessary to begin decommissioning under the LTP.

6.2.3.2 After decommissioning activities are complete and the provisions of 10 C.F.R. 20.1403 are in effect under the LTP, the license may be amended to end authorization of licensed activities. The license shall remain in effect for up to 5 years being limited to ownership/possession of the decommissioned material.

6.2.3.3 At the end of the period prescribed in paragraph 6.2.3.2, the Department will make a determination of the effectiveness of the established LTP. If the LTP has demonstrated the ability to maintain compliance with 10 C.F.R. 20.1403, the license will be terminated subject to the revisitation provision of 10 C.F.R. 20.1401(c) (relating to general provision and scope) regarding new evidence of a significant threat to health and safety. Otherwise, the licensee will be directed by the Department to take corrective actions as necessary to conform to 10 C.F.R. 20.1403 and the process shall revert back to paragraph 6.2.3.2.

6.2.4 *Reports of leaking or contaminated sealed sources.* If the test for leakage or contamination indicates a sealed source is leaking or contaminated, a report of the test shall be filed within 5 days with the Department describing the equipment involved, the test results and the corrective action taken.

7.0 Notices, Instructions and Reports to Workers; Inspections and Investigations

7.1 Purpose and scope.

7.1.1 This subsection establishes requirements for notices, instructions and reports by licensees to individuals engaged in activities under a license. This subsection also establishes options available to the individuals in connection with Department inspections of licensees to ascertain compliance with the provisions of the Vermont State Statutes and regulations, orders and licenses issued thereunder regarding radiological working conditions.

7.1.2 This subsection applies to persons who receive, possess, use, own or transfer radioactive materials licensed by the Department under Subsection 11.0(relating to licensing of radioactive material, services and associated healthcare professionals).

7.2 Incorporation by reference.

7.2.1 Except as provided in this subsection, the requirements of 10 C.F.R. Part 19 (relating to notices, instructions and reports to workers; inspections and investigations) are incorporated by reference. The unofficial version can be accessed at **http://www.nrc.gov/.** The official version is also available in hard copy.

7.2.2 Notwithstanding the requirements incorporated by reference, Sections 19.4; 19.5; 19.8; 19.11(a)(4), (b) and (e); 19.14(a); 19.30 and 19.40 are not incorporated. In 10 C.F.R. 19.13(a), where it says "Commission" and "Nuclear Regulatory Commission" this means the Department.

8.0 Reserved

9.0 Reserved

10.0 Enforcement

10.1 Purpose and Scope

10.1.1 Whenever the Department has reasonable grounds to believe that there has been a violation of any of the provisions of this rule, the Department may take appropriate action as provided in this subsection or otherwise provided in law at 18 V.S.A. Ch. 32, to protect the public health and safety.

10.1.2 If an inspection indicates that the regulated entity is not in compliance with the requirements of this rule, the Department shall notify the regulated entity in writing regarding any deficiencies.

10.1.3 The notice shall include specific required corrective actions necessary for the regulated entity to take to regain compliance with this rule and may include interim corrective actions, such as requiring further investigation of the circumstances giving rise to the notice, or ceasing use of radioactive materials until full compliance is restored, or such other action deemed necessary by the Department to protect the public health and safety is completed.

10.1.4 If the Department determines that an enforcement action is appropriate, or if timely and satisfactory compliance with a notice issued pursuant to paragraph 10.1.2 has not been achieved, the Department shall issue a notice of violation in writing.

10.2 Denial, Amendment, Suspension, Revocation or Waiver.

10.2.1 In any proceeding for granting denying, amending, suspending or revoking a license, determining compliance with, or granting exemptions from, rules or

regulations of the Department the Department shall hold a public hearing upon the request of any person whose interest may be affected. Any such person shall become a party to the proceeding. Proceedings shall be conducted in accordance with 18 V.S.A. §1655 and 3 V.S.A. §814 (the Administrative Procedures Act).

10.2.2 Any final order entered in any proceeding under 10.2.1 may be appealed to the Civil Division of the Superior Court.

10.3 Emergency Orders.

If the Department finds that an emergency exists that requires immediate action to protect the public health and safety the Department may, without notice or hearing, issue an order requiring such action as is necessary to address the emergency in accordance with 18 V.S.A. §1655 (b). Such orders must include a description of the nature of the emergency. Emergency orders take immediate effect and any person to whom the order is directed shall immediately comply. Any person(s) subject to such an order may make application to the Department for a hearing which shall be held within ten days. A decision shall be issued within ten days of the hearing that will continue, modify, or revoke the emergency order.

10.4 Whenever, in the judgment of the Department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of this rule, or its authorizing statute, the Department will refer the matter to the Attorney General who can seek relief in accordance with 18 V.S.A. §1656.

Section II. Radioactive Material

11.0 Licensing of Radioactive Materials

11.1 Purpose and scope.

11.1.1 This subsection establishes requirements for the licensing of radioactive material. A person may not manufacture, produce, receive, possess, use, transfer, own, dispose or acquire radioactive material except as authorized in a specific or general license issued under this subsection or otherwise provided in this subsection.

11.1.2 A licensee is also subject to Section I. Overview and other relevant subsections of Section II Radioactive Material.

11.2 The use of radioactive material in the State of Vermont under a license issued by the NRC is exempt from the licensing requirements of this subsection.

12.0 Rules of general applicability to licensing of radioactive materials.

12.1 Persons possessing a license for source, byproduct or special nuclear material in quantities not sufficient to form a critical mass on the date Vermont becomes an Agreement State as published in the *Federal Register:*

On the date the State of Vermont becomes an agreement state as published in the Federal Register, a person who possesses a general or specific license issued by the NRC for source, byproduct or special nuclear material in quantities not sufficient to form a critical mass, is deemed to possess a like license issued under this subsection and the statutes. The license shall expire either 90 days after receipt from the Department of a notice of expiration of the license, or on the date of expiration specified in the NRC license, whichever is earlier.

12.2 Incorporation by reference.

12.2.1 Except as provided in this subsection, the requirements of 10 C.F.R. Part 30 (relating to rules of general applicability to domestic licensing of byproduct material) are incorporated by reference. The unofficial version can be accessed at http://www.nrc.gov/**.** The official version is also available in hard copy. In 10 C.F.R. 30.10(b), the reference to 10 C.F.R. 2 relating to deliberate misconduct is replaced with 18 V.S.A. §1651 – 1657 and Radioactive Material Program Procedure Section 2.5, Enforcement, Escalated Enforcement and Administrative Actions. In 10 C.F.R. 30.50(c)(1), a reference to “NRC Operations Center” means “Department”. In 10 C.F.R. 30.50(c)(2), reference to written reports means ‘Written reports must be

sent to: Vermont Department of Health, 108 Cherry Street, Suite 201, Burlington Vermont 05401, Attn: Radioactive Materials Program."

12.2.2 Notwithstanding the requirements incorporated by reference, Sections 30.5; 30.6; 30.8; 30.21(c); 30.34(d) and (e)(1) and (3); 30.41(b)(6); 30.55; 30.63; 30.64 and the words "common defense and security" in the definitions for "Commencement of Construction" and "Construction" in 10 C.F.R. 30.4 are not incorporated. In 10 C.F.R. 30.10(b), the reference to 10 C.F.R. 2, relating to deliberate misconduct, is replaced with 18 V.S.A. §1651 – 1657 and Radioactive Material Program Procedure Section 2.5, Enforcement, Escalated Enforcement and Administrative Actions. In 10 C.F.R. 30.50 (c)(1), a reference to "NRC Operations Center" means "Department." In 10 C.F.R. 30.50(c)(2), reference to written reports means written reports must be sent to: Vermont Department of Health, 108 Cherry Street, Suite 201, Burlington, Vermont 05401, Attn: Radioactive Materials Program.

12.2.3 Only the NRC can issue a license under 10 C.F.R. 32.11, 32.22, 32.26 and 32.30.

12.3 Filing applications for specific license

In addition to incorporation by reference, an application for a specific license shall be accompanied by the fee required under Subsection 5.0 (relating to fees).

12.4 Renewal of licenses.

An application for renewal of a specific license shall be filed under Subsection 11.0 (relating to licensing of radioactive material).

12.4.1 If a renewal application is filed prior to 30 days before the expiration of a license, the existing license does not expire until definitive notice has been given by the Department of its action on the renewal application.

12.4.2 This paragraph also applies to new license applications incorporating other licenses.

12.5 General licenses for radioactive material

12.5.1 Incorporation by reference.

12.5.1.1 Except as provided in this subsection, the requirements of 10 C.F.R. Part 31 (relating to general domestic licenses for byproduct material) are incorporated by reference. The unofficial version can be accessed at http://www.nrc.gov/**.** The official version is also available in hard copy.

12.5.1.2 Notwithstanding the requirements incorporated by reference, Sections 31.4, 31.22 and 31.23 are not incorporated. In 10 C.F.R.

31.5(c)(7), the phrase “part 110” is replaced by “10 C.F.R. part 110.” In 10 C.F.R. 31, the term “any non-agreement state” means “Vermont.”

12.5.2 Certain measuring, gauging or controlling devices.

12.5.2.1 In addition to the parts of 10 C.F.R. 31.5 (relating to certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere) incorporated by reference, general licensees subject to registration under 10 C.F.R. 31.5(c)(13)(i) or possessing general licensed devices containing 37 MBq (1 mCi) or more of accelerator-produced material, as determined on the date of manufacture, or 3.7 MBq (0.1 mCi) or more of radium-226 shall also comply with the following:

12.5.2.2 Conduct a physical inventory every six months to account for all sources or devices, or both, received and possessed under this subsection and do the following:

12.5.2.2.1 Maintain the physical inventory records for three years from the date of each inventory.

12.5.2.2.2 Furnish a report to the Department annually showing to the extent practicable, the make, model, serial number, isotope, source activity and location of each device. The report shall list an individual to contact regarding questions about this report.

12.5.3 For portable devices, also comply with the following:

12.5.3.1 A person who initiates acquisition, transfer or disposal of a portable device shall notify the Department within 15 days of the action. Sending a portable device for calibration, maintenance or source replacement does not constitute transfer.

12.5.3.2 Portable devices may only be used by or under the direct supervision of individuals who have been instructed in the operating and emergency procedures necessary to ensure safe use.

12.5.3.3 For each individual that the licensee permits to use a portable device, the licensee shall maintain a record showing the type of device use permitted and the basis, such as training certificates, for that authorization. An individual’s record shall be kept for at least 3 years after the individual terminates association with the licensee.

12.5.3.4 Portable devices shall be secured from access by unauthorized personnel whenever the device is not under the direct surveillance of an individual authorized to use the device.

12.5.3.5 The licensee shall maintain a current sign out log at the permanent storage location of the portable device. Log entries shall be available for inspection by the Department for 3 years from the date of entry. The following information shall be recorded for each portable device:

12.5.3.5.1 The model and serial number of the device.

12.5.3.5.2 The name of the assigned user.

12.5.3.5.3 The locations and dates of use.

12.5.3.6 Emergency instructions shall accompany each portable device taken off the premises of the licensee.

12.5.4 Incidental radioactive material produced by a particle accelerator

12.5.4.1 A general license is issued to possess radioactive material produced incidentally to the operation of a particle accelerator. The general license is also subject to the applicable provisions of this subsection and Subsections 1.0, 6.0, and 7.0 (relating to general provisions; standards for protection against radiation; and notices, instructions and reports to workers; inspections and investigations).

12.5.4.2 A licensee may transfer this radioactive material only under Subsection 6.0 and Subsection 18.0 (relating to transfer of radioactive material; and packaging and transportation of radioactive material).

12.5.4.3 A licensee may dispose of this radioactive material only with Department approval.

12.6 Specific licenses to manufacture or transfer certain items containing radioactive material.

12.6.1 Incorporation by reference

12.6.1.1 Except as provided in this subsection, the requirements of 10 C.F.R. Part 32 (relating to specific domestic licenses to manufacture or transfer certain items containing byproduct material) are incorporated by reference. The unofficial version can be accessed at http://www.nrc.gov/**.** The official version is also available in hard copy.

12.6.1.2 Notwithstanding the requirements incorporated by reference, Sections 32.1(c)(1), 32.8, 32.11, 32.12, 32.14, 32.15, 32.16, 32.18, 32.19, 32.20, 32.21, 32.21a, 32.22, 32.23, 32.25, 32.26, 32.27, 32.28, 32.29, 32.30, 32.31 and 32.32 are not incorporated.

12.6.1.3 Only the NRC can issue a license under 10 CFR 32.11, 32.22, 32.26 and 32.30.

12.6.2 Licensing the incorporation of NARM into gas and aerosol detectors.

An application for a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt under Subchapter B (relating to general provisions for radioactive material) will be approved if the application satisfies requirements equivalent to those in 10 C.F.R. 32.26—32.29. The maximum quantity of radium-226 may not exceed 3.7 kBq (0.1 microcuries).

12.7 Specific Domestic Licenses of Broad Scope for Radioactive Material.

12.7.1 Incorporation by reference

12.7.1.1 Except as provided in this subsection, the requirements of 10 C.F.R. Part 33 (relating to specific domestic licenses of broad scope for byproduct material) are incorporated by reference. The unofficial version can be accessed at http://www.nrc.gov/. The official version is also available in hard copy.

12.7.1.2 Notwithstanding the requirements incorporated by reference, Sections 33.8, 33.21 and 33.23 are not incorporated.

12.7.2 Inclusion of naturally occurring or accelerator-produced radioactive material (NARM)

The requirements of 10 C.F.R. 33, relating to specific licenses of broad scope for radioactive material, also apply to NARM.

12.8 Licensing of source material

12.8.1 Incorporation by reference. Except as provided in this subsection, the requirements of 10 C.F.R. Part 40 (relating to domestic licensing of source material) are incorporated by reference. The unofficial version can be accessed at http://www.nrc.gov/**.** The official version is also available in hard copy.

12.8.2 Notwithstanding the requirements incorporated by reference, Sections 40.6; 40.8; 40.12(b); 40.13 (c)(5)(iv), (j) and (m); 40.23; 40.27; 40.28; 40.31(j),(k),(l) and (m); 40.32(d) and (g) and those portions of paragraph (e) which apply to uranium enrichment and uranium hexafluoride facilities; 40.33; 40.38; 40.41(d), (e)(1), (e)(3), (g) and (h); 40.51(b)(6); 40.52; 40.53; 40.56; 40.64; 40.66; 40.67; 40.81; and 40.82; Appendix A to Part 40; and the words "common defense and security" in the definitions for "Commencement of Construction" and "Construction" in 10 C.F.R. 40.4 are not incorporated. In 10 C.F.R. 40.4, the definition of "Byproduct Material" includes NARM. In 10 C.F.R. 40.10, the reference to 10 C.F.R. 2, relating to deliberate misconduct, is replaced with 18 V.S.A. §1651-1657 and

Radioactive Material Program Procedure Section 2.5, Enforcement, Escalated Enforcement and Administrative Actions. In 10 C.F.R. 40.4 the terms "Foreign Obligations" and "Reconciliation" are not incorporated. In 10 C.F.R. 40.4, the phrase "and any other material which the Commission, pursuant to the provision of section 51 of the Act, determines to be special nuclear material" is preserved without change. In 10 C.F.R. 40.10(b) the reference to 10 C.F.R. 2 subpart B is replaced by 18 V.S.A. §130. In 10 CFR 40.60, reference to written reports means "Written reports must be sent to: Vermont Department of Health, 108 Cherry Street, Suite 201, Burlington, Vermont 05401, Attn: Radioactive Materials Program."

12.8.3 Only the NRC can issue a license pursuant to 10 C.F.R. 40.52.

12.9 Licensing of special nuclear material

12.9.1 *Incorporation by reference*. Except as provided in this subsection, the requirements of 10 C.F.R. Part 70 (relating to domestic licensing of special nuclear material) are incorporated by reference. The unofficial version can be accessed at http://www.nrc.gov/**.** The official version is also available in hard copy. In section 70.10, the phrase "the procedures in 10 C.F.R. part 2 subpart B" is replaced with 18 V.S.A. §130. In 70.19(a)(1), the terms Commission and Atomic Energy Commission remain.

12.9.2 Notwithstanding the requirements incorporated by reference, Sections 70.1(c), (d) and (e); 70.5; 70.6; 70.8; 70.13; 70.14; 70.20a; 70.20b; 70.21(a)(1), (c), (f), (g) and (h); 70.22(b), (c), (f), (g), (h), (i), (j), (k), (l), (m) and (n); 70.23(a)(6), (7), (8), (9), (10), (11) and (12) and (b); 70.23a; 70.24; 70.25(a)(1); 70.31(c), (d) and (e); 70.32(a)(1), (4), (5), (6) and (7); 70.32(b)(1), (3) and (4), (c), (d), (e), (f), (g), (h), (i), (j) and (k); 70.37; 70.40; 70.42(b)(6); 70.44; 70.51(c); 70.52; 70.55(c)(1), (2) and (3); 70.56(c) and (d); 70.59; 70.60; 70.61; 70.64; 70.65; 70.66; 70.72; 70.73; 70.74; 70.76; 70.82; Appendix A to Part 70 and the words "common defense and security" in the definitions for "Commencement of Construction" and "Construction" in 10 C.F.R. 70.4 are not incorporated. In 10 C.F.R. 70.10, the reference to 10 C.F.R. 2, relating to deliberate misconduct, is replaced with 18 V.S.A. §1651-1657 and Radioactive Material Program Procedures Section 2.5, Enforcement, Escalated Enforcement and Administrative Action. In 70.19(a)(1) and 70.19(c)(3), the terms "Commission or the Atomic Energy Commission" remains and does not mean the "Department." In 10 C.F.R. 70.4, the phrase "and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material" is preserved without change. In 10 CFR 70.50(c), preparation and submission of reports, all communications are to be made to the Vermont Department of Health 108 Cherry Street, Suite 201, Attn: Radioactive Materials Program, Burlington Vermont 05401, and by telephone at 802-863-7200 for immediate and 24-hour reports.

12.9.3 In 10 C.F.R. 70.42(b)(1), the word "Department" means the "US Department of Energy."

12.10 Transfer of radioactive material

The requirements of 10 C.F.R. 30.41 (relating to transfer of byproduct material) also apply to NARM.

12.10.1 *Incorporation by reference.* Except as provided in this subsection, the requirements of 10 C.F.R. 150.1, 150.2, 150.3, 150.11 and 150.20 are incorporated by reference. The unofficial version may be accessed at **http://www.nrc.gov/.** An official hard copy version is also available.

12.10.2 The Department may withdraw, limit or qualify its acceptance of a specific license or equivalent licensing document issued by another agency, or product distributed under the licensing document, upon determining that the action is necessary to prevent a public health hazard as defined in 18 V.S.A. §2 (9).

12.10.3 Implementation of the requirements of this subsection regarding byproduct, source and special nuclear material is subject to paragraph 12.2 (relating to persons possessing a license for source, byproduct or special nuclear material in quantities not sufficient to form a critical mass on the date Vermont becomes an agreement state as published in the Federal Register).

13.0 Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

13.1 Purpose and scope

13.1.1 This subsection establishes the requirements for the physical protection program for any licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material listed in Appendix A to 10 C.F.R. Part 37 Category 1 and Category 2 Radioactive Materials.

13.1.2 No provision of this subsection authorizes possession of licensed material.

13.2 Incorporation by reference

13.2.1 Except as provided in this subsection, the requirements of 10 C.F.R. Part 37 (relating to physical protection of category 1 and category 2 quantities of radioactive materials) are incorporated by reference. The unofficial version can be accessed at **http://www.nrc.gov.** The official version is also available in hard copy.

13.2.2 Notwithstanding the requirements incorporated by reference, Sections 37.3(b)(2), 37.13, 37.73(d) and (e), 37.107 and 37.109 are not incorporated.

14.0 Medical Use of Byproduct Material

14.1 Purpose and scope

14.1.1 This subsection prescribes requirements and provisions for the medical use of radioactive material and for issuance of specific licenses authorizing the medical use of radioactive material. These requirements and provisions provide for the protection of the public health and safety.

14.1.2 The requirements of this chapter are in addition to, and not in substitution for, other applicable requirements in these regulations.

14.2 Incorporation by reference.

14.2.1 Except as provided in this subsection, the requirements of 10 C.F.R. Part 35 (relating to medical use of byproduct material) are incorporated by reference. The unofficial version can be accessed at http://www.nrc.gov**.** The official version is also available in hard copy.

14.2.2 Notwithstanding the requirements incorporated by reference, Sections 35.8, 35.11(c)(1), 35.13(a)(1), 35.4001 and 35.4002 are not incorporated.

14.3 Authorization for calibration, transmission and reference sources

Notwithstanding the incorporation by reference of 10 C.F.R. 35.65 (relating to authorization for calibration, transmission, and reference sources), a licensee authorized for medical use of radioactive materials may not receive, possess or use radium in total quantity of 3.7 MBq (100 µci) or more for check, calibration, transmission and reference use except as specifically authorized by the Department.

15.0 Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations

15.1 Purpose and Scope

This subsection establishes radiation safety requirements for persons using radioactive materials for industrial radiography.

15.2 Incorporation by reference

15.2.1 Except as provided in this subsection, the requirements of 10 C.F.R. Part 34 (relating to licenses for industrial radiography and radiation safety requirements for industrial radiographic operations) are incorporated by

reference. The unofficial version can be accessed at http://www.nrc.gov/**.** The official version is also available in hard copy.

15.2.2 Notwithstanding the requirements incorporated by reference, Sections 34.5, 34.8, 34.121 and 34.123 are not incorporated.

15.3 Prohibitions

Use of radiation sources covered under this subsection for diagnosis or therapy on humans or animals is not permitted.

16.0 Licenses and Radiation Safety Requirements for Well Logging

16.1 Purpose and Scope.

This subsection establishes radiation safety requirements for persons using radiation sources for well logging in a single well, radioactive markers, uranium sinker bars and subsurface tracer studies. Persons who use radiation sources for well logging operations shall comply with this subsection, which is in addition to and not in substitution for other applicable requirements of this rule.

16.2 Incorporation by reference

16.2.1 Except as provided in this subsection, the requirements of 10 C.F.R. Part 39 (relating to licenses and radiation safety requirements for well logging) are incorporated by reference. The unofficial version can be accessed at **http://www.nrc.gov/**. The official version is also available in hard copy.

16.2.2 Notwithstanding the requirements incorporated by reference, Sections 39.5, 39.8, 39.101 and 39.103 are not incorporated.

17.0 Licenses and Radiation Safety Requirements for Irradiators

17.1 Purpose and scope

17.1.1 This subsection contains the requirements for the issuance of a license authorizing the use of radioactive materials in sealed sources to irradiate objects or materials with gamma radiation.

17.1.2 The requirements of this subsection are in addition to, and not in substitution for, other applicable requirements in this regulation.

17.2 Incorporation by reference

17.2.1 Except as provided in this subsection, the requirements of 10 C.F.R. Part 36 (relating to licenses and radiation safety requirements for irradiators) are

incorporated by reference. The unofficial version can be accessed at http://www.nrc.gov/**.** The official version is also available in hard copy.

17.2.2 Notwithstanding the requirements incorporated by reference, Sections 36.5, 36.8, 36.91, 36.93 and the words "common defense and security" in the definitions for "Commencement of Construction" and "Construction" in 10 C.F.R. 36.2 are not incorporated.

18.0 Packaging and Transportation of Radioactive Material

18.1 Purpose and scope

This subsection establishes requirements for packaging, preparation for shipment and transportation of radioactive material. This subsection applies to a person who transports radioactive material or delivers radioactive material to a carrier for transport.

18.2 Incorporation by reference.

18.2.1 Except as provided in this subsection, the requirements of 10 C.F.R. Part 71 (relating to packaging and transportation of radioactive material) are incorporated by reference. The unofficial version can be accessed at http://www.nrc.gov/**.** The official version is also available in hard copy.

18.2.2 Notwithstanding the requirements incorporated by reference, Sections 71.2; 71.6; 71.11; 71.14(b); 71.19; 71.31; 71.33; 71.35; 71.37; 71.38; 71.39; 71.41; 71.43; 71.45; 71.51; 71.55; 71.59; 71.61; 71.63; 71.64; 71.65; 71.70; 71.71; 71.73; 71.74; 71.75; 71.77; 71.85(a), (b) and (c); 71.91(b); 71.99; 71.100; 71.101(c)(2), (d) and (e); 71.107; 71.109; 71.111; 71.113; 71.115; 71.117; 71.119; 71.121; 71.123 and 71.125 are not incorporated. In 10 C.F.R. 71 Subpart H the terms "Certificate of Compliance," "certificate holder," and "applicant for CoC" apply only to the NRC. In 10 C.F.R. 71.17(c)(3), the submission required before the first use of an NRC approved package should be sent to the NRC, ATTN: Document Control Desk, Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in §71.1(a), the licensee's name and license number and the package identification number specified in the package approval.

18.3 Transportation of licensed material

In addition to the incorporation by reference of 10 C.F.R. Part 71 (relating to packaging and transportation of radioactive material), if V.S.A. Title 23 (relating to interstate motor carrier safety requirements; intrastate motor carrier requirements; and hazardous materials transportation) or the regulations of the United States Department of Transportation in 49 C.F.R. Parts 171—180 and 388—397 do not

apply to a shipment of licensed material, the licensee shall conform to the standards and requirements of those regulations to the same extent as if the shipment was subject to the regulations.

19.0 Waste Classification, Characteristics and Labeling: The requirements of 10 C.F.R. 61. 55, 61.56 and 61.57 (relating to classification characterization and labeling of radioactive wastes) are incorporated by reference. The official version can be accessed at http://www.nrc.gov/. The official version is also available in hard copy.

Appendix 4.1-3

3 V.S.A. §§800 – 849 Administrative Procedure

The Vermont Statutes Online

Title 3: Executive

Chapter 25: Administrative Procedure

- **§800. Purpose**

The General Assembly intends that:

(1) agencies maximize the involvement of the public in the development of rules;

(2) agency inclusion of public participation in the rule-making processes should be consistent;

(3) the General Assembly should articulate, as clearly as possible, the intent of any legislation which delegates rule-making authority;

(4) when an agency adopts policy or procedures, it should not do so to supplant or avoid the adoption of rules. (Added 1999, No. 146 (Adj. Sess.), §2.)

- **§801. Short title and definitions**

(a) This chapter may be cited as the "Vermont Administrative Procedure Act."

(b) As used in this chapter:

(1) "Agency" means a State board, commission, department, agency, or other entity or officer of State government, other than the Legislature, the courts, the Commander in Chief, and the Military Department, authorized by law to make rules or to determine contested cases.

(2) "Contested case" means a proceeding, including but not restricted to rate-making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

(3) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law.

(4) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(5) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(7) "Practice" means a substantive or procedural requirement of an agency, affecting one or more persons who are not employees of the agency, which is used by the agency in the discharge of its powers and duties. The term includes all such requirements, regardless of whether they are stated in writing.

(8) "Procedure" means a practice which has been adopted in the manner provided in section 835 of this title, either at the election of the agency or as the result of a request under subsection 831(b) of this title.

(9) "Rule" means each agency statement of general applicability which implements, interprets, or prescribes law or policy and which has been adopted in the manner provided by sections 836-844 of this title.

(10) "Incorporation by reference" means the use of language in the text of a regulation which expressly refers to a document other than the regulation itself.

(11) "Adopting authority" means, for agencies which are attached to the Agencies of Administration, of Development and Community Affairs, of Natural Resources, of Human Services, and of Transportation, or any of their components, the secretaries of those agencies; for agencies attached to other departments or any of their components, the commissioners of those departments; and for other agencies, the chief officer of the agency. However, for the procedural rules of boards with quasi-judicial powers, for the Transportation Board, for the Vermont Veterans' Memorial Cemetery Advisory Board, and for the Fish and Wildlife Board, the chair or executive secretary of the board shall be the adopting authority. The Secretary of State shall be the adopting authority for the Office of Professional Regulation.

(12) "Small business" means a business employing no more than 20 full-time employees. (Added 1967, No. 360 (Adj. Sess.), §1, eff. July 1, 1969; amended 1981, No. 82, §1; 1983, No. 158 (Adj. Sess.), eff. April 13, 1984; 1985, No. 56, §1; 1985, No. 269 (Adj. Sess.), §4; 1987, No. 76, §18; 1989, No. 69, §2, eff. May 27, 1989; 1989, No. 250 (Adj. Sess.), §88; 2001, No. 149 (Adj. Sess.), §46, eff. June 27, 2002.)

- **§§802Repealed. 1981, No. 82, §7(1).**
- **§803. Repealed. 1981, No. 82, §7(2).**
- **§804. Repealed. 1981, No. 82, §7(3).**
- **§805. Repealed. 1981, No. 82, §7(4).**
- **§806. Procedure to request adoption of rules or procedures**

  A person may submit a written request to an agency asking the agency to adopt, amend, or repeal a procedure or rule. Within 30 days of receiving the request, the agency shall initiate rule-making proceedings, shall adopt a procedure, or shall deny the request, giving its reasons in writing. (Added 1967, No. 360 (Adj. Sess.), §6, eff. July 1, 1969; amended 1981, No. 82, §2.)

- **§807. Declaratory judgment on validity or applicability of rules**

  The validity or applicability of a rule may be determined in an action for declaratory judgment in the Washington Superior Court if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question. (Added 1967, No. 360 (Adj. Sess.), §7, eff. July 1, 1969; amended 1973, No. 193 (Adj. Sess.), §3.)

- **§808. Procedure to request declaratory rulings by agencies**

  Each agency shall provide for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency, and may so provide by procedure or rule. Rulings disposing of petitions have the same status as agency decisions or orders in contested cases. (1967, No. 360 (Adj. Sess.), §8, eff. July 1, 1969; amended 1981, No. 82, §3.)

- **§809. Contested cases; notice; hearing; records**

(a) In a contested case, all parties shall be given an opportunity for hearing after reasonable notice.

(b) The notice shall include:

(1) A statement of the time, place, and nature of the hearing.

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(3) A reference to the particular sections of the statutes and rules involved.

(4) A short and plain statement of the matters at issue. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(c) Opportunity shall be given all parties to respond and present evidence and argument on all issues involved.

(d) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(e) The record in a contested case shall include:

(1) all pleadings, motions, intermediate rulings;

(2) all evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings thereon;

(5) proposed findings and exceptions; and

(6) any decision, opinion, or report.

(f) Oral proceedings or any part thereof shall be transcribed on request of any party subject to other applicable provisions of law, and upon payment by the requesting party of the reasonable costs thereof.

(g) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(h) The chair of a board, commission, or panel, a hearing officer appointed by a board, commission, or panel, or a licensed attorney representing a party before a board, commission, or panel may, whether or not specifically authorized in any other provision of law, compel, by subpoena, the attendance and testimony of witnesses and the production of books and records. Sections 809a and 809b of this title shall apply to all subpoenas issued under this subsection. Notwithstanding the provisions of section 816 of this title, this subsection shall apply to the Human Services Board, the Labor Relations Board, and the Employment Security Board. (Added 1967, No. 360 (Adj. Sess.), §9, eff. July 1, 1969; amended 1987, No. 104.)

- **§809a. Enforcement of subpoenas; compulsion of testimony**

(a) This section applies when an agency has issued a subpoena to compel a person to appear and testify or to produce documents or things, if the person:

(1) has failed to appear or has failed to produce the subpoenaed materials, in which case any party or the agency may bring a proceeding to enforce the subpoena; or

(2) has appeared but has refused to take an oath or affirmation authorized by law, or has refused to testify or to answer a question, in which case any party or the agency may bring a proceeding to compel testimony by the person.

(b) A proceeding under this section shall be brought in Superior Court for the county in which the administrative proceeding is or will be held. The court shall consist of the presiding judge, sitting alone, and no jury shall be used. The proceeding shall be commenced by motion, and the motion shall be served in the manner provided for motions in civil actions. No filing fee shall be required. No answer or responsive motion is required, but such papers may be filed. The court shall schedule a hearing on the motion as soon as is reasonably practicable.

(c) In a proceeding to compel testimony, the court may order the respondent to testify and answer questions, and may impose limits on those questions or answers.

(d) In a proceeding to enforce a subpoena, if the petitioner establishes that the subpoena was properly issued, and that the person subpoenaed has failed to appear or to produce documents or things required, the court shall issue an order

compelling compliance with the agency subpoena. Otherwise, the court shall vacate or modify the subpoena.

(e) In a proceeding to enforce a subpoena, after giving the respondent an opportunity to present evidence, if the court determines that the subpoena was properly issued, and that failure to comply with the agency's subpoena was without reasonable excuse, it shall assess a penalty against the respondent, to be paid to the petitioner, in an amount not to exceed $100.00 and shall also award all costs of litigation which the petitioner incurred as a result of the respondent's noncompliance, including costs of issuing new subpoenas and incurring additional expenses for expert witnesses.

(f) A person who, without reasonable excuse, fails to comply with an order of the court issued under this section may be held to be in contempt of the court. (Added 1983, No. 230 (Adj. Sess.), §5; amended 2015, No. 97 (Adj. Sess.), §4.)

- **§809b. Modification of subpoena or discovery order**

(a) When an agency has issued a subpoena to compel testimony or the production of documents or things, or has issued a discovery order to a party, an aggrieved person may bring a proceeding to modify or vacate the subpoena or order in the Superior Court for the county in which the petitioner resides or in which the administrative proceeding is or will be held.

(b) The Court shall consist of the presiding judge, and no jury shall be used. The proceeding shall be commenced by motion, which shall be served in the manner provided for motions in civil actions. No answer or responsive motion is required, but such papers may be filed. No filing fee shall be required. The Court shall schedule a hearing on the motion as soon as is reasonably practicable.

(c) After hearing, the Court may issue its order affirming, modifying, or vacating the subpoena or discovery order. (Added 1983, No. 230 (Adj. Sess.), §5.)

- **§810. Rules of evidence; official notice**

In contested cases:

(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The Rules of Evidence as applied in civil cases in the Superior Courts of this State shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except

where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(3) A party may conduct cross-examinations required for a full and true disclosure of the facts.

(4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (Added 1967, No. 360 (Adj. Sess.), §10, eff. July 1, 1969; amended 1973, No. 193 (Adj. Sess.), §3, eff. April 9, 1974.)

- **§811. Examination of evidence by agency**

When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this section. (Added 1967, No. 360 (Adj. Sess.), §11, eff. July 1, 1969.)

- **§812. Decisions and orders**

(a) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified forthwith either personally or by mail of any decision or order. A copy of the decision or order shall be delivered or mailed forthwith to each attorney of record and to each party not having an attorney of record. That mailing shall constitute actual knowledge to that person or party.

(b) When a decision or order is approved for issue by a board or commission, the decision or order may be signed by the chair or vice chair on behalf of the issuing board or commission. (Added 1967, No. 360 (Adj. Sess.), §12, eff. July 1, 1969; amended 1983, No. 190 (Adj. Sess.), §1, eff. April 27, 1984.)

- **§813. Ex parte consultations**

Unless required for the disposition of ex parte matters authorized by law, members or employees of any agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his or her representative, except upon notice and opportunity for all parties to participate. An agency member:

(1) may communicate with other members or employees of the agency; and

(2) may have the aid and advice of one or more personal assistants. (Added 1967, No. 360 (Adj. Sess.), §13, eff. July 1, 1969.)

- **§814. Licenses**

(a) When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases shall apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license

limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

(d) An agency having jurisdiction to conduct proceedings and impose sanctions in connection with conduct of a licensee or former licensee shall not lose jurisdiction if the license is not renewed or is surrendered or otherwise terminated prior to initiation of such proceedings. (Added 1967, No. 360 (Adj. Sess.), §14, eff. July 1, 1969; amended 1987, No. 229 (Adj. Sess.), §1; 2001, No. 151 (Adj. Sess.), §4, eff. June 27, 2002.)

- **§815. Judicial review of contested cases**

(a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in any contested case may appeal that decision to the Supreme Court, unless some other court is expressly provided by law. However, a preliminary, procedural, or intermediate agency action or ruling is immediately appealable under those rules if review of the final decision would not provide an adequate remedy, and the filing of the appeal does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

(b) If, before the date set for court hearing, application is made to the Court for leave to present additional evidence, and it is shown to the satisfaction of the Court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the Court may order that the additional evidence be taken before the agency upon conditions determined by the Court. The agency may modify its findings and decisions by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(c) If the final decision of an agency is expressly provided by law to be reviewable in Superior Court or in the Supreme Court, such review shall be commenced by filing a notice of appeal pursuant to V.R.C.P. 74 or V.R.A.P. 13, as appropriate. (Added 1967, No. 360 (Adj. Sess.), §15, eff. July 1, 1969; amended 1971, No. 185 (Adj. Sess.), §1, eff. March 29, 1972; 1997, No. 161 (Adj. Sess.), §2, eff. Jan. 1, 1998.)

- **§816. Exemptions**

(a) Sections 809-813 of this title shall not apply to:

(1) Acts, decisions, findings, or determinations by the Human Services Board or the Commissioner for Children and Families or a duly authorized agent, and to procedures or hearings before and by the Board or Commissioner or agent.

(2) Acts, decisions, findings, or determinations by the Employment Security Board or the Commissioner of Labor or his or her, its, or their duly authorized agents and to any and all procedures or hearings before and by him or her or it or his or her or its agents, provided further that subdivisions 802(a)(3) and (4), and subsections 802(b) and 804(a) of this title shall not apply to information made confidential under federal or State law and provided further that subdivisions 802(a)(3) and (4), and subsections 802(b) and 804(a) shall not apply to a determination of a hearing or claims examiner or appeal referee.

(3) Acts, decisions, findings, or determinations by the Department of Labor or the Commissioner of Labor or his or her, its, or their duly authorized agents as to any and all procedures or hearings before and by the Department or Commissioner or his or her or their agents, arising out of or with respect to 21 V.S.A. chapter 5, subchapter 2, and chapters 9 and 11.

(b) Sections 809-814 of this title shall not apply to any and all acts, decisions, findings, or determinations by the Commissioner of Motor Vehicles or his or her duly authorized agents or to any and all procedures or hearings before and by him or her, or his or her agents, provided further that subsection 804(a) of this title shall not apply to decisions of that Commissioner respecting the grant, denial, suspension, or revocation of a license or registration under Title 23.

(c) This chapter shall not be construed to apply to the Commander-in-Chief or any other officer, individual, board, or set of persons in the Military Department of this State. (Added 1967, No. 360 (Adj. Sess.), §17, eff. July 1, 1969; amended 1981, No.

66, §5(b), eff. May 1, 1981; 1999, No. 147 (Adj. Sess.), §4; 2005, No. 103 (Adj. Sess.), §3, eff. April 5, 2006; 2005, No. 174 (Adj. Sess.), §4; 2013, No. 15, §7.)

- **§817. Legislative Committee on Administrative Rules**

(a) There is created a joint legislative committee to be known as the Legislative Committee on Administrative Rules. The Legislative Committee on Administrative Rules shall be composed of eight members of the General Assembly to be appointed for two-year terms ending on February 1 of odd-numbered years as follows: four members of the House of Representatives, appointed by the Speaker of the House, not all from the same party, and four members of the Senate to be appointed by the Senate Committee on Committees, not all from the same party. The Committee shall elect a chair and a vice chair from among its members.

(b) The Committee shall meet as necessary for the prompt discharge of its duties and may use the staff and services of the Legislative Council. The Committee shall adopt rules to govern its operation and organization. A quorum of the Committee shall consist of five members. For attendance at a meeting when the General Assembly is not in session, members of the Legislative Committee on Administrative Rules shall be entitled to the same per diem compensation and reimbursement for necessary expenses as provided members of standing committees under 2 V.S.A. §406.

(c) The Legislative Committee on Administrative Rules may hold public hearings on a proposed or previously adopted rule on its own initiative. The Committee shall give public notice of any hearing at least 10 days in advance and shall notify the agency affected. Any public hearing shall be scheduled at a time and place chosen to afford opportunity for affected persons to present their views. As appropriate, the Legislative Committee on Administrative Rules shall consult with the standing legislative committee having jurisdiction in the area of the rule under review.

(d) In addition to its powers under section 842 of this title concerning rules, the Committee may, in similar manner, conduct public hearings, object, and file objections concerning existing rules. A rule reviewed under this subsection shall remain in effect until amended or repealed.

(e) At any time following its consideration of a final proposal under section 841 of this title, the Committee, by majority vote of the entire Committee, may request that any standing committees of the General Assembly review the issues or questions

presented therein which are outside the jurisdiction of the Committee but are within the jurisdiction of the standing committees. On receiving a request for review under this subsection, a standing committee may at its discretion review the issues or questions and act on them. The Committee's request for review shall not affect the review or review period of a final proposal. (Added 1975, No. 211 (Adj. Sess.), §1; amended 1979, No. 59, §12; 1981, No. 82, §4; 1983, No. 88, §10, eff. July 3, 1983; 2011, No. 89 (Adj. Sess.), §2; 2013, No. 161 (Adj. Sess.), §72.)

- **§§818Repealed. 1981, No. 82, §7(5).**
- **§819. Repealed. 1981, No. 82, §7(6).**
- **§820. Interagency Committee on Administrative Rules**

(a) For assistance in the review, evaluation and coordination of programs and activities of State agencies, the development of strategies for maximizing public input, and the promotion of consistent measures among agencies for involving the public in the rulemaking process, subject to the provisions of this chapter, an Interagency Committee on Administrative Rules is created. Members of the Committee shall be appointed by the Governor from the Executive Branch and shall serve at his or her pleasure.

(b) The duties and responsibilities of the Committee shall be those established under this section or those directed by the Governor and shall include review of existing and proposed rules of agencies designated by the Governor for style, consistency with the law, legislative intent, and the policies of the Governor. The Committee shall make reports and recommendations concerning programs and activities of designated agencies subject to this chapter.

(c) After a proposed rule is prefiled with the Committee, the Committee shall work with the agency and prescribe a strategy for maximizing public input on the proposed rule. The Committee shall evaluate the current efforts and practices of agencies for including the public in the development of proposed rules, and shall recommend an appropriate process for maximizing public input, based on the Committee's evaluation of current agency practices and the importance of public involvement, given the nature of the proposed rule. The Committee shall prescribe a specific strategy regarding the location, time and frequency of public hearings, and advise the agency on specific provisions of 1 V.S.A. chapter 5 and the consequences of failing to adhere to the prescribed strategy. (Added 1975, No. 211 (Adj. Sess.), §2;

amended 1981, No. 82, §5; 1999, No. 146 (Adj. Sess.), §3; 2001, No. 149 (Adj. Sess.), §47, eff. June 27, 2002.)

- **§821. -830. [Reserved.]**

- **§831. Required policy statements and rules**

(a) Where due process or a statute directs an agency to adopt rules, the agency shall initiate rulemaking and adopt rules in the manner provided by sections 836-844 of this title.

(b) An agency shall adopt a procedure describing an existing practice when so requested by an interested person.

(c) An agency shall initiate rulemaking to adopt as a rule an existing practice or procedure when so requested by 25 or more persons or by the Legislative Committee on Administrative Rules. An agency shall not be required to initiate rulemaking with respect to any practice or procedure, except as provided by this subsection.

(d) An agency required to hold hearings on contested cases as required by section 809 of this title shall adopt rules of procedure in the manner provided in this chapter.

(e) Except as provided in subsections (a)-(d) of this section, an agency shall not be required to initiate rulemaking or to adopt a procedure or a rule. (Added 1981, No. 82, §6; amended 1995, No. 61, §1; 2001, No. 149 (Adj. Sess.), §48, eff. June 27, 2002.)

- **§832. Exemptions; limitations**

(a) No agency shall be required to adopt a procedure or rule:

(1) which may result in the disclosure of information considered by statute to be confidential;

(2) setting forth guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, in settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:

(A) enable law violators to avoid detection;

(B) facilitate disregard of requirements imposed by law; or

(C) give a clearly improper advantage to persons who are in an adverse position to the state; or

(3) describing the content of an agency budget.

(b) Subsection 831(c) of this title does not require any agency to adopt rules:

(1) establishing specific prices to be charged for particular goods or services sold by an agency;

(2) concerning only the physical servicing, maintenance, or care of agency owned or operated facilities or property;

(3) relating only to the use of a particular facility or property owned, operated, or maintained by the State or any of its subdivisions, if the substance of that rule is adequately indicated by means of signs or signals to persons who use the facility or property;

(4) concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.

(c) Subsections 831(b) and (c) of this title do not require the Attorney General to adopt procedures or rules describing the content of opinions or other legal advice given to agencies.

(d) Notwithstanding subsections 831(b) and (c), when an agency receives a request to adopt a procedure or rule, it may elect to issue a declaratory ruling when it has in effect a procedure or rule, as requested, which disposes of the question presented. (Added 1981, No. 82, §6.)

- **§832a. Rules affecting small businesses**

(a) Where a rule provides for the regulation of a small business, an agency shall consider ways by which a small business can reduce the cost and burden of compliance by specifying less numerous, detailed or frequent reporting requirements, or alternative methods of compliance.

(b) An agency shall also consider creative, innovative, or flexible methods of compliance with the rule when the agency finds, in writing, such action would not:

(1) significantly reduce the effectiveness of the rule in achieving the objectives or purposes of the statutes being implemented or interpreted; or

(2) be inconsistent with the language or purpose of statutes that are implemented or interpreted by the rule; or

(3) increase the risk to the health, safety, or welfare of the public or to the beneficiaries of the regulation, or compromise the environmental standards of the State.

(c) This section shall not apply where the regulation is incidental to:

(1) a purchase of goods or services by the State or an agency thereof; or

(2) the payment for goods or services by the State or an agency thereof for the benefit of a third party. (Added 1985, No. 56, §2.)

- **§832b. Administrative rules affecting school districts**

  If a rule affects or provides for the regulation of public education and public schools, the agency proposing the rule shall evaluate the cost implications to local school districts and school taxpayers, clearly state the associated costs, and report them in a local school cost impact statement to be filed with the economic impact statement on the rule required by subsection 838(c) of this title. An agency proposing a rule affecting school districts shall also consider and include in the local school cost impact statement an evaluation of alternatives to the rule, including no rule on the subject which would reduce or ameliorate costs to local school districts while achieving the objectives or purposes of the proposed rule. The Legislative Committee on Administrative Rules may object to any proposed rule if a local school cost impact statement is not filed with the proposed rule, or the Committee finds the statement to be inadequate, in the same manner in which the Committee may object to an economic impact statement under section 842 of this title. (Added 2003, No. 68, §44.)

- **§833. Style of rules**

  (a) Rules and procedures shall be written in a clear and coherent manner using words with common and everyday meanings, consistent with the text of the rule or procedure.

(b)(1) When an agency proposes to amend an existing rule, it shall replace terms identified as potentially disrespectful by the study produced in accordance with 2012 Acts and Resolves No. 24, Sec. 1 with respectful language recommended therein or used in the Vermont Statutes Annotated, where appropriate.

(2) All new rules adopted by agencies shall use, to the fullest extent possible, respectful language consistent with the Vermont Statutes Annotated and the respectful language study produced in accordance with 2012 Acts and Resolves No. 24, Sec. 1, where appropriate. (Added 1981, No. 82, §6; amended 2013, No. 96 (Adj. Sess.), §7.)

- **§834. Periodic review of rules and forms**

(a) Upon written request to an agency by the Legislative Committee on Administrative Rules, a rule or part of a rule that has not been adopted, readopted or substantially amended during the preceding six years shall expire one year from the date of the request. However, this section does not prevent the agency from adopting the same or a similar rule during that year.

(b) The Secretary of State shall review all forms used by agencies and affecting members of the public and shall make recommendations for their simplification and consolidation. Agencies shall provide the Secretary with information reasonably requested for this purpose. The recommendations shall be sent to the agencies concerned, and to the Chairs of the Legislative Committee on Administrative Rules and of the Interagency Committee on Administrative Rules. (Added 1981, No. 82, §6.)

- **§835. Compilation of procedures**

Procedures shall be maintained by the agency in an official current compilation that is indexed by subject. Each addition, change or deletion to the official compilation shall also be dated, indexed and recorded. The compilation shall be a public record. (Added 1981, No. 82, §6.)

- **§836. Procedure for adoption of rules**

Except for emergency rules, rules shall be adopted by taking the following steps:

(1) prefiling, when required;

(2) filing proposed rule;

(3) publishing proposed rule;

(4) holding public hearing and receiving comments;

(5) filing final proposal;

(6) responding to Legislative Committee on Administrative Rules when required; and

(7) filing adopted rule. (Added 1981, No. 82, §6.)

- **§837. Prefiling**

  Except for emergency rules, a rule shall be prefiled with the Interagency Committee on Administrative Rules 15 days before filing under section 838 of this title. (Added 1981, No. 82, §6; amended 2001, No. 149 (Adj. Sess.), §49, eff. June 27, 2002.)

- **§838. Filing of proposed rules**

  (a) Proposed rules shall be filed with the Secretary of State. The filing shall include the following:

  (1) a cover sheet;

  (2) an economic impact statement;

  (3) an incorporation by reference statement, if the proposed rule includes an incorporation by reference;

  (4) an adopting page;

  (5) the text of the proposed rule;

  (6) an annotated text showing changes from existing rules;

  (7) an explanation of the strategy for maximizing public input on the proposed rule as prescribed by the Interagency Committee on Administrative Rules; and

  (8) a brief summary of the scientific information upon which the proposed rule is based to the extent the proposed rule depends on scientific information for its validity.

  (b) The cover sheet shall be on a form prepared by the Secretary of State containing at least the following information:

(1) the name of the agency;

(2) the title or subject of the rule;

(3) a concise summary explaining the effect of the rule;

(4) the specific statutory authority for the rule, and, if none exists, the general statutory authority for the rule;

(5) an explanation of why the rule is necessary;

(6) an explanation of the people, enterprises, and government entities affected by the rule;

(7) a brief summary of the economic impact of the rule;

(8) the name, address, and telephone number of an individual in the agency able to answer questions and receive comments on the proposal;

(9) a proposed schedule for completing the requirements of this chapter, including, if there is a hearing scheduled, the date, time, and place of that hearing and a deadline for receiving comments;

(10) whether the rule contains an exemption from inspection and copying of public records, or otherwise contains a Public Records Act exemption by designating information as confidential or limiting its public release and, if so, the asserted statutory authority for the exemption and a brief summary of the reason for the exemption; and

(11) a signed and dated statement by the adopting authority approving the contents of the filing.

(c)(1) The economic impact statement shall analyze the anticipated costs and benefits to be expected from adoption of the rule. Specifically, each economic impact statement shall, for each requirement in the rule:

(A) List categories of people, enterprises, and government entities potentially affected and estimate for each the costs and benefits anticipated.

(B) Compare the economic impact of the rule with the economic impact of other alternatives to the rule, including no rule on the subject or a rule having separate requirements for small business.

(C) Include a flexibility statement. The flexibility statement shall compare the burden imposed on small businesses by compliance with the rule to the burden which would be imposed by alternatives considered under section 832a of this title.

(D) Include a greenhouse gas impact statement. The greenhouse gas impact statement shall explain how the rule has been crafted to reduce the extent to which greenhouse gases are emitted. The Secretary of Administration, in conjunction with the Secretaries of Agriculture, Food and Markets, of Natural Resources, and of Transportation, and the Commissioner of Public Service shall provide a checklist which shall be used in the adoption of rules to assure the full consideration of greenhouse gas impacts, direct and indirect.

(2) In addition, each economic impact statement shall conclude that the rule is the most appropriate method of achieving the regulatory purpose and, with respect to small businesses, contain any findings required by section 832a of this title. Only employees of the agency and information either already available to the agency or available at reasonable cost shall be used in preparing economic impact statements.

(d) Any required incorporation by reference statement shall include a separately signed statement by the adopting authority:

(1) certifying that the text of the matter incorporated has been reviewed by the agency, with the name of the reviewing official;

(2) explaining how the text of the matter incorporated can be obtained by the public, and at what cost;

(3) explaining any modifications to the matter incorporated;

(4) discussing the comparative desirability of reproducing the incorporated matter in full in the text of the rule; and

(5) certifying that the agency has the capability and the intent to enforce the rule.

(e) The adopting page shall be on a form prepared by the Secretary of State and shall contain the name of the agency, the subject of the proposed rule, an explanation of the effect of the proposal on existing rules, and any internal reference number assigned by the agency.

(f) The annotated text of the rule shall include markings to clearly indicate changed wording from any existing rule.

(g) The brief summary of scientific information shall refer to scientific studies upon which the proposed rule is based and shall explain the procedure for obtaining such studies from the agency. (Added 1981, No. 82, §6; amended 1985, No. 56, §3; 1999, No. 146 (Adj. Sess.), §4; 2001, No. 149 (Adj. Sess.), §50, eff. June 27, 2002; 2007, No. 209 (Adj. Sess.), §1; 2015, No. 3, §1.)

- **§839. Publication of proposed rules**

(a) The Secretary of State shall publish online notice of a proposed rule within two weeks of receipt of the proposed rule. Notice shall include the following information:

(1) the name of the agency;

(2) the title or subject of the rule;

(3) a concise summary of the effect of the rule;

(4) an explanation of the people, enterprises, and governmental entities affected by the rule;

(5) a brief summary of economic impact;

(6) the name, telephone number, and address of an agency official able to answer questions and receive comments on the proposal;

(7) the date, time, and place of the hearing or hearings; and

(8) the deadline for receiving comments.

(b) The Secretary of State may edit all notices for clarity, brevity, and format and shall include a brief statement explaining how members of the public can participate in the rulemaking process.

(c) The Secretary of State shall arrange for one formal publication, in a consolidated advertisement in newspapers having general circulation in different parts of the State as newspapers of record approved by the Secretary of State, of information relating to all proposed rules that includes the following information:

(1) the name of the agency and its Internet address;

(2) the title or subject and a concise summary of the rule; and

(3) the office name, office telephone number, and office mailing address of an agency official able to answer questions and receive comments on the proposal.

(d) The Secretary of State shall be reimbursed by agencies making publication in accordance with subsection (c) of this section so that all costs are prorated among agencies publishing at the same time. (Added 1981, No. 82, §6; amended 2009, No. 146 (Adj. Sess.), §F2; 2013, No. 1, §79.)

- **§840. Public hearing and comment**

(a) The agency may hold one or more public hearings for each proposed rule. A public hearing shall be scheduled if so requested by 25 persons, by a governmental subdivision or agency, by the Interagency Committee on Administrative Rules, or by an association having 25 or more members. The first hearing shall not be held sooner than 30 days following the notice required by section 839 of this title.

(b) On request, the agency shall promptly provide a copy of a proposed or final proposed rule. If the copy is mailed, it shall be sent not later than the end of the third working day after the request is received. The agency may charge for copying costs in the amount provided by law.

(c) An agency shall afford all persons reasonable opportunity to submit data, views or arguments, orally or in writing, at least through the seventh day following the last public hearing.

(d) The agency shall consider fully all written and oral submissions concerning the proposed rule, and all submissions on separate requirements for small businesses. The agency shall provide information to all individuals, who submitted written or oral comment, on the procedure for adoption of rules and how to obtain changes in the proposed rule.

(e) If requested by an interested person at any time before 30 days after final adoption of a rule, the adopting authority shall issue an explanation of the proposed rule. The explanation shall include:

(1) a concise statement of the principal reasons for and against the adoption of the rule in its final form; and

(2) an explanation of why the adopting authority overruled the arguments and considerations against the rule. (Added 1981, No. 82, §6; amended 1985, No. 56, §4; 1999, No. 146 (Adj. Sess.), §5; 2009, No. 146 (Adj. Sess.), §F3.)

- **§841. Final proposal**

(a) After considering public comment as required in section 840 of this title, an agency shall file a final proposal with the Secretary of State and with the Legislative Committee on Administrative Rules.

(b) The filing of the final proposal shall include all information required to be filed with the original proposal, suitably amended to reflect any changes made in the rule and the fact that public hearing and comment has been completed. Where an agency decides in a final proposal to overrule substantial arguments and considerations raised for or against the original proposal or to reject suggestions with respect to separate requirements for small businesses, the final proposal shall include a description of the reasons for the agency's decision.

(c) The Legislative Committee on Administrative Rules shall distribute a copy of the final proposal to:

(1) the chairs of the appropriate standing committees;

(2) each member of the appropriate standing committees who requests a copy of the filing; and

(3) the Chairs of the House and Senate Committees on Government Operations, if the cover sheet accompanying the filing identifies a Public Records Act exemption in the rule.

(d) The chair of a standing committee that considered legislation delegating rulemaking authority and, in the case of rules that create or enlarge the scope of a Public Records Act exemption, the Chairs of the House and Senate Committees on Government Operations, may convene the committee for the purpose of considering a recommended course of action for the Legislative Committee on Administrative Rules. The chair may convene such a meeting, pursuant to 2 V.S.A. §406, while the General Assembly is not in session. Any recommended course of action shall be filed with the Legislative Committee on Administrative Rules no later than five working days before the Committee has scheduled a review of the proposed rule. (Added 1981, No. 82, §6; amended 1985, No. 56, §5; 1989, No. 134 (Adj. Sess.); 1999, No.

146 (Adj. Sess.), §6; 2001, No. 149 (Adj. Sess.), §51, eff. June 27, 2002; 2015, No. 3, §2.)

- **§842. Review by Legislative Committee**

(a) Within 30 days of the date a rule is first placed on the Committee's agenda but no later than 45 days after the filing of a final proposal unless the agency consents to an extension of this review period, the Legislative Committee on Administrative Rules, by majority vote of the entire Committee, may object under subsection (b), (c), or (d) of this section, and recommend that the agency amend or withdraw the proposal. The agency shall be notified promptly of the objections. Failure to give timely notice shall be deemed approval. The agency shall within 14 days of receiving notice respond in writing to the Committee. After receipt of this response the Committee may withdraw or modify its objections.

(b) The Committee may object under this subsection if:

(1) a proposed rule is beyond the authority of the agency;

(2) a proposed rule is contrary to the intent of the Legislature;

(3) a proposed rule is arbitrary; or

(4) the agency did not adhere to the strategy for maximizing public input prescribed by the Interagency Committee on Administrative Rules.

When objection is made under this subsection, and the objection is not withdrawn after the agency responds, on majority vote of the entire Committee, it may file the objection in certified form with the Secretary of State. The objection shall contain a concise statement of the Committee's reasons for its action. The Secretary shall affix to each objection a certification of its filing and as soon as practicable transmit a copy to the agency. After a Committee objection is filed with the Secretary under this subsection, or on the same grounds under subsection 817(d) of this title, to the extent that the objection covers a rule or portion of a rule, the burden of proof thereafter shall be on the agency in any action for judicial review or for enforcement of the rule to establish that the part objected to is within the authority delegated to the agency, is consistent with the intent of the Legislature, is not arbitrary, and the agency did adhere to the strategy for maximizing public input prescribed by the Interagency Committee on Administrative Rules. If the agency fails to meet its burden of proof, the Court shall declare the whole or portion of the rule objected to

invalid. The failure of the Committee to object to a rule is not an implied legislative authorization of its substantive or procedural lawfulness.

(c) The Committee may object under this subsection if a proposed rule is not written in a satisfactory style according to section 833 of this title.

(d) The Committee may object under this subsection if the economic impact statement fails to recognize a substantial economic impact of the proposed rule that the Committee describes in its notice of objection.

The Committee may object one time under this subsection and return the proposed rule to the agency as unacceptable for filing. The agency may then cure the defect and adopt the rule, or it may adopt the rule without change.

(e) When an objection is made under subsection (b) of this section and has been certified by the Secretary of State, notice of the objection shall be included on all copies of the rule distributed to the public. (Added 1981, No. 82, §6; amended 1981, No. 158 (Adj. Sess.), §1; 1999, No. 9, §1, eff. May 4, 1999; 2001, No. 149 (Adj. Sess.), §52, eff. June 27, 2002.)

- **§843. Filing of adopted rules**

(a) An adopting authority may adopt a properly filed final proposed rule after:

(1) The passage of 30 days from the date a rule is first placed on the committee's agenda or 45 days after filing of a final proposal under section 841 of this title, whichever occurs first, provided the agency has not received notice of objection from the Legislative Committee on Administrative Rules; or

(2) Receiving notice of approval from the Legislative Committee on Administrative Rules; or

(3) Responding to an objection of the Legislative Committee on Administrative Rules under section 842 of this title.

(b) The text of the adopted rule shall be the same as the text of the final proposed rule submitted under section 841, except that any germane change may be made by the agency in response to an objection or expressed concern of the Legislative Committee on Administrative Rules.

(c) Adoption shall be complete upon proper filing with the Secretary of State and with the Legislative Committee on Administrative Rules. An agency shall have eight months from the date of initial filing with the Secretary of State to adopt a rule unless extended by action or request of the Legislative Committee on Administrative Rules. The Secretary of State shall refuse to accept a final filing after that date.

(d) Adopted rules filed shall include:

(1) A cover sheet on a form prepared by the Secretary of State containing at least the following information:

(A) the name of the agency;

(B) the title or subject of the rule;

(C) a brief summary of any changes made since the filing of the final proposed rule, including any changes in expected economic impact;

(D) a summary of the dates on which the agency complied with the procedural requirements of this chapter; and

(E) a signed and dated statement by the adopting authority that the procedural requirements of this chapter have been met and that the adopting authority approves of the contents of the filing; and

(2) An adopting page as required by section 838 of this title; and

(3) The text of the rule.

(e) After adopting a rule, the agency shall create a file containing all papers used or created in that action. The file shall be retained for at least one year. (Added 1981, No. 82, §6; amended 1983, No. 202 (Adj. Sess.), §1, eff. April 26, 1984; 1999, No. 9, §2, eff. May 4, 1999.)

- **§844. Emergency rules**

(a) Where an agency believes that there exists an imminent peril to public health, safety, or welfare, it may adopt an emergency rule. The rule may be adopted without having been prefiled or filed in proposed or final proposed form, and may be adopted after whatever notice and hearing that the agency finds to be practicable under the circumstances. The agency shall make reasonable efforts to ensure that emergency rules are known to persons who may be affected by them.

(b) Emergency rules adopted under this section shall not remain in effect for more than 120 days. An agency may propose a permanent rule on the same subject at the same time that it adopts an emergency rule.

(c) Emergency rules adopted under this section shall be filed with the Secretary of State and with the Legislative Committee on Administrative Rules. The Legislative Committee on Administrative Rules shall distribute copies of emergency rules to the appropriate standing committees.

(d) Emergency rules adopted under this section shall include:

(1) as much of the information required for the filing of a proposed rule as is practicable under the circumstances; and

(2) a signed and dated statement by the adopting authority explaining the nature of the imminent peril to the public health, safety, or welfare and approving of the contents of the rules.

(e)(1) On a majority vote of the entire Committee, the Committee may object under this subsection if an emergency rule is:

(A) beyond the authority of the agency;

(B) contrary to the intent of the Legislature;

(C) arbitrary; or

(D) not necessitated by an imminent peril to public health, safety, or welfare sufficient to justify adoption of an emergency rule.

(2) When objection is made under this subsection, on majority vote of the entire Committee, the Committee may file the objection in certified form with the Secretary of State. The objection shall contain a concise statement of the Committee's reasons for its action. The Secretary shall affix to each objection a certification of its filing and as soon as practicable transmit a copy to the agency. After a Committee objection is filed with the Secretary under this subsection, to the extent that the objection covers a rule or portion of a rule, the burden of proof thereafter shall be on the agency in any action for judicial review or for enforcement of the rule to establish that the part objected to is within the authority delegated to the agency, is consistent with the intent of the Legislature, is not arbitrary, and is justified by an imminent peril to the public health, safety, or welfare. If the agency

fails to meet its burden of proof, the Court shall declare the whole or portion of the rule objected to invalid. The failure of the Committee to object to a rule is not an implied legislative authorization of its substantive or procedural lawfulness.

(3) When the Committee makes an objection to an emergency rule under this subsection, the agency may withdraw the rule to which an objection was made. Prior to withdrawal, the agency shall give notice to the Committee of its intent to withdraw the rule. A rule shall be withdrawn upon the filing of a notice of withdrawal with the Secretary of State and the Committee. If the emergency rule amended an existing rule, upon withdrawal of the emergency rule, the existing rule shall revert to its original form, as though the emergency rule had never been adopted. (Added 1981, No. 82, §6; amended 1995, No. 61, §2; 2011, No. 89 (Adj. Sess.), §1.)

- **§845. Effect of rules**

(a) Rules shall be valid and binding on persons they affect, and shall have the force of law unless amended or revised or unless a court of competent jurisdiction determines otherwise. Except as provided by subsections 842(b) and 844(e) of this title, rules shall be prima facie evidence of the proper interpretation of the matter that they refer to.

(b) No agency shall grant routine waivers of or variances from any provisions of its rules without either amending the rules, or providing by rule for a waiver or variance procedure. The duration of the waiver or variance may be temporary if the rule so provides.

(c) Nothing in this chapter:

(1) allows rules to provide for penalties, fines or imprisonment not authorized by other law;

(2) enlarges the authority of any agency to impose requirements on any member of the public; or

(3) allows an agency by rule to require permits, licenses or fees or to define unprofessional conduct unless specifically authorized by other law.

(d) Rules adopted under this chapter shall take effect 15 days after adoption is complete or at a later time provided in the text of the rule or on its adopting page. However, an emergency rule shall take effect upon filing, or at a later time provided in the text of the rule or on its adopting page.

(e) Rules shall remain in effect until:

(1) repealed or modified by subsequent rule;

(2) limited or invalidated by a court; or

(3) repealed or modified by statute. (Added 1981, No. 82, §6; amended 1995, No. 61, §3; 1995, No. 186 (Adj. Sess.), §32, eff. May 22, 1996; 1999, No. 52, §44.)

- **§846. Remedies for procedural failures**

(a) The following shall prevent a rule from taking effect:

(1) failure to file with the Secretary of State;

(2) failure to file with the Legislative Committee on Administrative Rules;

(3) failure to file with the Interagency Committee on Administrative Rules; or

(4) failure to respond to an objection of the Legislative Committee on Administrative Rules as required in section 842 of this title.

(b) The following shall not affect the validity of a rule after its adoption:

(1) inadvertent failure to make required assurances relating to an incorporation by reference; or

(2) amendment after public hearing of the text of a proposed rule in a manner that does not cause the published summary of the rule to become misleading or inadequate; or

(3) failure to certify that all procedures required by this chapter have been satisfied; or

(4) failure to meet the style requirements of section 833 of this title; or

(5) inadvertent failure to mail notice or copies of any rule.

(c) Failure to identify the creation or enlargement in scope of a Public Records Act exemption in accordance with subsection 838(b) or 841(b) of this title shall render invalid the provisions of the rule that create or enlarge the exemption.

(d) For other violations of this chapter, the Court may fashion appropriate relief.

(e) An action to contest the validity of a rule for noncompliance with any of the provisions of this chapter, other than those listed in subsections (a) and (c) of this section, must be commenced within one year after the effective date of the rule. (Added 1981, No. 82, §6; amended 1995, No. 61 §4; 2001, No. 149 (Adj. Sess.), §53, eff. June 27, 2002; 2015, No. 3, §3.)

- **§847. Availability of adopted rules; rules by Secretary of State**

(a) The Secretary of State shall keep open to public inspection a permanent register of rules. The Secretary also shall publish a code of administrative rules that contains the rules adopted under this chapter. The requirement to publish a code shall be considered satisfied if a commercial publisher offers such a code in print at a competitive price and at no charge online.

(b) The Secretary of State shall publish not less than quarterly a bulletin setting forth the text of all rules filed since the immediately preceding publication and any board objections filed under subsection 842(b) or 844(e) of this title.

(c) The bulletin may omit any rule if either:

(1) a commercial publisher offers a comparable publication at a competitive price; or

(2) all three of the following apply:

(A) its publication would be unduly cumbersome or expensive; and

(B) the rule is made available on application to the adopting agency; and

(C) the bulletin contains a notice stating the general subject matter of the omitted rule and stating how a copy of the rule and any objection filed under subsection 842(b) or 844(e) of this title may be obtained.

(d) Bulletins shall be made available upon request to agencies and officials of this State free of charge and to other persons at prices fixed by the Secretary of State to cover mailing and publication costs.

(e) The Secretary of State shall adopt rules for the effective administration of this chapter. These rules shall be applicable to every agency and shall include uniform procedural requirements, style, appropriate forms, and a system for compiling and

indexing rules. (Added 1981, No. 82, §6; amended 1995, No. 61, §5; 2013, No. 142 (Adj. Sess.), §10; 2015, No. 131 (Adj. Sess.), §19; 2015, No. 169 (Adj. Sess.), §11.)

- **§848. Rules repeal; operation of law**

(a) A rule shall be repealed without formal proceedings under this chapter if:

(1) the agency that adopted the rule is abolished and its authority, specifically including its authority to implement its existing rules, has not been transferred to another agency; or

(2) a court of competent jurisdiction has declared the rule to be invalid; or

(3) the statutory authority for the rule, as stated by the agency under subdivision 838(b)(4) of this title, is repealed by the General Assembly or declared invalid by a court of competent jurisdiction.

(b) When a rule is repealed by operation of law under this section, the Secretary of State shall delete the rule from the published code of administrative rules.

(c)(1) On July 1, 2018, a rule shall be repealed without formal proceedings under this chapter if:

(A) as of July 1, 2016, the rule was in effect but not published in the code of administrative rules; and

(B) the rule is not published in such code before July 1, 2018.

(2) An agency seeking to publish a rule described in subdivision (1) of this subsection may submit a digital copy of the rule to the Secretary of State with proof acceptable to the Secretary that as of July 1, 2016 the rule was adopted and in effect under this chapter and the digital copy consists of the text of such rule without change.

(d) If the statutory authority for a rule, as stated by the agency under subdivision 838(b)(4), is amended by the General Assembly, the agency shall review the rule and make a determination whether such statutory amendment repeals the authority upon which the rule is based, and shall, within 60 days of the effective date of the statutory amendment, inform in writing the Secretary of State and the Legislative Committee on Administrative Rules whether repeal or revision of the rule is required

by the statutory amendment. (Added 1983, No. 202 (Adj. Sess.), §2, eff. April 26, 1984; amended 2015, No. 169 (Adj. Sess.), §12.)

- **§849. Boards and commissions; retiring members**

  When a board or commission member, who hears all or a substantial part of a case, retires from office or completes his or her term before the case is completed, he or she may remain a member of the board or commission for the purpose of deciding and concluding the case. If the member who retires or completes his or her term is a chair, he or she may also remain a member for the purpose of certifying questions of law if appeal is taken, where such is required by law. For this service, the member may be compensated in the manner provided for active members. (Added 1983, No. 190 (Adj. Sess.), §2, eff. April 27, 1984.)

Appendix 4.1-4

18 V.S.A. §§101 – 131, STATE BOARD OF HEALTH

The Vermont Statutes Online

Title 18: Health

Chapter 3: State Board Of Health

- **§101. State Board of Health, appointment and qualification**

  (a) There shall be, within the Department of Health, a board to be known and designated as the State Board of Health. Such Board shall consist of seven members who shall be appointed biennially in the month of February by the Governor, with the advice and consent of the Senate. The members shall be appointed for a term of six years. Any vacancy occurring in the membership of such Board shall be filled by the Governor for the unexpired portion of the term. The Governor shall designate the Chair of the Board.

  (b) Three members of such Board shall be doctors, one of whom shall be licensed to practice medicine and surgery in the State, one of whom shall possess special training and ability in psychiatry and one of whom shall be licensed to practice osteopathy, surgery, and obstetrics in the State; one member of such Board shall be licensed to practice dentistry in the State and three members of such Board shall be persons not of the medical or dental profession. (Amended 1959, No. 329 (Adj. Sess.), §27, eff. March 1, 1961; 2013, No. 161 (Adj. Sess.), §72.)

- **§102. Duties of Board**

  The Board shall supervise and direct the execution of all laws vested in the Department of Health by virtue of this title, and shall formulate and carry out all policies relating thereto, and shall adopt such rules as are necessary to administer this title and shall make a biennial report with recommendations to the Governor and to the General Assembly. The Board may delegate such powers and assign such duties to the Commissioner as it may deem appropriate and necessary for the proper execution of provisions of this title. The authority of the Board to adopt the rules

shall extend to all matters relating to the preservation of the public health and consistent with the duties and responsibilities of the Board. The Board's jurisdiction over sewage disposal includes emergent conditions which create a risk to the public health as a result of sewage treatment and disposal, or its effects on water supply, but does not include rulemaking on design standards for on-site sewage disposal systems. (Amended 1959, No. 329 (Adj. Sess.), §27, eff. March 1, 1961; 1983, No. 117 (Adj. Sess.), §2; 2015, No. 23, §104.)

- **§103. Meetings of Board; per diem; expenses**

(a) The Board shall hold such meetings as may be required for the performance of its duties. Such Board shall meet at such times and places as may be designated by the Chair thereof. Such Chair shall call a meeting upon the written request of any three members or upon the written request of the Governor.

(b) The members of the Board shall receive a per diem of $30.00 for time actually spent in the performance of their duties and shall be reimbursed for their travel and expenses. (Amended 1959, No. 329 (Adj. Sess.), §27, eff. March 1, 1961; 2013, No. 161 (Adj. Sess.), §72.)

- **§104. Commissioner of health; duties**

(a) The secretary shall appoint a commissioner of health, as provided in 3 V.S.A. §3051, who shall be either a physician licensed to practice medicine and surgery in this state or a health care professional who has at least a master's degree in public health or a related health care field and who, in addition, has had practical experience in the field of public health.

(b) The commissioner may delegate such powers and assign such duties to members of the department as may be deemed appropriate and necessary for the proper execution of the provisions of this title. If the commissioner is not a physician licensed to practice medicine and surgery in this state, the commissioner shall fill an existing exempt position within the department by appointing a chief medical officer who shall be a physician licensed to practice medicine and surgery in this state and who shall report to the commissioner.

(c) The powers set forth in this title are in addition to the common law and statutory powers or remedies of the state otherwise provided by law.

(d) Upon receipt of information regarding a condition that may be a public health hazard, the commissioner shall conduct an investigation. The investigation may include an inspection of the premises where the public health hazard may exist and may include monitoring and testing.

(e) The commissioner shall establish guidelines for conducting investigations and inspections and for determining whether a public health risk or public health hazard is a local or a state problem.

(f) When applicable, the commissioner shall make use of the best scientific, environmental, medical, engineering, epidemiological, hydrological, geological, ecological, and sanitation practices when issuing permits and orders, and when establishing practices, procedures, rules and guidelines under this title.

(g) The commissioner may enter into contracts to provide services, provided the department is not otherwise required to provide such services and provision of such services does not interfere with the department's statutory purposes and programs. The department may charge for services provided under this subsection. Charges collected under this subsection shall be credited to separate special funds for each type of contractual service, and shall be available to the department to offset the costs of each type of service.

(h) The commissioner may bill a third party insurer for services provided by the department to persons covered by such insurance. Charges collected under this subsection shall be credited to a special fund and shall be available to the department to offset the cost of such services.

(i) The commissioner may accept and retain any product rebates received for items purchased in support of departmental programs. Charges collected under this subsection shall be credited to separate special funds and shall be available to the department to offset the cost of such programs. (Amended 1959, No. 329 (Adj. Sess.), §27, eff. March 1, 1961; 1985, No. 267 (Adj. Sess.), §3; 1997, No. 155 (Adj. Sess.), §55, eff. April 29, 1998; 2007, No. 152 (Adj. Sess.), §1.)

- **§104a. Commissioner of health; designation of advisor to commissioner of motor** vehicles

The commissioner of health, upon request by the commissioner of motor vehicles, shall designate an appropriate professional member of the department to serve as

advisor to the commissioner of motor vehicles on health aspects of the licensing of motor vehicle operators. (Added 1967, No. 251 (Adj. Sess.), §1, eff. Feb. 20, 1968.)

- **§104b. Community health and wellness grants**

(a) The Commissioner shall establish a program for awarding competitive, substantial, multi-year grants to comprehensive community health and wellness projects. Successful projects must:

(1) use comprehensive approaches designed to promote healthy behavior and disease prevention across the community and across the lifespan of individual Vermonters and address issues which may include promoting nutrition and exercise for children, community recreation programs, elderly wellness, lead poisoning abatement, obesity prevention, maternal and child health and immunization, mental health and substance abuse, and tobacco prevention and cessation;

(2) be consistent with the Blueprint for Health and other State health initiatives as well as the overall goals of the applicant community;

(3) be goal and result driven;

(4) use strategies that have been demonstrated to be effective in reaching the desired goal;

(5) provide data for evaluating and monitoring progress;

(6) include a plan for ensuring that all food vending machines located in public buildings within the control of the grant recipient contain foods and portion sizes consistent with the Vermont nutrition and fitness policy guidelines or other relevant science-based resources; and

(7) address socioeconomic or other barriers that stand in the way of fit and healthy lifestyles in their communities.

(b) The Commissioner, through the 12 district health offices, shall assist communities by:

(1) providing technical assistance to support communities in following a consistent and coordinated approach to planning and implementation, including practices such as needs assessment, defined priorities, action plans, and evaluation;

(2) providing access to best and promising practices and approved public policies;

(3) providing assistance to help communities develop public awareness materials and communication tools with well-researched and well-coordinated messaging;

(4) helping communities obtain and maximize funding from all applicable sources; and

(5) providing other assistance as appropriate.

(c)-(e) Repealed.]

(f) The Commissioner may adopt regulations pursuant to 3 V.S.A. chapter 25, the Administrative Procedure Act, necessary for the implementation of this program.

(g) The Commissioner is authorized to accept donations or contributions from private sources for community wellness grants. (Added 2005, No. 215 (Adj. Sess.), §322; amended 2007, No. 203 (Adj. Sess.), §14, eff. June 10, 2008; 2009, No. 135 (Adj. Sess.), §26, eff. May 29, 2010; 2011, No. 139 (Adj. Sess.), §51, eff. May 14, 2012; 2015, No. 11, §16.)

- **§105. Repealed. 1977, No. 147 (Adj. Sess.).**
- **§106. Delegation of duties by board through commissioner**

  Any delegation of responsibility and authority by the board shall be made through the commissioner and shall in no wise relieve the said board of its accountability for the proper administration of the provisions of this title. (Amended 1959, No. 329 (Adj. Sess.), §27, eff. March 1, 1961.)

- **§107. Life and health of inhabitants; inspections, investigations**

  (a) The commissioner shall take cognizance of the interest of the life and health of the inhabitants of the state, shall make or cause to be made inspections, investigations, and inquiries respecting causes of disease and the means of preventing the same and the effect of all circumstances relating to or affecting the public health. With the approval of the governor, the commissioner may apply for and accept research grants for such funded research projects as have as their

objective the advancement of knowledge in the health sciences, provided that the commissioner may staff and equip such projects only from such research grants.

(b) A health officer may conduct inspections to detect violations of any state or local health statute, rule, ordinance or permit, or any public health hazard or public health risk. Inspections shall be conducted at a reasonable time and in a reasonable manner. The health officer may, upon presentation of credentials, seek permission to inspect any premises not open to the public. If permission is refused, the health officer may, pursuant to section 121 of this title, seek a search warrant authorizing the inspection of such premises.

(c) This section shall not limit or conflict with the duties or powers of a health officer to inspect public water sources, public water systems or public water source protection areas and food or lodging establishments under chapters 24 and 85 of this title. (Amended 1959, No. 329 (Adj. Sess.), §27, eff. March 1, 1961; 1963, No. 102, §5, eff. May 22, 1963; 1985, No. 267 (Adj. Sess.), §4; 1989, No. 105, §4.)

- **§108. Water supply; sanitation**

  When requested, or when, in its opinion, it is necessary, the board shall advise with municipal officers in regard to drainage, water supply, and sewerage of towns and villages and in regard to the erection, construction, heating, ventilation, and sanitary arrangements of public buildings. (Amended 1959, No. 329 (Adj. Sess.), §27, eff. March 1, 1961.)

- **§109. Board exercising powers of local board of health or health officer**

  In its discretion the board may exercise all the powers and authority, in each town and village, which is given to a local board of health. The commissioner may likewise exercise all the power and authority of a local health officer throughout the state. (Amended 1959, No. 329 (Adj. Sess.), §27, eff. March 1, 1961.)

- **§110. Reports by commissioner**

  From the reports required to be made to him or her, the commissioner shall issue in each even year registration reports. He or she shall make a biennial report to the board relating to his or her work for the period with such recommendations as seem advisable, which report shall be incorporated into the biennial report of the board. (Amended 1959, No. 329 (Adj. Sess.), §27, eff. March 1, 1961.)

- **§111. Forms for reports of infectious and contagious diseases**

The board shall devise and furnish health officers suitable forms upon which to make reports of infectious and contagious diseases. It shall also devise and furnish forms for physicians to report to health officers. (Amended 1959, No. 329 (Adj. Sess.), §27, eff. March 1, 1961.)

- **§112. Circulars of information**

  The Board shall prepare and distribute to local boards of health, physicians, and other persons such printed circulars as it deems necessary and such rules as the Board may adopt and, upon request of the Board, the Commissioner thereof shall give information relative to the cause and prevention of disease and directions as to modes of management, quarantine, and means of prevention of contagious and infectious diseases. (Amended 1959, No. 329 (Adj. Sess.), §27, eff. March 1, 1961; 2015, No. 23, §105.)

- **§113. Services and expenditures; cooperation with other agencies; attendance upon** meetings

  The board may perform such services and incur such expenditures as it deems necessary for the protection of the public health, may cooperate with health agencies of other states and countries; and a committee of the board may attend meetings of health authorities outside the state. (Amended 1959, No. 329 (Adj. Sess.), §27, eff. March 1, 1961.)

- **§114. Repealed. 1985, No. 267 (Adj. Sess.), §28.**

- **§115. Public health surveillance assessment and planning**

  (a) The Department of Health may, in the discretion of the Commissioner, accept for treatment children who have chronic diseases or developmental disabilities.

  (b) The Commissioner of Health is authorized to:

  (1) study the prevalence of chronic disease;

  (2) make such morbidity studies as may be necessary to evaluate the over all problem of chronic disease and developmental disabilities;

  (3) develop an early case-finding program, in cooperation with the medical profession;

(4) develop and carry on an educational program as to the causes, prevention, and alleviation of chronic disease and developmental disabilities; and

(5) adopt rules for the purpose of screening chronic diseases and developmental disabilities in newborns.

(c) The Department of Health is directed to consult and cooperate with the medical profession and interested official and voluntary agencies and societies in the development of this program.

(d) The Department is authorized to accept contributions or gifts which are given to the State for any of the purposes as stated in this section, and the Department is authorized to charge and retain monies to offset the cost of providing newborn screening program services. (Amended 1959 (Adj. Sess.), §27, eff. March 1, 1961; 1973, No. 77, §60, eff. April 14, 1973; 1997, No. 59, §84, eff. June 30, 1997; 2013, No. 96 (Adj. Sess.), §86; 2015, No. 152 (Adj. Sess.), §11.)

- **§115a. Repealed. 2015, No. 152 (Adj. Sess.), §12.**
- **§116. Mother and child health service; training of nurses and workers**

(a) The Board shall continue the existing health service for mothers and children established in a manner harmonious with parts one and two of Title V of the Act of Congress approved August 14, 1935 and entitled Social Security Act and shall continue its existing health service for children with physical disabilities.

(b) The Board may pay for the graduate training of public health nurses and other professional health department workers whom it employs. (Amended 1959, No. 75, eff. April 1, 1959; 1959, No. 329 (Adj. Sess.), §27, eff. March 1, 1961; 2013, No. 96 (Adj. Sess.), §88.)

- **§117. Chronic fatigue syndrome**

(a) The commissioner of health shall establish a statewide network of resources to provide education through the distribution of information regarding persons with chronic fatigue syndrome, also known as chronic fatigue immune dysfunction syndrome (CFIDS), to persons with chronic fatigue syndrome, health care providers, and the public.

(b) The department shall work in collaboration with the Vermont CFIDS Association, Inc. and health care providers with expertise in chronic fatigue

syndrome to prepare an informational packet about the clinical significance, diagnosis, and treatment of chronic fatigue syndrome. The informational packet shall be based upon the publication "A Consensus Manual for the Primary Care and Management of Chronic Fatigue Syndrome" published by the Academy of Medicine of New Jersey and the New Jersey Department of Health and Senior Services, to the extent allowable under federal copyright protections. The department shall distribute the informational packet to all primary care physicians in the state, and it shall be available on the department of health's website. The informational packet may contain any other information that the commissioner of health deems necessary and shall be revised by the department when new information about chronic fatigue syndrome becomes available. The department shall publicize the informational packet and make it widely available to the public. (Added 2005, No. 215 (Adj. Sess.), §116.)

- **§§118, 119. Repealed. 1985, No. 267 (Adj. Sess.), §28.**

- **§120. Contract for payment of certain health benefits**

  The Board of Health may contract with a private organization to process the payment of in-patient hospital care, and physician, radiological, and other medical costs related thereto under the maternal, child health, and children with physical disabilities' plans of the Department of Health. Such a contract shall provide for cancellation upon reasonable notification by the Board. In furtherance of the purposes of the contract, the Board may requisition funds, with the approval of the Governor, and the Commissioner of Finance and Management shall issue his or her warrant in favor of the contracting party to permit the contracting party to make payments to vendors under the contract. The Board shall quarterly, and at such other times as the Commissioner of Finance and Management requires, render an account in such form as the Commissioner of Finance and Management prescribes of the expenditures of monies so advanced. (Added 1967, No. 267 (Adj. Sess.), §1, eff. July 1, 1968; amended 2013, No. 96 (Adj. Sess.), §89.)

- **§121. Issuance of search warrants**

  (a) Upon application by a health officer or a law enforcement officer, a district or superior court judge shall, upon a finding of probable cause, issue a warrant to search a premises for violation of any state or local health statute, rule, ordinance, or permit, or for any public health hazard or public health risk.

(b) Probable cause for a search warrant under this section exists when:

(1) a health officer or law enforcement officer has reason to believe that a state or local health statute, rule, ordinance, or permit has been violated; or

(2) a health officer or law enforcement officer has reason to believe that a public health hazard or public health risk may exist on the premises to be searched; or

(3) permission to inspect has been refused and the premises to be searched are subject to routine inspections in connection with a regulatory program conducted pursuant to this title.

(c) The provisions of the Vermont Rules of Criminal Procedure 41(c) shall apply to warrants issued under this section. (Added 1985, No. 267 (Adj. Sess.), §5.)

- **§122. Private right of action**

(a) Any person injured or damaged by a violation of this title, of a rule adopted pursuant thereto, or of a permit or order issued thereunder, or by a public health hazard may bring an action for equitable relief or damages arising from such violation or public health hazard.

(b) A judicial determination of a violation of this title, of a rule adopted pursuant thereto, or of a permit or order issued thereunder, or of a public health hazard shall be prima facie evidence of the existence of the violation or the hazard, which evidence may be rebutted by the defendant.

(c) The remedies provided by this section are in addition to any common law or statutory remedies otherwise available and do not amend or conflict with the provisions of 24 V.S.A. chapter 129, the powers and authority of the Agency of Agriculture, Food and Markets, the Department of Labor, the Agency of Natural Resources, or the Public Service Board, or the power of the Commissioner to issue a health or emergency health order.

(d) The limitations and defenses of 12 V.S.A. chapter 189 and the provisions of 29 V.S.A. chapter 55 shall apply to actions against the State or any of its political subdivisions under this section.

(e) Notwithstanding any provision of this section or the existence of any other remedy existing at law or in equity, no cause of action or grounds for enforcement

shall lie against any municipal corporation as defined in 24 V.S.A. §3301 or any company as defined in 30 V.S.A. §201(a) for any defect, liability, condition, violation, or hazard which exists on the date such municipal corporation or company acquires by purchase, donation, or condemnation any public water source or public water system as defined in 10 V.S.A. §1671(4) and (5), unless such acquiring municipal corporation or company expressly assumes the same. The provisions of this subsection shall not be construed to relieve such municipal corporation or company from any obligation or responsibility to correct or abate any violation of this title or of 10 V.S.A. chapter 56 on and after the date of such acquisition. This subsection shall be liberally construed to immunize municipal corporations and companies from liability for preexisting conditions in public water sources and systems subsequently acquired by such entities. This section shall not be read to immunize municipalities from suits or claims in existence on the date a municipality acquires any public water source or system arising from the taking of water or land. (Added 1985, No. 267 (Adj. Sess.), §6; amended 1989, No. 256 (Adj. Sess.), §10(a), eff. Jan. 1, 1991; 1993, No. 164 (Adj. Sess.), §10; 2003, No. 42, §2, eff. May 27, 2003; 2005, No. 103 (Adj. Sess.), §3, eff. April 5, 2006; 2013, No. 34, §11.)

- **§123. Revocation of permits**

(a) The commissioner may, after notice and opportunity for hearing, revoke, modify, or suspend any permit issued pursuant to the commissioner's authority under this title if the commissioner finds that:

(1) the permit holder submitted materially false or inaccurate information;

(2) the permit holder has violated any material requirement, restriction or condition of any permit, any rule, statute, or order; or

(3) there is a change in any condition that requires either a temporary or permanent restriction, limitation, or elimination of the permitted use.

(b) Revocation shall be effective upon actual notice thereof to the permit holder or permit holder's designated agent. (Added 1985, No. 267 (Adj. Sess.), §7.)

- **§124. Voluntary compliance**

(a) When appropriate, the health officer shall make all practicable efforts to secure voluntary compliance. This requirement shall not restrict the health officer's

authority to use any enforcement powers authorized by this title or the common law.

(b) Means of securing voluntary compliance may include, but need not be limited to, the following:

(1) encouraging voluntary cooperation by persons and affected groups to achieve the purposes of this title;

(2) encouraging local units of government to handle violation problems within their respective jurisdiction by compact on a cooperative basis, and providing technical and consultative assistance therefor;

(3) advising, consulting, contacting and cooperating with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups; and

(4) encouraging voluntary compliance through warning, conference, or any other similar means. (Added 1985, No. 267 (Adj. Sess.), §8.)

- **§125. Assurance of discontinuance**

(a) In any case where the commissioner has authority to institute an action or proceeding against a person under this title, the commissioner may, in lieu thereof, accept from such person an assurance that the violation, or the action or inaction contributing to a public health hazard or a significant public health risk, will be discontinued. An assurance of discontinuance may include, but need not be limited to:

(1) specific action to be taken;

(2) abatement or mitigation schedules;

(3) payment of a civil penalty and the costs of investigation;

(4) payment of an amount to be held in escrow pending the outcome of an action, or as restitution to aggrieved persons.

(b) An assurance of discontinuance shall be in writing, shall be filed with the superior court having jurisdiction over the subject matter, and shall become an order of the court. Evidence of a violation of an assurance of discontinuance shall be prima

facie proof of the violation cited in the assurance. (Added 1985, No. 267 (Adj. Sess.), §9.)

- **§126. Health orders**

(a) The commissioner or the selectmen may issue a health order to:

(1) prevent, remove, or destroy any public health hazard;

(2) mitigate a significant public health risk;

(3) correct any violation of this title or any rules promulgated thereunder; or

(4) correct any violation of a permit restriction or requirement.

(b) The issuing authority for a state health order shall be the commissioner. The issuing authority for a local health order shall be the selectmen.

(c) Prior to issuance of a health order under this section, the issuing authority shall provide notice as provided in this subsection.

(1) The health officer shall prepare a notice of intent to seek a health order, setting forth the health officer's reasons to believe a health order should be issued.

(2) The notice of intent, together with the supporting evidence and a statement of procedural rights available under this section, shall be served on the person against whom the health order is sought in accordance with the procedures set forth in Rule 4 of the Vermont Rules of Civil Procedure.

(3) Upon request of the person against whom the health order is sought, a hearing shall be held before the issuing authority. At such hearing, the person against whom the order is sought shall be given an opportunity to rebut the allegations and demonstrate that no health order should issue.

(d) A health order shall be effective upon issuance and may require any person responsible for contributing to the public health hazard or significant public health risk to take actions to protect the public health. Such actions may include, but shall not be limited to, the following:

(1) the prohibition of transportation, sale, distribution, or supplying of water, food, or any other materials or services;

(2) the repair, installation, construction, operation, or implementation of purification equipment or methods;

(3) testing, sampling, monitoring, surveying, or other analytical operations required to determine the nature, extent, duration, or severity of the public health hazard or public health risk;

(4) the impounding, destruction, or removal of any public health hazard;

(5) the quarantine or isolation of any area, persons, animals, or materials;

(6) the closing of, and the prohibition of assemblage in any food or lodging establishment, church, school, or any other place of assemblage;

(7) the cessation of any acts, discharges, or processes contributing to a public health hazard or public health risk;

(8) the medical or veterinary treatment of any agent that is contributing to a public health hazard or a public health risk;

(9) the giving of notice to potential users, including travelers, of the goods or services, of the nature, extent, and possible health effects of the public health hazard or public health risk and precautions to be taken by such users; or

(10) any other affirmative acts or prohibitions necessary to mitigate a significant public health risk. (Added 1985, No. 267 (Adj. Sess.), §10.)

- **§127. Emergency health orders**

(a) A health officer may, without a prior hearing, issue an emergency health order when necessary to prevent, remove, or destroy an imminent and substantial public health hazard, or to mitigate an imminent and substantial significant public health risk. Such order may include any actions available under section 126 of this title. An emergency health order shall be effective upon actual notice to the person against whom the order is directed.

(b) The health officer may issue an emergency health order only after preparation of a written statement of reasons stating the need for an emergency health order together with the supporting evidence and a statement of procedural rights available under this section. The order, together with the statement and the evidence, shall be made available as soon as possible to the person to whom the order is directed. An

emergency order shall be served in accordance with the procedures set forth in Rule 4 of the Vermont Rules of Civil Procedure.

(c) A person to whom an emergency health order is directed shall be given the opportunity for a hearing within five business days of the issuance of such order. A person who is in full compliance with an emergency health order may request, and shall be granted, an extension of the hearing date. If the emergency order was issued by the Commissioner, such hearing shall be in front of the Commissioner. If the emergency order was issued by a local health officer, such hearing shall be in front of the selectmen. At the hearing, the person to whom the order is directed shall be given the opportunity to rebut allegations upon which the emergency health order is based. After the hearing, the Commissioner or selectmen shall issue a health order pursuant to section 126 of this title affirming, modifying, or terminating the emergency health order. (Added 1985, No. 267 (Adj. Sess.), §11.)

- **§128. Appeal**

(a) Any person aggrieved by an act, decision, or order of the commissioner, local board of health, or selectmen pursuant to this title may appeal to the board within 30 days. Hearings by the board under this section shall be subject to the provisions of 3 V.S.A. chapter 25 relating to contested cases (the Administrative Procedure Act). The board shall consider the matter de novo, and all persons and parties in interest, as determined by board rule, may appear and be heard. The board shall issue an order within 30 days following the conclusion of the hearing.

(b) An appeal from the decision of the board shall be to the Vermont supreme court. (Added 1985, No. 267 (Adj. Sess.), §12.)

- **§129. Stay**

An appeal filed pursuant to section 128 of this title shall not stay the effectiveness of the order appealed from unless the board or the court, as appropriate, otherwise orders. (Added 1985, No. 267 (Adj. Sess.), §13.)

- **§130. Civil enforcement**

(a) The commissioner, or a local board of health, may bring an action in the superior court of the county in which a violation or a public health hazard or public health risk has occurred or is occurring, to enforce the provisions of this title, or the rules,

permits or orders issued pursuant thereto, including but not limited to the terms of an assurance of discontinuance entered into under section 125 of this title.

(b) The court may grant temporary and permanent injunctive relief and may exercise all the powers available to it, including but not limited to:

(1) enjoining future activities which may contribute to a public health hazard or a public health risk;

(2) ordering remedial actions to be taken to mitigate a public health risk or to remove or destroy a public health hazard;

(3) ordering the design, construction, installation, and operation of facilities designed to mitigate a public health risk or to assure compliance with any permit issued under this chapter;

(4) fixing and ordering compensation for any public or private property destroyed or damaged;

(5) ordering reimbursement from any person who caused governmental expenditures for the investigation and mitigation of the public health risk or the investigation, abatement, or removal of public health hazards;

(6) levying civil penalties not to exceed $10,000.00 for each violation. In the case of a continuing violation, each day's continuance may be deemed a separate violation. (Added 1985, No. 267 (Adj. Sess.), §14.)

- **§131. Criminal penalty**

(a) Any person who violates a provision of this title, or who fails or neglects to obey or comply with an order or the terms of a permit issued under this title shall be fined not more than $5,000.00. Each violation shall be a separate offense and, in the case of a continuing violation, each day's continuance shall be deemed a separate violation.

(b) Any person who refuses to obey or comply with an order or the terms of a permit issued under this title or who knowingly creates a public health hazard or knowingly contributes to a significant public health risk shall be fined not more than $25,000.00 or be imprisoned not more than six months, or both. Each violation shall be a separate offense and, in the case of a continuing violation, each day's continuance shall be deemed a separate violation.

(c) Any person who knowingly makes a false statement, representation or certification as to any material fact in any application, record, report, plan, testing result, or other document filed or required to be maintained under this title, or who falsifies, tampers with, or knowingly renders inaccurate testing device or method required to be maintained under this title or required by a permit, rule, regulation, or order issued under this title shall be fined not more than $10,000.00 or be imprisoned for not more than six months, or both.

(d) Any person who hinders or attempts to hinder any actions taken pursuant to this chapter shall be fined not more than $1,000.00. (Added 1985, No. 267 (Adj. Sess.), §15.)

Appendix 4.1-5

3 Appendix V.S.A. App §3-53 Executive Code of Ethics

The Vermont Statutes Online

Title 03 APPENDIX: Executive Orders

Chapter 003: Executive

(Cite as: 3APPENDIX V.S.A. App. §3-53)

- **Executive Order No. 3-53**

(No. 09-11)

[Executive Code of Ethics]

WHEREAS, Throughout the state, dedicated public servants bring their talents and expertise to work on behalf of the people of Vermont,

WHEREAS, it is essential to the proper operation of government that public officers be independent and impartial; that governmental decisions and policy be made fairly and impartially, on the merits of the matter at issue; that public office not be used for private gain other than the remuneration provided by law; and that there be public confidence in the integrity of government; and

WHEREAS, there is a risk that the attainment of one or more of these ends may be impaired whenever a conflict exists between the private interests of a public officer and his or her official responsibilities; and

WHEREAS, it is also essential to the proper operation of government that those best qualified not be discouraged from serving as public officers by requiring them to relinquish totally the opportunity to further their own interests, at least where such interests do not create irreconcilable conflicts with their official responsibilities; and

WHEREAS, both the public and private sectors of Vermont are enriched by the healthy exchange of individuals who have hands-on knowledge and work experience in both the public and private sectors.

NOW, THEREFORE, an Executive Code of Ethics effectively ensures fairness and impartiality in the conduct of state business while at the same time, encouraging the recruitment and retention of those best qualified to serve the state and ought to be reaffirmed and continued.

BE IT RESOLVED THAT I, Peter Shumlin, by virtue of the authority vested in me as Governor, do hereby promulgate the following Executive Code of Ethics:

Except where otherwise provided by law, all gubernatorial appointees of the executive branch shall be subject to provisions of this Executive Order. Nothing in this Executive Order shall exempt an appointee from any other requirement of law or any duly adopted state personnel policy.

To assure adherence to this code, all future appointees, and any current appointees who have not signed an acknowledgment with respect to Executive Order No. 10-03 (codified as Executive Order No. 3-45), will be asked to sign the acknowledgment attached hereto as Exhibit A and submit it to the Secretary of Civil and Military Affairs (the "Secretary").

The Secretary has the authority to interpret the provisions of this code as they relate to particular circumstances and to issue exemptions from the Code under special circumstances. All such interpretations and exemptions shall be written and kept by the Secretary in the same manner as the Conflict Questionnaires.

I. Definitions

As used in this Executive Order:

A. "Appointee" means any exempt employee or any member of any public body appointed by or upon the approval of the Governor, or by or upon the approval of such an appointee.

B. "Appearance of a conflict of interest" as used below in §§III(A)(2) and (7) means the impression that a reasonable person might have, after full disclosure of the facts, that an appointee's judgment might be significantly influenced by outside interests, even though there is no actual conflict of interest.

C. "Conflict of interest" means a significant interest, of an appointee or such an interest, known to the appointee, of a member of his or her immediate family or household or of a business associate, in the outcome of any particular matter pending before the appointee or his or her public body. "Conflict of interest" does not include any interest that (i) is no greater than that of other persons generally affected by the outcome of the matter, or (ii) has been disclosed and found not to be significant.

D. "Full-time appointee" means any appointee receiving a full-time salary for state service.

E. "Private entity" is any person, corporation, partnership, joint venture or association, whether organized for profit or not for profit, except those specifically chartered by the State of Vermont or which relies upon taxes for at least 50 percent of its revenues.

F. "Public body" means any agency, department, division or office and any board or commission of any such entity, or any independent board or commission, in the executive branch of the state.

II. General Conduct

An appointee must conduct the affairs of his or her office in such a manner as to instill public trust and confidence.

A. Thus, an appointee shall take all reasonable steps to avoid any action or circumstances, whether or not specifically prohibited by this code, which might result in:

(1) Undermining his or her independence or impartiality or action;

(2) Taking official action on the basis of unfair considerations;

(3) Giving preferential treatment to any private interest on the basis of unfair considerations;

(4) Giving preferential treatment to any family member or member of the appointee's household;

(5) Using public office for the advancement of personal interest;

(6) Using public office to secure special privileges or exemptions; or

(7) Affecting adversely the confidence of the public in the integrity of state government.

B. Every appointee shall be true and faithful to the State of Vermont; will not, directly or indirectly, do any act or thing injurious to the Constitution or Government of the State of Vermont; will faithfully execute the office which he or she holds; and will therein do equal right and justice to all men and women, to the best of his or her judgment and ability, according to law. [VT. Const., Ch 11, §56]

C. Appointees shall always treat each other, employees, staff, volunteers, and the public with dignity, respect and courtesy.

D. Appointees shall support efforts to create and maintain a diverse and effective work force.

E. Every full-time appointee shall devote all of his or her work time to the duties of his or her office.

F. An appointee shall not use state property nor permit others to use state property unless the use is reasonably related to his or her official responsibilities or the conduct is permitted pursuant to a duly adopted state or agency personnel policy.

G. An appointee shall not enter into any commitment to expend state funds unless the expenditure is reasonable and valuable to the state and made in accordance with all applicable statutes, rules or directives from the Secretary of the Agency of Administration.

H. An appointee shall be in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont. An appointee shall be in good standing with respect to, or in full compliance with a plan to pay, any and all child support obligations.

I. Exemptions sought under this Code shall be issued only to further the twin goals of this Code: to establish high standards of ethical conduct for all appointees and to encourage those Vermonters best qualified to serve in state government.

III. Personal Interests, Outside Employment, and Financial Activities

A. **Ethical Rules While in State Employ:**

(1) No full-time appointee shall be the owner of, or financially interested, directly or indirectly in any private entity or private interest that is subject to the supervision of his or her respective department or agency, except as a policyholder in an insurance company or a depositor in a bank. (3 V.S.A. §204). For the purpose of this Executive Order, a direct or indirect financial interest excludes:

(i) any insignificant interest held individually or by a member of the appointee's immediate household or by a business associate, or

(ii) any interest which is no greater than that of other persons who might be generally affected by the agency's or department's supervision.

(2) An appointee shall not take any action in any particular matter in which he or she has either a conflict of interest or the appearance of a conflict of interest, until such time as the conflict is resolved.

(3) An appointee shall not take any official action that materially advances the interest of any entity (except the State of Vermont) with which the appointee is actively seeking employment.

(4) A full-time appointee shall not, for pecuniary gain, be an advocate for any private entity in any matter before any public body or before the state legislature or its committees.

(5) an appointee, while in state employ, shall not solicit or receive any payment, gift, or favor based on any understanding that it may influence any official action.

(6) An appointee shall not solicit or receive any payment, gift or favor from any private interest which:

(i) has, or seeks to obtain, contractual or other business or financial relationships with the appointee's public body;

(ii) conducts business or activities that are regulated by the appointee's public body; or

(iii) has an interest that may be substantially affected by the appointee's official actions.

(7) An appointee, or his or her designee, shall not accept gifts or trips from private interests if the gifts or trips are (i) a quid pro quo; (ii) are intended to influence any decision by the appointee; or (iii) create an appearance of a conflict of interest.

(8) Absent specific law requiring disclosure, an appointee shall not disclose to any private entity any confidential or privileged information obtained while in state employ.

(9) An appointee or his or her family shall not trade in stock or otherwise transact private business based upon information obtained by the Appointee through his or her work on behalf of the state.

B. **Ethical Rules After State Employ:**

(1) For one year after leaving office, a former appointee shall not, for pecuniary gain, be an advocate for any private entity before any public body or before the state legislature or its committees, regarding any particular matter:

(i) in which the state is a party or has a direct and substantial interest; and

(ii) in which the appointee had participated personally and substantively while in state employ.

This prohibition applies to any matter the appointee directly handled, supervised or managed, or gave substantial input, advice or comment, or benefited from, either through discussing, attending meetings on, or reviewing materials prepared regarding the matter.

(2) For one year after leaving office, a former full-time appointee shall not, for pecuniary gain, be an advocate for any private entity before any public body or before the state legislature or its committees, regarding any particular matter in which the appointee had exercised any official responsibility.

IV. Reports

Within thirty days of appointment and thereafter annually on June 30, every Appointee who earns $30,000 or more per year shall file with the Secretary an "Ethics Questionnaire" as prescribed in Exhibit B. These questionnaires shall be treated as confidential personnel documents as defined by 1 V.S.A. §317(c)(7) and kept as such during the gubernatorial administration in which the appointee serves,

or for one year after the appointee leaves office, whichever first occurs, at which point they will be destroyed.

V. Enforcement

The purpose of this Executive Code of Ethics is to provide guidance to gubernatorial appointees covered herein, and during such appointment, except as otherwise required by law, only the Governor or his designated agent shall have the power to sanction any violations hereof. Nothing in this code shall create a right to continue state employment. The remedy for a violation of post-employment restrictions set forth in Section III(B) shall rest with the public body before which the former appointee appears and, barring unusual circumstances, shall result only in disqualifying the former appointee from appearing or participating in the particular matter.

VI. Effective Date, Repeal and Transition

This Executive Order takes effect upon signing and, except as otherwise required by law, and except as provided below, supersedes and replaces Executive Order No. 10-03 (codified as No. 3-45), dated September 13, 2003. Appointees who completed the acknowledgment and disclosure required pursuant to the prior Executive Order No. 10-03 need not re-execute the acknowledgment and disclosure required pursuant to this Executive Order, but remain bound to and accountable for the requirements of that prior Executive Order No. 10-03.

Dated July 21, 2011.

CODE OF ETHICS ACKNOWLEDGEMENT

I, _____, having been appointed to the position of _____, hereby acknowledge having received and read Executive Order 09-11, the Executive Code of Ethics, promulgated on July 21, 2011, and agree to adhere to it.

Date: _____

Signature: _____

Name (print): _____

OATH OF OFFICE

I, _____, do solemnly swear/affirm that I will be true and faithful to the State of Vermont, and that I will not, directly or indirectly, do any act or thing injurious to the Constitution or Government thereof. So help me God. / Under the pains and penalties of perjury. So help me God. / Under the pains and penalties of perjury.

I _____ , do solemnly swear/affirm that I will faithfully execute the Office of _____, for the State of Vermont, and that I will therein do equal right and justice to all persons, to the best of my judgment and ability according to law.

So help me God. / Under the pains and penalties of perjury.

I _____ , do solemnly swear/affirm that I will support the Constitution of the United States.

So help me God. / Under the pains and penalties of perjury.

Signature: _____

STATE OF VERMONT

_____ COUNTY, SS

At _____ , in said County, this _____ day of _____ , 2011, personally appeared _____ and took and subscribed the foregoing oath of office and allegiance.

Before Me, _____

Notary Public

My Commission expires _____

EXECUTIVE ORDER NO. 09-11

EXHIBIT B

ETHICS QUESTIONNAIRE

In accordance with the Executive Order No. 09-11, Executive Code of Ethics, every gubernatorial appointee as defined therein, who earns $30,000 or more per year, shall fill out and file this questionnaire annually, on or by June 30, with the Secretary of Civil and Military Affairs. This questionnaire shall be treated as a confidential personnel document pursuant to 1 V.S.A. §317(c)(7) and kept as such during the gubernatorial administration in which the appointee serves, or for one year after the appointee leaves office, whichever occurs first.

The purpose of this questionnaire is to determine any significant personal interests of gubernatorial appointees that might conflict with the best interests of the state. It is understood that individuals serving the state as gubernatorial appointees may have pecuniary interests that may relate to matters arising in the course of their performance of the official responsibilities. This form is intended to identify those interests and provide assurance that conflicts of interest will not impair fair and impartial state actions. Gubernatorial appointees should, whenever possible, avoid conflicts of interest and, where they do occur, make them clearly evident.

In answering questions, please disclose not only your own direct interests but also any indirect or beneficial interests which could arise through members of your immediate family (spouses, dependent children) or through persons who reside in your home or by reason of a trust or partnership arrangement in which you or a member of your immediate family or household participates or has an interest.

(Use reverse side to give additional information, if necessary.)

1. Are you, your spouse, or a member of your immediate family the director, officer, partner or employee of any enterprise that, to your knowledge, does business or has a financial relationship with the state? If yes, please list all such positions.

Yes _____ No _____

2. Except for securities that are listed on a national exchange, do you own directly, indirectly, or beneficially, securities, options, or rights to purchase securities or share in profits of companies, to your knowledge, doing business with the state? If yes, list company and percent of total shares.

Yes _____ No _____

3. Do you directly, indirectly or beneficially, have any ownership interest in a proprietorship, partnership, or syndicate that, to your knowledge, operates any business which does business with the state? If yes, explain briefly.

Yes _____ No _____

4. Does there currently exist any creditor-debtor relationship between you, directly or indirectly, and any non-financial organization, to your knowledge, doing business with the state, except normal charge accounts and installment purchase accounts? If yes, explain briefly.

Yes _____ No _____

5. Are you receiving commissions or any forms of compensation, gift or reward on business transacted with the state either directly or through a third person? If yes, explain briefly.

Yes _____ No _____

6. In addition to the information reported above, do you have any direct or indirect business relationships which may reasonably be considered to have some influence on your judgment and decisions involving transactions with the state, or otherwise during the performance of your duties and responsibilities as a gubernatorial appointee? If yes, explain briefly.

Yes _____ No _____

7. Are you in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont? If no, explain.

Yes _____ No _____

8. If you are under an obligation to pay child support, are you in good standing with respect to that obligation?

Yes _____ No _____

If no, have you entered into a payment plan with the Vermont Office of Child Support and are you in full compliance with that payment plan?

Yes _____ No _____

I agree to disassociate myself from situations where possible conflicts of interest pertaining to any matter addressed in this questionnaire might occur, when requested by the Governor or his or her representative, the Secretary of Civil & Military Affairs.

9. To the best of my knowledge, the answers to all of the above questions are true and complete in every respect.

Date: _____ Signed: _____

Name: _____

Position: _____

Appendix 4.1-6

Department of Human Resources Procedure 5.2

Number 5.2 - CONFLICTS OF INTEREST ARISING FROM EMPLOYMENT

Effective Date: January 23, 2013

Supersedes: Policy 5.2**,** dated February 1, 2002
Policy 5.2, dated March 1, 1996

Applicable To: All applicants for employment with; and all classified, exempt, appointed, temporary, and contractual employees, in the Executive Branch of the State of Vermont.

Issued By: Department of Human Resources

Approved By: Jeb Spaulding, Secretary of Administration

PURPOSE & POLICY STATEMENT

It is the State of Vermont's responsibility to conduct employment matters in a manner that avoids not only conflicts of interest, but also the any appearance of a conflict of interest. Conflicts of interest may arise in: hiring employees; other employment related matters; their employment by the State in more than one capacity; outside employment or activities engaged in by employees; and the award of contracts to employees.

This Policy is intended to promote avoidance of conflicts of interest and the appearance thereof that arise through the employment, in the same governmental unit, of people who share certain familial or other close relationships. The primary goal of this Policy is to avoid instances in which the hiring process or any term or condition of employment is inappropriately influenced by such familial or other relationships, or the perception among members of the public or other employees of such impropriety.

It is the general policy of the State that no one will be employed in the same department, institution, or organizational unit that employs his/her relative. In addition, it is the general policy of the State that no one will be employed in the same department, institution, or organizational unit as a person with whom he/she resides, or the relative of a person with whom he/she resides. It is important to note that the definition of "relative," for the purposes of this Policy, includes spouses, civil union partners, and domestic partners, in addition to the other familial relationships listed in the definition.

This Policy applies to ***all*** employment decisions including, but not limited to, those concerning new hires, promotions, demotions, transfers within State government, and changes in categories of employment (such as moving from temporary employment into the classified service). Hiring managers must ask prospective applicants for employment or appointment if they have any relatives, a civil union partner, a domestic partner, other person with whom they reside, or relative of any of the foregoing currently working for the State of Vermont.

DEFINITIONS

Civil Union Partner – a person who has entered into a civil union pursuant to Vermont law. Civil union partners shall be treated the same as spouses under this Policy. Domestic Partner – a person of the same or opposite sex who lives with a State employee under circumstances in which they have agreed between themselves to be responsible for each other's welfare.

Relative – includes parent, grandparent, spouse, civil union partner, domestic partner, child, brother, sister, grandchild, aunt, uncle, niece, nephew, parent-in-law, brother-inlaw, sister-in-law, step-parent, step-child, or any other person so related through marriage, and any other person so related to one's civil union partner or domestic partner.

Employment – working for the State in a permanent, limited, temporary or exempt position; or under contract.

Division – a major unit of an agency or department of State government, usually headed by a director.

WAIVERS

Requests for a waiver of this Policy may be submitted to the Commissioner of Human Resources or designee. Waiver request will be evaluated to determine the extent of current or potential conflicts of interest, or the appearance thereof. The Commissioner's or designee's consideration will include, but not be limited to the following:

- The size of the employing unit;

- The closeness or remoteness of the relationship between the relatives or cohabitants;

- The reporting relationships within the organization and the likelihood that the employees would work together or that either employee would be in a position to

influence any aspect of the other's employment;

- The degree to which the action would aid in attaining applicable affirmative action goals;
- The level, status, and geographic locations of the positions;

- The extent to which the proposed employment may reduce management's flexibility with respect to work assignments or future transfer or promotion of such employee;

- The availability of other qualified, suitable, and interested applicants for the position, as demonstrated by the documented results of the recruitment effort for the position that is the subject of the waiver request.

Waivers will not be granted in any case in which one of the affected positions is the exempt head of a department, or deputy thereto. Waivers to allow the employment of a person in any case in which the waiver would be necessary because of a relationship with a designated management employee (either classified or exempt) are disfavored and will be granted only when the lack of potential conflicts is apparent, will not compromise the safety and security of the organizational unit, institution or facility, and the waiver is plainly in the State's best interest.

All requests for waiver shall be submitted to the Commissioner of Human Resources or designee ***prior to the extension of an offer of employment*** (including the approval of transfers, promotions, reclassifications, reallocations, management level redesignations, or any other change in position or permanent workplace assignment) and shall include the following information:

- Names of the applicant and the person whose employment causes the conflict, as defined by this Policy, and their relationship to one another.

- A current organizational chart that identifies both positions and shows the reporting relationships within the organization.

- Status of the position under recruitment (i.e., permanent, limited, temporary, exempt, etc.)

- Proposed starting date of employment.

No promise or offer of employment made to a person covered under this Policy shall be valid, effective and enforceable ***unless previously approved*** by the Commissioner of Human Resources or designee.

Any waiver which is approved applies ***only*** to the circumstances identified in the

request. A further waiver ***must*** be requested for any change in employment status including promotion of the person subject to a waiver. If a waiver is granted, each employee must sign a *Conditional Approval to Hire a Relative* form to acknowledge awareness that future duty assignments and/or employment opportunities may be denied based on this Policy.

CONFLICTS OF INTEREST ARISING DURING EMPLOYMENT

Conflicts of interest that arise (or become known) during employment must be avoided to the extent that is reasonably practicable. Employees who, during their employment, become the relative (including by marriage or civil union) or domestic partner of another employee, or who begin to reside with another employee within the same department, must make those facts known to the employing department. The employing department must then request a waiver of this Policy as described above. Such employees will not be required to leave State employment solely as a result of that change in circumstances. However, any favoritism or inappropriate action by either employee that is attributable to the relationship with the other employee will lead to corrective or disciplinary action, up to and including dismissal from employment.

Where a conflict of interest has arisen during employment, the employing department must take all reasonable and practicable measures, including, but not limited to, changes in supervision, work location, and/or work shift, to avoid to the greatest extent possible the conflict or the appearance thereof.

This Policy shall also apply to promotion or other subsequent employment action that affects an employee. The employer shall avoid creating or exacerbating any conflict of interest situation that arose during employment by any promotion or subsequent actions involving the affected employees.

Questions regarding this Policy should be directed to the Labor Relations Division of the Department of Human Resources, 828-2972 or 828-3454.

Approved:

Jeb Spaulding Date

Secretary of Administration

Appendix 4.1-7

Department of Human Resources Procedure 5.6

Number 5.6 - EMPLOYEE CONDUCT

Effective Date: December 15, 1996

Applicable To: All classified employees, as well as exempt, appointed, and temporary, with the Executive Branch of the State of Vermont.

Issued By: Department of Personnel

Approved By: William H. Sorrell, Secretary of Administration

POLICY AND PROCEDURES
This policy is a guide for agencies and departments regarding general issues of employee conduct. It is understood, however, that individual departments may need to have more specific guidelines and may wish to issue guidelines that are appropriate to their program function and the roles of their employees.

REQUIRED CONDUCT

1. It shall be the duty of employees to fulfill to the best of their ability the duties and responsibilities of their position. Employees shall pursue the common good in their official activities, and shall uphold the public interest, as opposed to personal or group interests.

2. Employees shall devote their full time, attention, and effort to the duties and responsibilities of their positions during their scheduled work time, except when other activities are authorized by law, rule, or contractual agreement, or are approved by the appointing authority.

3. Employees shall conduct themselves in a manner that will not bring discredit or embarrassment to the State of Vermont, whether on or off duty.

4. Employees shall respect the legitimate privacy interests of their co-workers, superiors, and employer, both as to personal property and work product in the workplace. Employees have access only to information which is necessary for the performance of their job duties except as otherwise approved by their employer. Employees who wish to have access to information which is not required for the performance of their jobs may exercise their right as a citizen to

request information under Vermont's access to public records statute (See 3 V.S.A. 315).

PROHIBITED CONDUCT

1. Employees shall not use, or attempt to use, their positions to obtain special privileges or exemptions for themselves or others.

2. Employees shall not use, or attempt to use, State personnel, property, or equipment for their private use or for any use not required for the proper discharge of their official duties.

3. Employees are not permitted to solicit or accept any form of compensation from anyone except their employer for activities which are related to their position, unless it is provided for by law or approved by the employer. Prohibited compensation shall include any gift, reward, loan, gratuity or other valuable consideration, including free meals, provided to employees, their immediate family, or business associate(s). Activities related to the position include papers, talks, demonstrations, or appearances connected with the job. However, this prohibition shall not extend to uncompensated activities or compensation received for activities not related to the employees' jobs which are done on their own time.

4. Employees shall not engage in any employment, activity, or enterprise which has been or may be determined by the appointing authority to be inconsistent, incompatible, or in conflict with their duties as a State employee or with the duties, functions or responsibilities of the agency by which they are employed. The mere appearance of impropriety may constitute a conflict of interest. Employees shall consult with their appointing authority prior to engaging in such employment, activity, or enterprise. Employees whose employment, activity or enterprise pre-dates this policy or their employment with the State shall promptly consult with their appointing authority to resolve any issue of conflict of interest.

5. Employees may not engage in any outside employment, activity, or enterprise during work hours.

6. Employees shall not disclose, directly or indirectly, information which they receive or have access to by virtue of their official duties, either for the private gain or benefit of themselves or others, except as authorized by their superiors or by law.

7. Employees shall not discriminate against, intimidate, nor harass any employee because of race, color, religion, creed, ancestry, sex, marital status, age, national origin, handicap, membership or non-membership in the VSEA, filing a complaint or grievance, or any other factor for which discrimination is prohibited by law.

Appendix 4.1-8

The Vermont Statutes Online

Title 10: Conservation And Development

Chapter 162: Texas Low-level Radioactive Waste Disposal Compact

- **§7060. Entry into the Compact**

  The State shall be a member of the Texas Low-Level Radioactive Waste Disposal Compact. (Added 1993, No. 137 (Adj. Sess.), §2.)

- **§7061. Definitions**

  (a) As used in this chapter:

  (1) "Commission" means the Texas Low-Level Radioactive Waste Disposal Compact Commission.

  (2) "Compact" or "Compact agreement" means the Texas Low-Level Radioactive Waste Disposal Compact.

  (3) "Compact facility," "disposal facility," and "facility" mean any site, location, structure, or property within the State of Texas provided for the purposes of disposal of low-level radioactive waste, pursuant to the Compact.

  (4) "Generator" means a person who produces or processes low-level radioactive waste in the course of its activities.

  (5) "Low-level radioactive waste" means radioactive waste material that is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or byproduct material, as defined in 42 U.S.C. §2014(e)(2), the United States Atomic Energy Act of 1954, Section 11(e)(2), and that material the United States Nuclear Regulatory Commission, consistent with existing law, classifies as low-level radioactive waste.

(6) "Manage" means collection, consolidation, storage, packaging, or treatment of low-level radioactive waste.

(b) In addition, terms defined in the Compact shall have the same definition in this chapter, unless another meaning is clearly intended. (Added 1993, No. 137 (Adj. Sess.), §2.)

- **§7062. Commission membership**

  The Governor shall appoint one or more persons with relevant knowledge and experience to represent the State on the Commission established by Article III of the Compact. The Governor may appoint an alternate for each Commission member appointed under this section. Each Commission member and alternate, if appointed, shall serve at the pleasure of the Governor. (Added 1993, No. 137 (Adj. Sess.), §2; amended 2011, No. 47, §20r, eff. May 25, 2011.)

- **§7063. Compensation of Commission members; report**

  Each Commission member and alternate is entitled to compensation at a rate established by the Governor, and for reimbursement for actual and necessary expenses incurred in the performance of his or her duties. If a State employee is appointed as a Commission member or an alternate, that State employee is not entitled to compensation in addition to such employee's regular pay. At least annually by December 31, Commission members and alternates appointed under this section shall report to the Governor and the Commissioner of Public Service on their activities conducted in representing the State on the Commission. The report shall include an itemization of compensation paid and expenses incurred. Compensation and expenses of Commission members and alternates shall be included in the annual budget of the Department of Public Service and shall be specifically identified in the budget report filed pursuant to 32 V.S.A. §§306 and 307. (Added 1993, No. 137 (Adj. Sess.), §2; amended 2011, No. 47, §20s, eff. May 25, 2011.)

- **§7064. Support of the Compact Commission member**

  (a) The Agency of Natural Resources, the Agency of Administration, the Department of Public Service, the Department of Health, and the Attorney General shall respond to requests of the Commission member for data and information needed for Commission activities.

(b) Expenses of any State agency for all actions and proceedings authorized under this chapter and the Compact shall be allocated to the Secretary of Administration for billing under subdivision 7067(b)(3) of this title, including expenses for the use of additional personnel and regular employees. (Added 1993, No. 137 (Adj. Sess.), §2.)

- **§7065. Compact responsibilities**

(a) For low-level radioactive waste, to the extent necessary to meet the requirements of the Texas Low-Level Radioactive Waste Disposal Compact, the Secretary of Natural Resources shall do the following:

(1) develop and enforce procedures for packaging, processing, and waste form specifications for low-level radioactive waste shipments to the compact facility;

(2) develop and enforce procedures for minimization of the volume of low-level radioactive waste generated;

(3) by no later than 180 days after the effective date of this chapter, establish the annual projected volume of low-level radioactive waste from each generator in Vermont to be disposed in the Compact facility for the years 1995-2045, to determine compliance with section 3.04(11) of the Compact agreement;

(4) collect, compile, and distribute data and information required under this section.

(b) For low-level radioactive waste, as part of its present responsibilities under 18 V.S.A. chapter 32, the Commissioner of Health shall do the following:

(1) maintain a registry of all generators of low-level radioactive waste within the State, including the amount and class of low-level radioactive waste generated by each generator;

(2) maintain an accounting of waste shipped and proposed to be shipped to the Compact facility by volume and curies, proposed transportation methods and routes, and proposed shipment schedules.

(c) The Secretary of Natural Resources may do the following:

(1) develop and enforce procedures for reports and manifests from generators of low-level radioactive waste within the State concerning the quantities, concentrations, and characteristics of waste generated and shipped; proposed

transportation methods and routes; proposed shipment schedules; expected generation rates; packaging; and storage conditions and any other information reasonably necessary for the Agency and the Commission member to carry out their responsibilities;

(2) adopt rules under 3 V.S.A. chapter 25 for fulfilling the State responsibilities identified in this section and any other responsibilities established in the Compact for low-level radioactive waste.

(d) Repealed.] (Added 1993, No. 137 (Adj. Sess.), §2; amended 2009, No. 33, §83(e)(10).)

- **§7066. Requirements regarding radioactive waste disposal**

(a) Every generator of low-level radioactive waste in this State shall comply with the reporting requirements of this chapter.

(b) A generator of low-level radioactive waste in this State that existed, as a generator, on the effective date of the Compact, including any nuclear plant, may not be discriminated against with respect to access to disposal capacity at the Compact facility.

(c) No generator of low-level radioactive waste in the State existing on the date of enactment of this section may increase its generation of waste in a year by more than 20 percent of the total annual volume of waste from all generators estimated for disposal by the Secretary of Natural Resources, under subdivision 7065(a)(3) of this title, unless that generator receives a favorable determination from the Secretary of Natural Resources that disposal capacity will be available as provided by section 3.04(11) of the Compact agreement.

(d) Any person other than those generators identified in subsection (c) of this section who wishes to undertake an activity that will generate low-level radioactive waste in the State must first receive a favorable determination from the Secretary of Natural Resources that disposal capacity will be available as provided by section 3.04(11) of the Compact agreement.

(e) No generator of low-level radioactive waste may dispose of its low-level radioactive waste at the Compact facility unless that generator has a current indemnification agreement with the State of Vermont. Federal generators of low-level radioactive waste shall be required to indemnify the State only to the extent

permitted by federal law. Any indemnification agreement shall be reviewed by the Attorney General before the State agrees to it. (Added 1993, No. 137 (Adj. Sess.), §2.)

- **§7067. Assessment of Compact costs; Low-Level Radioactive Waste Disposal Compact** Fund

(a) There is hereby created the Low-Level Radioactive Waste Disposal Compact Fund, to be administered and expended by the Secretary of Administration in accordance with the provisions of this section. All balances in the Fund at the end of any fiscal year shall be carried forward and remain a part of the Fund. Interest earned by the Fund shall be deposited into the Fund.

(b) The Secretary of Administration shall assess the generators of low-level radioactive waste in the State for the full administrative costs of membership and participation in the Compact, subject to Articles IV and V of that agreement, and for the State's costs incurred in carrying out the responsibilities of this chapter. Generators of low-level radioactive waste shall be assessed by the method established in subsection (c) of this section. Payments shall be dispensed from the State Treasury only upon warrants issued by the Commissioner of Finance and Management after receipt of proper statements describing expenses.

(1) Initial assessments.

(A) The Secretary of Administration shall make an initial assessment in the amount of $12,500,000.00 within 30 days following ratification of the Compact agreement by the Congress of the United States. The amount assessed shall be paid within 15 days of the assessment.

(B) The Secretary of Administration shall make a second assessment in the amount of $12,500,000.00 within 30 days following the date of the opening of the compact facility in Texas. The amount assessed shall be paid within 15 days of the assessment.

(2) Host county assessments.

(A) The Secretary of Administration shall make an initial host county assessment in accordance with section 4.05, subsection (5) of the Compact in the amount of $1,250,000.00 no later than 30 working days following ratification of the

Compact agreement by the Congress of the United States. The amount assessed shall be paid within 15 days of assessment.

(B) The Secretary of Administration shall make a second host county assessment in the amount of $1,250,000.00 no later than 30 working days following the approval of a facility operating license by the Texas Natural Resource Conservation Commission. The amount assessed shall be paid within 15 days of assessment.

(3) Compact Commission and State expenses. On an annual basis or on any other schedule established by the Commission, the Secretary of Administration shall assess the State's share of the administrative, legal and other expenses for the operation of the Compact Commission, as well as the State's costs incurred in carrying out the responsibilities of this chapter. Amounts assessed under this section shall be paid within 30 days of assessment.

(4) Uncommitted balance of the Low-Level Radioactive Waste Fund. Any uncommitted balance of the Low-Level Radioactive Waste Fund created under section 7013 of this title, shall be transferred to the Fund established in subsection (a) of this section and shall be used to reduce, offset, or eliminate the costs assessed under this subsection.

(5) Alternate payment schedule. In accordance with section 5.02 of the Compact agreement and if so designated by the Commission, the schedule for assessments by the Secretary of Administration to be forwarded to the Texas Low-Level Radioactive Waste Disposal Authority under subdivision (1) of this section shall be revised to conform to the payment schedule for the repayment of debt incurred for the construction of the compact facility. An amount may not be assessed pursuant to this subsection on less than 30 days' notice and a payment may not be required in fewer than 15 days from the date of assessment.

(c) With respect to the funding of the assessment for payments identified in subsection (b) of this section, generators of low-level radioactive waste in the State shall be assessed proportionately on the basis of a three-year rolling total volume of generated wastes prepared for shipment (i.e., waste processed into disposal containers). The calculation shall use the last three complete calendar years at the time the assessment is made. Vermont Yankee decommissioning waste shall be accounted for by using a volume equal to 3/20 of the decommissioning waste volume estimate from the last completed Vermont Yankee decommissioning rate

case before the Federal Energy Regulatory Commission. This 3/20 decommissioning waste volume shall be added to the three-year waste generated by Vermont Yankee prior to performing the calculation. Those generators generating less than five cubic feet of low-level radioactive waste for the rolling three-year period shall be exempt from this assessment.

(d) A generator of low-level radioactive waste in the State that did not contribute to the initial assessments identified in this section shall make such contributions at the end of the third calendar year after its first shipment of radioactive waste to the compact facility. A recalculation shall be made of the initial assessments under subsection (b) of this section if the new generator has generated more than five cubic feet of waste during the three-year period. The calculation described in subsection (c) of this section shall be recalculated, including the new generator's waste volume. The amount due from the new generator shall be distributed to the previous payees in proportion to their payment amount. If the new generator's waste is one percent of the recalculated total waste volume or greater, interest will also be included in the payment to the previous payees in an amount equal to the Vermont Yankee cost of money between the initial payments and the time the new generator payment is made. (Added 1993, No. 137 (Adj. Sess.), §2.)

- **§7068. Enforcement**

  Any person who violates this chapter or any rule adopted under this chapter or refuses to comply with any of the provisions of this chapter shall be subject to enforcement actions under chapters 201 and 211 of this title. (Added 1993, No. 137 (Adj. Sess.), §2.)

- **§7069. Texas Low-Level Radioactive Waste Disposal Compact**

  The General Assembly ratifies the Texas Low-Level Radioactive Waste Disposal Compact to provide access to facilities in the State of Texas for the permanent disposal of all low-level radioactive waste. The text is as follows:

TEXAS LOW-LEEL RADIOACTIVE WASTE DISPOSAL

COMPACT

ARTICLE I. POLICY AND PURPOSE

Sec. 1.01. The party states recognize a responsibility for each state to seek to manage low-level radioactive waste generated within its boundaries, pursuant to the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Secs. 2021b-2021j). They also recognize that the United States Congress, by enacting the Act, has authorized and encouraged states to enter into compacts for the efficient management and disposal of low-level radioactive waste. It is the policy of the party states to cooperate in the protection of the health, safety, and welfare of their citizens and the environment and to provide for and encourage the economical management and disposal of low-level radioactive waste. It is the purpose of this compact to provide the framework for such a cooperative effort; to promote the health, safety, and welfare of the citizens and the environment of the party states; to limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste and to encourage the reduction of the generation thereof; and to distribute the costs, benefits, and obligations among the party states; all in accordance with the terms of this compact.

ARTICLE II. DEFINITIONS

Sec. 2.01. As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Act" means the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Secs. 2021b-2021j).

(2) "Commission" means the Texas Low-Level Radioactive Waste Disposal Compact Commission established in Article III of this compact.

(3) "Compact facility" or "facility" means any site, location, structure, or property located in and provided by the host state for the purpose of management or disposal of low-level radioactive waste for which the party states are responsible.

(4) "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the United States Nuclear Regulatory Commission and the United States Environmental Protection Agency under applicable laws, or by the host state.

(5) "Generate," when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(6) "Generator" means a person who produces or processes low-level radioactive waste in the course of its activities, excluding persons who arrange for the collection, transportation, management, treatment, storage, or disposal of waste generated outside the party states, unless approved by the Commission.

(7) "Host county" means a county in the host state in which a disposal facility is located or is being developed.

(8) "Host state" means a party state in which a compact facility is located or is being developed. The State of Texas is the host state under this compact.

(9) "Institutional control period" means that period of time following closure of the facility and transfer of the facility license from the operator to the custodial agency in compliance with the appropriate regulations for long-term observation and maintenance.

(10) "Low-Level Radioactive Waste" has the same meaning as that term is defined in Section 2(9) of the Act (42 U.S.C. Sec. 2021b(9)), or in the host state statute so long as the waste is not incompatible with management and disposal at the compact facility.

(11) "Management" means collection, consolidation, storage, packaging, or treatment.

(12) "Operator" means a person who operates a disposal facility.

(13) "Party state" means any state that has become a party in accordance with Article VII of this Compact. Texas, Maine, and Vermont are initial party states under this Compact.

(14) "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.

(15) "Transporter" means a person who transports low-level radioactive waste.

ARTICLE III. THE COMMISSION

Sec. 3.01. There is hereby established the Texas Low-Level Radioactive Waste Disposal Compact Commission. The Commission shall consist of one voting member from each party state except that the host state shall be entitled to six voting members. Commission members shall be appointed by the party state governors, as provided by the laws of each party state. Each party state may provide alternates for each appointed member.

Sec. 3.02. A quorum of the Commission consists of a majority of the members. Except as otherwise provided in this compact, an official act of the Commission must receive the affirmative vote of a majority of its members.

Sec. 3.03. The Commission is a legal entity separate and distinct from the party states and has governmental immunity to the same extent as an entity created under the authority of Article XVI, Section 59, of the Texas Constitution. Members of the Commission shall not be personally liable for actions taken in their official capacity. The liabilities of the Commission shall not be deemed liabilities of the party states.

Sec. 3.04. The Commission shall:

(1) Compensate its members according to the host state's law.

(2) Conduct its business, hold meetings, and maintain public records pursuant to laws of the host state, except that notice of public meetings shall be given in the nonhost party states in accordance with their respective statutes.

(3) Be located in the capital city of the host state.

(4) Meet at least once a year and upon the call of the Chair, or any member. The Governor of the host state shall appoint a Chair and Vice Chair.

(5) Keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the Commission.

(6) Approve a budget each year and establish a fiscal year that conforms to the fiscal year of the host state.

(7) Prepare, adopt, and implement contingency plans for the disposal and management of low-level radioactive waste in the event that the compact facility should be closed. Any plan which requires the host state to store or otherwise manage the low-level radioactive waste from all the party states must be approved by at least four host state members of the Commission. The Commission, in a contingency plan or otherwise, may not require a nonhost party state to store low-level radioactive waste generated outside the state.

(8) Submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the Commission, including an annual report to be submitted on or before January 31 of each year.

(9) Assemble and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.

(10) Keep a current inventory of all generators within the party states, based upon information provided by the party states.

(11) By no later than 180 days after all members of the Commission are appointed under Section 3.01 of this article, establish by rule the total volume of low-level radioactive waste that the host state will dispose of in the compact facility in the years 1995-2045, including decommissioning waste. The shipments of low-level radioactive waste from all nonhost party states shall not exceed 20 percent of the volume estimated to be disposed of by the host state during the 50-year period. When averaged over such 50-year period, the total of all shipments from nonhost party states shall not exceed 20,000 cubic feet a year. The Commission shall coordinate the volumes, timing, and frequency of shipments from generators in the nonhost party states in order to assure that over the life of this agreement shipments from the nonhost party states do not exceed 20 percent of the volume projected by the Commission under this paragraph.

Sec. 3.05. The Commission may:

(1) Employ staff necessary to carry out its duties and functions. The Commission is authorized to use to the extent practicable the services of existing employees of the party states. Compensation shall be as determined by the Commission.

(2) Accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal or state government. The nature, amount, and condition, if any, of any donation, grant, or other resources accepted pursuant to this paragraph and the identity of the donor or grantor shall be detailed in the annual report of the Commission.

(3) Enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the Commission shall bind a party state.

(4) Adopt, by a majority vote, bylaws and rules necessary to carry out the terms of this compact. Any rules promulgated by the Commission shall be adopted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(5) Sue and be sued and, when authorized by a majority vote of the members, seek to intervene in administrative or judicial proceedings related to this Compact.

(6) Enter into an agreement with any person, state, regional body, or group of states for the importation of low-level radioactive waste into the Compact for management or disposal, provided that the agreement receives a majority vote of the Commission. The Commission may adopt such conditions and restrictions in the agreement as it deems advisable.

(7) Upon petition, allow an individual generator, a group of generators, or the host state of the Compact, to export low-level radioactive waste to a low-level radioactive waste disposal facility located outside the party states. The Commission may approve the petition only by a majority vote of its members. The permission to export low-level radioactive waste shall be effective for that period of time and for the specified amount of low-level radioactive waste, and subject to any other term or condition, as is determined by the Commission.

(8) Monitor the exportation outside of the party states of material, which otherwise meets the criteria of low-level radioactive waste, where the sole purpose of the exportation is to manage or process the material for recycling or waste reduction and return it to the party states for disposal in the compact facility.

Sec. 3.06. Jurisdiction and venue of any action contesting any action of the Commission shall be in the United States District Court in the district where the Commission maintains its office.

ARTICLE IV. RIGHTS, RESPONSIBILITIES AND OBLIGATIONS OF PARTY STATES

Sec. 4.01. The host state shall develop and have full administrative control over the development, management and operation of a facility for the disposal of low-level radioactive waste generated within the party states. The host state shall be entitled to unlimited use of the facility over its operating life. Use of the facility by the nonhost party states for disposal of low-level radioactive waste, including such waste resulting from decommissioning of any nuclear electric generation facilities located in the party states, is limited to the volume requirements of Section 3.04(11) of Article III.

Sec. 4.02. Low-level radioactive waste generated within the party states shall be disposed of only at the compact facility, except as provided in Section 3.05(7) of Article III.

Sec. 4.03. The initial states of this Compact cannot be members of another low-level radioactive waste compact entered into pursuant to the Act.

Sec. 4.04. The host state shall do the following:

(1) Cause a facility to be developed in a timely manner and operated and maintained through the institutional control period.

(2) Ensure, consistent with any applicable federal and host state laws, the protection and preservation of the environment and the public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the disposal facilities within the host state.

(3) Close the facility when reasonably necessary to protect the public health and safety of its citizens or to protect its natural resources from harm. However, the host state shall notify the commission of the closure within three days of its action and

shall, within 30 working days of its action, provide a written explanation to the Commission of the closure, and implement any adopted contingency plan.

(4) Establish reasonable fees for disposal at the facility of low-level radioactive waste generated in the party states based on disposal fee criteria set out in Sections 402.272 and 402.273, Texas Health and Safety Code. The same fees shall be charged for the disposal of low-level radioactive waste that was generated in the host state and in the nonhost party states. Fees shall also be sufficient to reasonably support the activities of the Commission.

(5) Submit an annual report to the Commission on the status of the facility, including projections of the facility's anticipated future capacity, and on the related funds.

(6) Notify the Commission immediately upon the occurrence of any event that could cause a possible temporary or permanent closure of the facility and identify all reasonable options for the disposal of low-level radioactive waste at alternate compact facilities or, by arrangement and commission vote, at noncompact facilities.

(7) Promptly notify the other party states of any legal action involving the facility.

(8) Identify and regulate, in accordance with federal and host state law, the means and routes of transportation of low-level radioactive waste in the host state.

Sec. 4.05. Each party state shall do the following:

(1) Develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for the facility to conform to packaging, processing, and waste form specifications of the host state.

(2) Maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at the facility, including, but not limited to, the amount of low-level radioactive waste and the class of the low-level radioactive waste generated by each generator.

(3) Develop and enforce procedures requiring generators within its borders to minimize the volume of low-level radioactive waste requiring disposal. Nothing in

this Compact shall prohibit the storage, treatment, or management of waste by a generator.

(4) Provide the Commission with any data and information necessary for the implementation of the Commission's responsibilities, including taking those actions necessary to obtain this data or information.

(5) Pay for community assistance projects designated by the host county in an amount for each nonhost party state equal to 10 percent of the payment provided for in Article V for each such state. One-half of the payment shall be due and payable to the host county on the first day of the month following ratification of this compact agreement by Congress and one-half of the payment shall be due and payable on the first day of the month following the approval of a facility operating license by the host state's regulatory body.

(6) Provide financial support for the Commission's activities prior to the date of facility operation and subsequent to the date of Congressional ratification of this Compact under Section 7.07 of Article VII. Each party state will be responsible for annual payments equaling its pro rata share of the Commission's expenses, incurred for administrative, legal, and other purposes of the Commission.

(7) If agreed by all parties to a dispute, submit the dispute to arbitration or other alternate dispute resolution process. If arbitration is agreed upon, the Governor of each party state shall appoint an arbitrator. If the number of party states is an even number, the arbitrators so chosen shall appoint an additional arbitrator. The determination of a majority of the arbitrators shall be binding on the party states. Arbitration proceedings shall be conducted in accordance with the provisions of 9 U.S.C. Sections 1 through 16. If all parties to a dispute do not agree to arbitration or alternate dispute resolution process, the United States District Court in the district where the Commission maintains its office shall have original jurisdiction over any action between or among parties to this compact.

(8) Provide on a regular basis to the Commission and host state:

(A) an accounting of waste shipped and proposed to be shipped to the compact facility, by volume and curies;

(B) proposed transportation methods and routes; and

(C) proposed shipment schedules.

(9) Seek to join in any legal action by or against the host state to prevent nonparty states or generators from disposing of low-level radioactive waste at the facility.

Sec. 4.06. Each party state shall act in good faith and may rely on the good faith performance of the other party states regarding requirements of this Compact.

ARTICLE V. PARTY STATE CONTRIBUTIONS

Sec. 5.01. Each party state, except the host state, shall contribute a total of $25 million to the host state. Payments shall be deposited in the host state treasury to the credit of the Low-Level Waste Fund in the following manner except as otherwise provided. Not later than the 60th day after the date of Congressional ratification of this Compact, each nonhost party state shall pay to the host state $12.5 million. Not later than the 60th day after the date of the opening of the compact facility, each nonhost party state shall pay to the host state an additional $12.5 million.

Sec. 5.02. As an alternative, the host state and the nonhost states may provide for payments in the same total amount as stated above to be made to meet the principal and interest expense associated with the bond indebtedness or other form of indebtedness issued by the appropriate agency of the host state for purposes associated with the development, operation, and post-closure monitoring of the compact facility. In the event the member states proceed in this manner, the payment schedule shall be determined in accordance with the schedule of debt repayment. This schedule shall replace the payment schedule described in Section 5.01 of this article.

ARTICLE VI. PROHIBITED ACTS AND PENALTIES

Sec. 6.01. No person shall dispose of low-level radioactive waste generated within the party states unless the disposal is at the compact facility, except as otherwise provided in Section 3.05(7) of Article III.

Sec. 6.02. No person shall manage or dispose of low-level radioactive waste within the party states unless the low-level radioactive waste was generated within the party states, except as provided in Section 3.05(6) of Article III. Nothing herein shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, nor its disposal pursuant to 10 C.F.R. Section 20.302.

Sec. 6.03. Violations of this article may result in prohibiting the violator from disposing of low-level radioactive waste in the compact facility, or in the imposition of penalty surcharges on shipments to the facility, as determined by the Commission.

ARTICLE VII. ELIGIBILITY; ENTRY INTO EFFECT; CONGRESSIONAL CONSENT; WITHDRAWALL

EXCLUSION

Sec. 7.01. The States of Texas, Maine, and Vermont are party states to this Compact. Any other state may be made eligible for party status by a majority vote of the Commission and ratification by the legislature of the host state, subject to fulfillment of the rights of the initial nonhost party states under Section 3.04(11) of Article III and Section 4.01 of Article IV, and upon compliance with those terms and conditions for eligibility that the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states named in this section, as a member of this Compact; provided, however, the specific provisions of this Compact, except for those pertaining to the composition of the Commission and those pertaining to Section 7.09 of this article, may not be changed except upon ratification by the legislatures of the party states.

Sec. 7.02. Upon compliance with the other provisions of this Compact, a state made eligible under Section 7.01 of this article may become a party state by legislative enactment of this Compact or by executive order of the governor of the state adopting this Compact. A state becoming a party state by executive order shall

cease to be a party state upon adjournment of the first general session of its legislature convened after the executive order is issued, unless before the adjournment, the legislature enacts this Compact.

Sec. 7.03. Any party state may withdraw from this Compact by repealing enactment of this Compact subject to the provisions herein. In the event the host state allows an additional state or additional states to join the Compact, the host state's legislature, without the consent of the nonhost party states, shall have the right to modify the composition of the Commission so that the host state shall have a voting majority on the Commission, provided, however, that any modification maintains the right of each initial party state to retain one voting member on the Commission.

Sec. 7.04. If the host state withdraws from the Compact, the withdrawal shall not become effective until five years after enactment of the repealing legislation and the nonhost party states may continue to use the facility during that time. The financial obligation of the nonhost party states under Article V shall cease immediately upon enactment of the repealing legislation. If the host state withdraws from the Compact or abandons plans to operate a facility prior to the date of any nonhost party state payment under Sections 4.05(5) and (6) of Article IV or Article V, the nonhost party states are relieved of any obligations to make the contributions. This section sets out the exclusive remedies for the nonhost party states if the host state withdraws from the Compact or is unable to develop and operate a compact facility.

Sec. 7.05. A party state, other than the host state, may withdraw from the compact by repealing the enactment of this Compact, but this withdrawal shall not become effective until two years after the effective date of the repealing legislation. During this two-year period the party state will continue to have access to the facility. The withdrawing party shall remain liable for any payments under Sections 4.05(5) and (6) of Article IV that were due during the two-year period, and shall not be entitled to any refund of payments previously made.

Sec. 7.06. Any party state that substantially fails to comply with the terms of the Compact or to fulfill its obligations hereunder may have its membership in the Compact revoked by a seven-eighths vote of the Commission following notice that a hearing will be scheduled not less than six months from the date of the notice. In all other respects, revocation proceedings undertaken by the Commission will be subject to the Administrative Procedure and Texas Register Act (Article 6252-13a,

Vernon's Texas Civil Statutes), except that a party state may appeal the Commission's revocation decision to the United States District Court in accordance with Section 3.06 of Article III. Revocation shall take effect one year from the date such party state receives written notice from the Commission of a final action. Written notice of revocation shall be transmitted immediately following the vote of the Commission, by the Chair, to the governor of the affected party state, all other governors of party states, and to the United States Congress.

Sec. 7.07. This Compact shall take effect following its enactment under the laws of the host state and any other party state and thereafter upon the consent of the United States Congress and shall remain in effect until otherwise provided by federal law. If Texas and either Maine or Vermont ratify this Compact, the Compact shall be in full force and effect as to Texas and the other ratifying state, and this Compact shall be interpreted as follows:

(1) Texas and the other ratifying state are the initial party states.

(2) The Commission shall consist of two voting members from the other ratifying state and six from Texas.

(3) Each party state is responsible for its pro rata share of the Commission's expenses.

Sec. 7.08. This Compact is subject to review by the United States Congress and the withdrawal of the consent of Congress every five years after its effective date, pursuant to federal law.

Sec. 7.09. The host state legislature, with the approval of the governor, shall have the right and authority, without the consent of the nonhost party states, to modify the provisions contained in Section 3.04(11) of Article III to comply with Section 402.219(c)(1), Texas Health and Safety Code, as long as the modification does not impair the rights of the initial nonhost party states.

ARTICLE VIII. CONSTRUCTION AND SEVERABILITY

Sec. 8.01. The provisions of this Compact shall be broadly construed to carry out the purposes of the Compact, but the sovereign powers of a party shall not be infringed upon unnecessarily.

Sec. 8.02. This Compact does not affect any judicial proceeding pending on the effective date of this compact.

Sec. 8.03. No party state acquires any liability, by joining this Compact, resulting from the siting, operation, maintenance, long-term care or any other activity relating to the compact facility. No nonhost party state shall be liable for any harm or damage from the siting, operation, maintenance, or long-term care relating to the compact facility. Except as otherwise expressly provided in this Compact, nothing in this Compact shall be construed to alter the incidence of liability of any kind for any act or failure to act. Generators, transporters, owners, and operators of the facility shall be liable for their acts, omissions, conduct, or relationships in accordance with applicable law. By entering into this Compact and securing the ratification by Congress of its terms, no party state acquires a potential liability under Section 5(d)(2)(C) of the Act (42 U.S.C. Sec. 2021e(d)(2)(C)) that did not exist prior to entering into this Compact.

Sec. 8.04. If a party state withdraws from the Compact pursuant to Section 7.03 of Article VII or has its membership in this Compact revoked pursuant to Section 7.06 of Article VII, the withdrawal or revocation shall not affect any liability already incurred by or chargeable to the affected state under Section 8.03 of this article.

Sec. 8.05. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared by a court of competent jurisdiction to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby to the extent the remainder can in all fairness be given effect. If any provision of this Compact shall be held contrary to the Constitution of any state participating therein, the Compact shall remain in full force and effect as to the state affected as to all severable matters.

Sec. 8.06. Nothing in this Compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:

(1) the United States Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 2011 et seq.); or

(2) an agreement state under Section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 2021).

Sec. 8.07. Nothing in this Compact confers any new authority on the states or Commission to do any of the following:

(1) Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the United States Nuclear Regulatory Commission or the United States Department of Transportation.

(2) Regulate health, safety, or environmental hazards from source, byproduct, or special nuclear material.

(3) Inspect the activities of licensees of the agreement states or of the United States Nuclear Regulatory Commission. (Added 1993, No. 137 (Adj. Sess.), §2.)

Appendix 4.1-9

New England Compact on Radiological Health Protection

INTERSTATE RADIATION INCIDENT PLAN

2018 Markup

N.E. Radiological Health Committee

NEW ENGLAND INTERSTATE RADIATION INCIDENT PLAN

1. AUTHORITY

This plan is authorized by the New England Compact on Radiological Health Protection, henceforth the Compact, as approved by the Legislatures and Governors of the several party States. The Act was first passed in the State of Maine on March 1, 1967 followed by, Rhode Island on April 5, 1967, New Hampshire on July 18, 1967, and Massachusetts on December 30, 1967, and Connecticut on May 24, 1969. The Compact became official with the passage of the second cooperating State. The Compact, as signed into law in each of the States, followed essentially the same format. The Compact is composed of members from the six New England Radiation Control Program Directors, with federal liaisons from the Food and Drug Administration (FDA) Regional Radiological Health, the Department of Energy Radiological Assistance Program (DOE RAP) Region 1, and the U.S. Environmental Protection Agency (EPA) Region 1. The Compact also allows that any state not mentioned above that is contiguous to any party state may become a party to this Compact by enacting the same.

References

The New England Interstate Radiation Assistance Plan is intended to comply with applicable laws, standards and regulations, including but not limited to:

- Connecticut General Statute 22a-159 The Connecticut New England Compact on Radiological Health
- Connecticut General Statute 22a-160 Formulation and maintenance of radiation incident plan
- Maine Revised Statues Title 22 Chapter 163 The New England Compact on Radiological Health Protection
- Massachusetts General Laws Chapter 801 of Public Acts of 1967, The New England Compact on Radiological Health Protection
- NCRP Report No. 138 Management of Terrorist Events Involving Radioactive Material
- New Hampshire Revised Statute Annotated (RSA) 125-B New England Compact on Radiological Health Protection
- The General Laws of Rhode Island 23-12.5 The New England Compact on Radiological Health Protection
- Vermont Statutes Annotated (V.S.A.) The New England Compact on Radiological Health Protection Title 18, Chapter 31

2. CONCEPT OF OPERATIONS

The purpose of this plan is to delineate the manner in which the Compact will be implemented. The purpose of the Compact is to:

(a) Promote the Radiological Health Protection of the public, and individuals within party states,
(b) Provide mutual aid and assistance in radiological health matters including, but not limited to, radiation incidents and preventative radiological/nuclear detection; and
(c) Encourage and facilitate the efficient use of personnel and equipment by furthering the orderly acquisition and sharing of resources useful for programs of radiation protection.

This plan outlines the manner in which this interstate mutual aid and assistance and exchange of personnel, equipment, and services will be accomplished. This plan includes specific information on the channels of communication among the states, the availability of equipment, laboratory capabilities, the procedures for requesting assistance from the party states and notifying party states of radiological incidents, as well as clarification on the procedures of the loan of personnel and equipment, and financial obligations encountered.

3. DELEGATION OF AUTHORITY

The Compact Secretary, henceforth the Secretary, shall be the primary contact person in the State of Connecticut. The Compact Administrator or designee for each party state shall notify the Secretary of the Compact of the identity of any subordinate or subordinates to whom his authority as Compact Administrator has been delegated. (See Appendix A) This is in accordance with the paraphrase of each compact holder's State statutes:

Compact Administrators

Each party state shall have a compact administrator who shall be the head of the state agency having principal responsibility for radiation protection, and who:

1. *Shall coordinate activities pursuant to this compact in and on behalf of his state.*
2. *Serving jointly with the compact administrators of the other party states, shall develop and keep current an interstate radiation incident plan; consider such other matters as may be appropriate in connection with programs of cooperation in the field of radiation protection and allied areas of common interest; and formulate procedures for claims and reimbursement.*

4. POINTS OF EMERGENCY CONTACT

Each Compact Administrator and Delegate shall provide the home and office telephone number of himself or herself and/or such staff members as he or she may designate as emergency contacts. In addition, he or she shall provide a second channel of communication that will be operative 24 hours a day, seven days a week, and shall arrange within his or her state for emergency communications to reach a responsible staff member. Each Compact Administrator shall notify the Secretary of the above designation; and, this information shall be updated at least annually in Appendix A of this plan.

5. INTEROPERABILITY

The Compact provides the necessary mutual aid/partnership agreement between the members and federal partners to ensure that preparedness, operations and response to nuclear/radiological incidents is consistent with the National Incident Management System (NIMS) and the Incident Command System (ICS). This enables effective and efficient incident management by integrating a combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure, designed to enable effective and efficient incident management. The use of ICS provides standardization through consistent terminology and established organizational structures. The Compact members shall ensure any protocols, processes, and procedures are compatible with ICS.

In accordance with the Federal Emergency Management Agency's (FEMA) "Nuclear/Radiological Incident Annex to the Response and Recovery Federal Interagency Operational Plans" (NRIA) (October 2016 – Final), the RadResponder Network is the national standard and whole community solution for the management of radiological data. It is a product of collaboration between FEMA, Department of Energy (DOE) / National Nuclear Security Administration (NNSA), and the Environmental Protection Agency (EPA). RadResponder's flexible architecture enables organizations to rapidly and securely record, share and aggregate large quantities of data while managing equipment, personnel, interagency partnerships, and multijurisdictional event space. In order to ensure interoperability with Compact partners and federal response agencies, each Compact Administrator or Delegate shall ensure state response protocols:

- Share radiological data with Compact and federal partners in a timely manner. The use the RadResponder Network during a response to a radiological or nuclear emergency ensures radiological data is readily shared in accordance with the NRIA.
- Establish a member organization in RadResponder to access data entered by Compact and federal response partners and provide access to the other Compact members upon request.

- Ensure information on available field survey equipment is listed for their RadResponder organization or otherwise provided to other Compact members and federal partners and updated annually or more often if conditions warrant.

Upon request for personnel assistance, the requesting Compact member or Delegate shall (using Appendix E as a guide):

- Ensure that Compact personnel are properly briefed on safety, dosimetry, and personnel protective equipment requirements. For large incidents or specialized requests, it is anticipated that requested personnel will respond with their own vehicles, survey instrumentation, dosimetry, and PPE.
- Ensure that Compact personnel are properly integrated into the state's ICS. Specifically, chain of command will be specified for each responding member.
- Identify and, if necessary, provide appropriate communication capabilities to ensure the ability to communicate with essential personnel, other agencies and organizations. The system should be able to operate within 12 hours.
- Ensure Compact personnel have necessary procedures and other written guidance
- Ensure Compact personnel assisting are provided access to facilities required by the response
- Ensure that all equipment provided is either properly calibrated or noted any limitations to equipment use (such as qualitative use only)
- Ensure that Compact personnel are briefed on state protocols for emergency response including identification and use of emergency lights and sirens (if applicable)

6. CAPABILITIES

Each Compact Administrator or Delegate shall ensure that their member radiological response capabilities are provided to the Secretary. These capabilities shall be listed in Appendix B of this plan and updated at least annually. Each member shall notify Compact partners of any significant changes to their response capabilities.

7. REQUEST FOR ASSISTANCE

a) Upon determination by a Compact Administrator or Delegate that a radiation incident has taken place within his/her state of a magnitude sufficient to require additional personnel, services, or equipment, the Compact Administrator or Delegate should contact the Secretary to request such aid, as he/she deems necessary. The Secretary shall contact such other party state(s) to request aid as he/she judged to be best able to assist under the circumstances using Appendix C or equivalent facsimile. The state(s) receiving such a request should respond with personnel, services, and/or equipment to the best of their ability, while maintaining sufficient capability for the protection of the public health within their own state. At the time of the request, said

personnel should be advised of their assigned tasks and of the location and individual (including contact information) to which they are to report. Provisions for further briefing, when necessary, may also be arranged at the time of such request.

b) Any state responding to a request for aid under this compact shall operate while in a party state, in accordance with the radiation incident plan and procedures of that state.

c) Reimbursement by the state receiving aid or assistance under this Article for any loss or damage to, or expense incurred in the operation of any equipment; for cost of all materials, transportation and maintenance of officers, employees, and equipment; and, for any compensation or benefits for injuries or death incurred by officers of employees of an aiding state shall be in accordance with Section 11 and this paraphrase of each compact holder State's statutes:

Liability

1. *Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid.*

2. *No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.*

3. *All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state, on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.*

4. *Any party state rendering outside aid to cope with a radiation incident shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation and maintenance of officers, employees and equipment incurred in connection with such request: provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.*

5. *Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the*

injury or death were sustained within the state for or in which the officer or employee was regularly employed.

8. NOTIFICATION OF COMPACT MEMBERS

The notification to the primary contact person for each party state under this plan shall be made directly by the Compact Administrator or Delegate; and, such notification shall also be made to the Secretary. The Secretary shall maintain a means of rapidly notifying Delegates. The primary contact person for each member is responsible for ensuring notification of their Compact Administrator and Delegates.

Incidents at Nuclear Power Plants shall be reported using the NRC Event Classification System. Other radiological incidents shall be reported per Appendix D to ensure consistency of response by members. When notified of a radiological emergency and Compact assistance is requested, the requesting state shall provide the Secretary with a detailed description from the requesting state of the incident using Appendix E to ensure responding members are properly briefed.

9. LOAN OF FACILITIES AND EQUIPMENT, LABORATORY ANALYSIS AND EXCHANGE OF DATA

a) Facilities and equipment specified in this plan may be loaned in accordance with either of the two following situations;

   i. one in which the requested state is not affected by the incident in question;

   ii. one in which the requested state is or could possibly be affected by the incident in question.

The requesting state shall reimburse the lending state in accordance with section 11.

b) Laboratory analyses may be performed by the requested state under conditions specified in paragraph (a) above.

c) Requests for assistance, exchange of data or other pertinent information may be accomplished utilizing the attached plan forms (or electronic facsimile) the Secretary. Transmission shall be by the most expeditious means of communication available.

This is in accordance with the following paraphrase of each compact holder State's statutes:

Facilities, Equipment and Personnel

1. *Whenever a department, agency or officer of a party state responsible for and having control of facilities or equipment designed for or useful in radiation control, radiation research, or any other phase of a radiological health program or programs determines that such a facility or item of equipment is not being used to its full capacity by such party state, or that temporarily it is not needed for current use by such state, a department, agency or officer may, upon request of an appropriate department, agency or officer of another party state, make such facility or item of equipment available for use by such requesting department, agency or officer. Unless otherwise required by law, the availability and use resulting therefore may be with or without charge, at the discretion of the lending department, agency or officer. Any personal property made available pursuant to this paragraph may be removed to the requesting state, but no such property shall be made available, except for a specified period and pursuant to written agreement. Except when necessary to meet an emergency, no supplies or materials intended to be consumed prior to return shall be made available pursuant to this paragraph.*

2. *In recognition of the mutual benefits, in addition to those resulting from {statute} article IV, accruing to the party states from the existence and flexible use of professional or technical personnel having special skills or training related to radiation protection, such personnel may be made available to a party state by appropriate departments, agencies and officers of other party states: Provided that the borrower reimburses such party state regularly employing the personnel in question for any cost of making such personnel available, including a prorated share of the salary or other compensation of the personnel involved.*

3. *Nothing in this article shall be construed to limit or to modify in any way the provisions of {statute} article IV of this compact.*

10. LOAN OF PERSONNEL

Professional or technical personnel having special skills or training related to radiation protection or expertise may be made available to a party state upon request. Such requests should be transmitted through the Secretary, and have approval of the respective Compact Administrators or Delegates. The requesting state shall reimburse the lending state in accordance with section 11 of this plan and with the paraphrase of each compact holder State's statutes:

Duties of States.

1. *It shall be the duty of each party state to formulate and put into effect an intrastate radiation incident plan which is compatible with the interstate radiation incident plan formulated pursuant to this compact.*

2. *Whenever the compact administrator of a party state requests aid from the compact administrator of any other party state pursuant to this compact, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people. The compact administrator of a party state may delegate any or all of his authority to request aid or respond to requests for aid pursuant to this compact to one or more subordinates, in order that requests for aid and responses thereto shall not be impeded by reason of the absence or unavailability of the compact administrator. Any compact administrator making such a delegation shall inform all the other compact administrators thereof, and also shall inform them of the identity of the subordinate or subordinates to whom the delegation has been made.*

3. *Each party state shall maintain adequate radiation protection personnel and equipment to meet normal demands for radiation protection within its borders*

11. CHARGES FOR EQUIPMENT AND PERSONNEL

a) The state receiving aid or assistance shall reimburse the state rendering aid or assistance for any loss or damage incurred in the operation of any equipment.

b) The state receiving aid or assistance shall pay for the cost of transporting and maintaining all officers and employees of the state rendering aid in accordance with the rendering state's Rules and Regulations, or those of the state receiving aid -- whichever is greater.

c) The party state borrowing personnel shall reimburse the state loaning the personnel at the same annual rate as the personnel are receiving in their own state. The borrowing state shall pay for the cost of maintaining such personnel in accordance with section 11, paragraph (b).

d) Nothing contained herein in sections 9, 10, and 11 shall prevent any assisting party state from assuming the costs incurred under paragraphs (a), (b), and (c) of section 11 and the paraphrase of each compact holder State's statutes:

Liability

1. *Any party state rendering outside aid to cope with a radiation incident shall be reimbursed by the party state receiving such aid for any loss or damage to, or*

expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation and maintenance of officers, employees and equipment incurred in connection with such request: provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

2. *Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state for or in which the officer or employee was regularly employed*

12. UPDATES AND REVISIONS

The Secretary shall be responsible for updating this Plan on an annual basis. In addition, the members of the Compact shall notify the Secretary of changing situations that may affect any of the items covered under this Plan or the Compact. If needed, the Secretary can form a subcommittee to rewrite appropriate sections of this Plan. Revised appendices will be forwarded to all Plan holders at the beginning of each calendar year. Each Compact Administrator or Delegate shall ensure their equipment capabilities are provided to other Compact members or accurately listed in RadResponder and the capabilities listed in this Plan accurately reflect the member state's resources.

Changes to this Plan shall be approved by a majority vote of the member states.

13. PUBLIC NOTIFICATION

The state with the lead on the radiological incident shall have the lead responsibility for communications related to the incident and should ensure that its public notification systems are implemented. These notification systems should coordinated through the ICS and be in place to readily provide education and to alert the public during a radiological incident. Other members of the Compact shall ensure that notifications and inquiries are coordinated through the lead member so as the maintain consistency.

14. TRAINING

The Compact shall conduct annual joint training to exercise proficiency of Compact response. This training shall occur in member states on a rotating basis.

15. RECOGNITION OF QUALIFICATIONS AND CERTIFICATIONS

Each Compact Administrator or Delegate is responsible to ensure that personnel operating within the member state is appropriately qualified to perform the tasks assigned. The state requesting aid shall ensure any required personnel qualifications and equipment certifications are communicated to the Compact members providing aid. The Compact Administrators or Delegates providing aid shall ensure that:

- personnel responding are fit for duty
- relevant qualifications or equivalent of personnel are documented
- all equipment is either properly calibrated or noted that the equipment is for qualitative use only
- laboratory analysis is properly certified or the limitations of the analysis is noted

APPENDIX A

EMERGENCY CONTACT LISTING

CONNECTICUT

Compact Administrator	Katherine S. Dykes Commissioner Department of Energy and Environmental Protection 79 Elm Street Hartford, CT 06106 Business Tel: (860) 827-2805 katie.dykes@ct.gov
Person to Whom Authority Delegated and Primary Contact Individual (Compact Secretary)	Jeffrey Semancik Director, Division of Radiation Department of Energy and Environmental Protection Business Tel: (860) 424-4190 Home Tel: (860) 912-0351 Cell: (860) 597-3628 jeffrey.semancik@ct.gov
Other Emergency Contacts (in order of Priority)	Denny Galloway Supervising Radiation Control Physicist Department of Energy and Environmental Protection Business Tel: (860) 424-3029 Home Tel: (860) 464-1627 Pager: (860) 842-8234 Cell: (860) 490-4051 denny.galloway@ct.gov Michael Firsick Supervising Radiation Control Physicist Department of Energy and Environmental Protection Business Tel: (860) 424-3029 Home Tel: (860) 528-2375 Pager: (860) 939-4123

	Cell: (860) 916-1638 michael.firsick@ct.gov
24 Hour Emergency	Department of Environmental Protection
Primary Contact Point	Emergency Dispatch Center
	(860) 424-3333 (request contact Radiation Duty Supervisor)

MAINE

Compact Administrator	Jeanne M. Lambrew Commissioner Department of Health and Human Services 11 State House Station Augusta, ME 04333 Business Tel: (207) 287-3707 jeanne.lambrew@maine.gov
Person to Whom Authority Delegated and Primary Contact Individual	Jay Hyland PE, Manager Radiation Control Program Business Tel: (207) 287-5677 Cell: (207) 592-4170 Jay.hyland@maine.gov
Other Emergency Contacts (in order of Priority)	Patrick Dostie State Nuclear Safety Inspector Business Tel: (207) 287-6721 State Cell: (207) 592-6049 Home: (207)622-9472 Thomas Hillman Radioactive Materials Inspector Business Tel: (207)287-8401 State Cell: (207) 215-5302 Private Cell: (207) 242-7593 Robert Stilwell Radiation Specialist Business Tel: (207) 287-5719 State Cell: (207) 592-6057 Private Cell: (207) 458-1687

24 Hour Emergency	Maine State Police (Dispatch)
Primary Contact Point	Augusta Regional Communications Center
	Request Radiation/Nuclear Incident contact
	(207) 624-7076

MASSACHUSETTS

Compact Administrator	Monica Bharel, MD, MPH Commissioner Department of Public Health 250 Washington Street Boston, MA 02108 Business Tel: (617) 624-5200
Persons to Whom Authority Delegated and Primary Contact Individual	John M. Priest Jr., Director MA Department of Public Health Bureau of Environmental Health Radiation Control Program Business Tel: (617) 242-3035 Ext 2001 Business Cell: (617) 388-9540 Home Cell: (781) 626-0833 Jack.Priest@state.ma.us
Other Emergency Contacts (in order of Priority)	Mario Iannaccone Emergency Plan Supervisor/Radiation Control Officer Business Tel: 617/242-3035 ext. 2043 Business Cell: 857-278-1258 Home Cell: 781-626-0833 mario.iannaccone@state.ma.us Edward H. Salomon Emergency Planner/Radiation Control Officer Business Tel: (617) 242-3035 ext. 2064 Business Cell: 857-278-1257 Home Cell: (508) 333-4349 edward.salomon@state.ma.us
24 Hour Emergency Primary Contact Point	Radiation Control Program During Business Monday-Friday 9:00 am -5:00 pm Main # (617) 242-3035 or Emergency # (617) 242-3453 (Ask for Officer of the Day)

During Non-Business hours

(617)-242-3453 rings through to MA State Police

Alternative Emergency Numbers:

Dept of Public Health Emergency Response Duty Officer

(617) 339-8351

Massachusetts State Police (508) 820-2121 direct line

Massachusetts Emergency Management Agency

(508) 820-2000

NEW HAMPSHIRE

Compact Administrator	Jeffrey A. Meyers Commissioner Department of Health & Human Services 129 Pleasant Street Concord, NH 03301 (603) 271-9200
Person to Whom Authority Delegated and Primary Contact Individual	Augustinus Ong Administrator DPHS/Radiological Health Section 29 Hazen Drive Concord, NH 03301 (603) 271-4585
Other Emergency Contacts (in order of Priority)	David Scalise Materials Manager DPHS/Radiological Health Section 29 Hazen Drive Concord, NH 03301 (603) 271-5176
24 Hour Emergency Primary Contact Point	New Hampshire State Police (603) 271-3636
Alternate 24 Hour Contact Radiological Emergency	New Hampshire State Police (800) 852-3411

RHODE ISLAND

Compact Administrator	Nicole Alexander-Scott, MPH, MD Director, Rhode Island Department of Health 3 Capitol Hill, Room 401 Providence, Rhode Island 02908 401-222-2232
Person to Whom Authority Delegated and Primary Contact Individual	Charma Waring Supervising Radiological Health Specialist Rhode Island Department of Health Center for Health Facilities Regulation Radiation Control Program 3 Capitol Hill, Room 305 Providence, RI 02908 401-222-4249 Charma.waring@health.ri.gov
Other Emergency Contacts (in order of Priority)	William P. Dundulis, Jr. Risk Assessment Toxicologist RI Department of Health Center for Health Facilities Regulation Radiation Control Program 3 Capitol Hill, Room 305 Providence, RI 02908 Phone: (401) 222-7767 Bill.dundulis@health.ri.gov Thomas Caruolo Radiological Health Specialist RI Department of Health

	Center for Health Facilities Regulation Radiation Control Program 3 Capitol Hill, Room 305 Providence, RI 02908 Phone: (401) 222-7891 Tom.caruolo@health.ri.gov
	Dennis Klaczynski. Senior Radiological Health Specialist RI Department of Health Center for Health Facilities Regulation Radiation Control Program 3 Capitol Hill, Room 305 Providence, RI 02908 Phone: (401) 222-4111 Dennis.klaczynski@helth.ri.gov
	Maria Barnes Radiological Health Specialist RI Department of Health Center for Health Facilities Regulation Radiation Control Program 3 Capitol Hill, Room 305 Providence, RI 02908 Phone: (401) 222-4053 Maria.barnes@health.ri.gov
24 Hour Emergency Primary Contact Point	Rhode Island Department of Health (401) 272-5952 Rhode Island Emergency Management Agency

(401) 946-9996

VERMONT

Compact Administrator	Mark Devine, MD Commissioner Vermont Department of Health 108 Cherry Street Burlington, VT 05401 802-863-7280 Mark.Levine@vermont.gov
Person to Whom Authority Delegated and Primary Contact Individual	William Irwin, ScD, CHP Radiological & Toxicological Sciences Program Chief Vermont Department of Health 108 Cherry Street Burlington, VT 05401 802-863-7238 William.Irwin@vermont.gov
Other Emergency Contacts (in order of Priority)	Littia Mann, MS Radiological & Toxicological Sciences Program Scientist Vermont Department of Health 108 Cherry Street Burlington, VT 05401 802-865-7737 Littia.Mann@vermont.gov Francis O'Neill Senior Radiological Health Specialist Vermont Department of Health 108 Cherry Street Burlington, VT 05401

	802-865-7743
	Francis.Oneill@vermont.gov
24 Hour Emergency	Vermont State Police
Primary Contact Point	(802) 244-8727

FEDERAL LIAISON CONTACT LISTING

EPA

Compact Liaison	Anthony Honnellio Business Tel: (617) 918-1456 Home Tel: (978) 663-4514 Cell Number: (978) 808-8857 Honnellio.Anthony@epa.gov
24 Hour Emergency Primary Contact Point	Oil & Hazardous Materials Duty Officer (617) 223-7265

FDA

Compact Liaison	George Allen Business Tel: (508) 869-6023 x1102 Cell: (781) 572-9630 george.allen@fda.hhs.gov
24 Hour Emergency Primary Contact Point	After Hrs Answering Service 718/340-7000 ask for Duty Officer

DOE RAP

Compact Liaison	Kathleen McIntyre, CHP RAP Regional Operations Manager Radiological Assistance Program, Region 1 Nonproliferation and National Security Department Business Tel: (631) 344-5868 Cell: (631) 872-7897 mcintyre@bnl.gov

24 Hour Emergency Primary Contact Point	DOE Watch Officer (202) 586-8100

Appendix B

Compact Member Capabilities

NERHC Member Capabilities							
	CT	MA	ME	NH	RI	VT	Comments
Laboratory Services							
Gross alpha, gross beta, tritium and gamma emitters, including I-131	X	X	X	X		X	
Milk, soil, sediment, vegetation, water, snow, meat, poultry, other produce and silver zeolite cartridges by gamma spectrometry	X	X	X	X		X	
Gross alpha and gross beta analyses on water and air filters	X	X	X	X		X	MA – Only for Air Filters
Sr-89/90						X	will be sent to the Winchester Engineering and Analytical Center, Winchester, MA
Biodosimetry	X						
Field Analysis							
Gamma Survey	X	X	X	X	X	X	
Beta Survey	X	X	X	X	X	X	
Alpha Survey	X	X	X	X	X	X	
Neutron Survey	X	X	X		X	X	
Portable NaI Gamma Spectroscopy and Isotopic Identification	X	X	X	X	X	X	

NERHC Member Capabilities							
	CT	MA	ME	NH	RI	VT	Comments
Portable HPGe Gamma Spectroscopy and Isotopic Identification	X						
Vehicle Based NaI Gamma Spectroscopy	X						
High Range gamma monitor	X	X					
High Throughput Automated Low Background Alpha/Beta Gas Proportional smear counter	X			X		X	
Floor Scanner	X						
High Pressure PIC Environmental Monitoring	X						
Gamma – neutron DNDO backpack	X	X					
Portable Liquid Scintillation (H-3, C-14)	X			X			
Personnel Capabilities							
HAZWOPER Operations	X			X	X	X	
Dose Assessment – Rascal	X	X	X	X	X	X	
Dose Assessment – MIDAS	X	X					
Dose Assessment – TurboFRMAC	X		X	X	X	X	
ResRad – RDD						X	
ROSS – Level 1	X					X	

NERHC Member Capabilities							
	CT	MA	ME	NH	RI	VT	Comments
ROSS – Level 2							
ROSS – Level 3							
FRMAC Liaison	X						
Security Clearance – Q							
Security Clearance – L	X		X	X			
RadResponder for field data	X					X	
JACIS Fusion Reachback	X					X	
Decon Capabilities							
Portal Monitors	X	X		X		X	
Dosimetry	X	X	X	X	X	X	
PCs	X	X	X	X	X	X	

Appendix C

NERHC Action Request

NERHC Action Request	
Reference No. *(provided by NERHC Secretary)*	
Reported by:	Priority: ☐ Emergency ☐ Urgent ☐ Routine
Organization:	
Name:	Date/Time:
Nature of Request:	
Equipment	
Manpower	
Support	
Estimated duration of request:	
NERHC Response	
(Completed by NERHC Secretary or member)	Priority: ☐ Emergency ☐ Urgent ☐ Routine ☐ INFO Only
Responding Organizations:	

Name/Authorization:	Date/Time:
REPLY/RESOLUTION	
Distribution: ☐ CT (Secretary) ☐ DOE RAP Region 1 ☐ FDA ☐ EPA ☐ FEMA Region 1	☐ MA ☐ ME ☐ NH ☐ RI ☐ VT

Appendix D

NERHC Incident Notifications

IND EMERGENCY [IND1]	
Events are in progress or have occurred which involve actual or imminent significant release of radioactive material from an Improvised Nuclear Device (IND). Release of radioactive material can be reasonable expected to exceed EPA Protective Action Guideline exposure levels for a large uncontrolled geographic area.	1. Confirmed IND explosion in Compact state 2. Confirmed IND explosion adjacent to New England 3. Credible and specific threat of IND 4. Local Law Enforcement Agency (LLEA) or federal agency identification of a confirmed or suspected IND in Compact state or adjacent to New England

RDD EMERGENCY [RDD1]	
Events are in progress or have occurred which involve actual or imminent release of radioactive material from a Radiological Dispersal Device (RDD). Release of radioactive material could possibly exceed EPA Protective Action Guideline exposure levels in a limited uncontrolled geographic area.	1. Confirmed RDD explosion in Compact state 2. Confirmed RDD explosion in region immediately adjacent (<2 miles) to New England 3. Credible and specific threat of RDD in Compact State or in region immediately adjacent (<2 miles) to New England 4. CSP/DNDO identification of a confirmed or suspected RDD in Compact state or in region immediately adjacent (<2 miles) to New England

RAD CON EMERGENCY [RC2]	
Events are in progress or have occurred which involve actual or imminent release of or uncontrolled exposure to radioactive material that could possibly exceed EPA Protective Action Guideline exposure levels in a limited uncontrolled geographic area. Initiating event *not* due to in-state or adjacent IND, RDD or Nuclear Power Plant accident.	1. Dose assessment estimate indicates EPA Protective Action Guidelines (PAGS) could be exceeded in an uncontrolled area. 2. Confirmed Acute Radiation Syndrome of responders or public diagnosed by medical or HP professional. 3. Confirmed RED (Radiation Exposure Device) in uncontrolled area. 4. IND or RDD event in a non-adjacent area with potential impact in New England. 5. Judgment – Any condition for which judgment indicates there is a substantial threat to public health and safety and requires Compact support staffing

RAD CON ALERT [RC3]	
Events are in progress or have occurred which involve actual or potential release of or uncontrolled exposure to radioactive material. Any radioactive releases or exposures are expected to be less than the EPA Protective Action Guideline exposure levels beyond the controlled area.	1. Uncontrolled Category 1 or 2 source 2. Fire releasing radioactive material 3. Credible but non-specific radiation related threat 4. Public dose detected in an uncontrolled area >500 mrem/yr but < 2,000 mrem/yr 5. Judgment – Any condition for which judgment indicates there is potential for public or environmental exposure from radiological exposure

RAD CON INCIDENT [RC4]	
Events are in progress or have occurred which involve potential or actual release of or exposure to radioactive material. Any radioactive releases or exposures are expected to be limited to a small fraction of EPA Protective Action Guideline exposure levels beyond the controlled area.	1. Overseas or non-adjacent area radiological event detectable in New England 2. Uncontrolled radioactive material (Less than Cat II) 3. Contamination discovered in a large uncontrolled area 4. Fire involving radioactive material with no known release of radioactive material 5. Transportation accident involving radioactive material 6. Public dose detected in an uncontrolled area >100 mrem/yr but < 500 mrem/yr 7. Judgment – Any condition for which judgment indicates there is potential for public or environmental concern from radiological exposure

Appendix E

NERHC Assistance - Event Briefing Sheet

NERHC Assistance - Event Briefing Sheet

Describe the Event

The type of facility or radiological material involved in the emergency (a power reactor, nuclear material, IND, RDD, etc.)

The location of the emergency and the nearest major city or town.

The nature and condition of the emergency

Radiological Release

Has a release or loss occurred?

☐ YES ☐ NO ☐ Unknown

Start	Date	Stop	Date
	Time		Time
		☐ *Has not stopped*	

Multiple Releases

☐ YES, how many? _____ ☐ NO

An estimate of the source term and isotope(s) involved

Isotope	Abundance	Release Rate	Chemical/Physical Form

The extent of knowledge about the release and distribution.

Data Products

Models – Have any models been created and, if so, where are they being stored and how can they be accessed?

The meteorological conditions at the time of the emergency. (wind speed direction, precipitation, stability class if know)
Sample Data – Has there been any field sampling/monitoring data collected? How can it be accessed?
RadResponder Event:
Protective Actions
Responder protective actions, dose limits, PPE required.
Public protective actions initiated.

Points of Contact
The name and telephone number of a technical person from the requesting organization who is knowledgeable about the radiological situation.
An identified Public Information Officer (PIO) (name/phone number/e-mail) due to the potential public interest.
Points of contact for requesting organizations (name/phone number/e-mail) for follow-up support
Reporting Information
Response location (location name and address)
Responders should report to (name or title and telephone number):
Expected duration of support

Special access requirements
Road closures
Responder accommodations

Appendix 4.1-10

Title 18: Health

Chapter 31: New England Compact On Radiological Health Protection

- ***Subchapter 1: Compact***
- **§1601. Purposes Article I**

The purposes of this compact are to:

(1) Promote the radiological health protection of the public and individuals within the party states.

(2) Provide mutual aid and assistance in radiological health matters including, but not limited to, radiation incidents.

(3) Encourage and facilitate the efficient use of personnel and equipment by furthering the orderly acquisition and sharing of resources useful for programs of radiation protection. (Added 1967, No. 26, §1, eff. March 14, 1967.)

- **§1602. Enactment Article II**

This compact shall become effective when enacted into law by any two or more of the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Thereafter it shall become effective with respect to any other aforementioned state upon its enacting this compact into law. Any state not mentioned in this article which is contiguous to any party state may become a party to this compact by enacting the same. (Added 1967, No. 26, §1, eff. March 14, 1967.)

- **§1603. Duties of state Article III**

(a) It shall be the duty of each party state to formulate and put into effect an intrastate radiation incident plan which is compatible with the interstate radiation incident plan formulated pursuant to this compact.

(b) Whenever the compact administrator of a party state requests aid from the compact administrator of any other party state pursuant to this compact, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people. The

compact administrator of a party state may delegate any or all of his authority to request aid or respond to requests for aid pursuant to this compact to one or more subordinates, in order that requests for aid and responses thereto shall not be impeded by reason of the absence or unavailability of the compact administrator. Any compact administrator making such a delegation shall inform all the other compact administrators thereof, and also shall inform them of the identity of the subordinate or subordinates to whom the delegation has been made.

(c) Each party state shall maintain adequate radiation protection personnel and equipment to meet normal demands for radiation protection within its borders. (Added 1967, No. 26, §1, eff. March 14, 1967.)

- **§1604. Liability Article IV**

(a) Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges, and immunities as comparable officers and employees of the state to which they are rendering aid.

(b) No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

(c) All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state, on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

(d) Any party state rendering outside aid to cope with a radiation incident shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, and maintenance of officers, employees and equipment incurred in connection with such request: provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense, or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

(e) Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state for or in which the officer or employee was regularly employed. (Added 1967, No. 26, §1, eff. March 14, 1967.)

- **§1605. Facilities, equipment and personnel Article V**

(a) Whenever a department, agency, or officer of a party state responsible for and having control of facilities or equipment designed for or useful in radiation control, radiation research, or any other phase of a radiological health program or programs determines that such a facility or item of equipment is not being used to its full capacity by such party state, or that temporarily it is not needed for current use by such state, a department, agency, or officer may, upon request of an appropriate department, agency, or officer of another party state, make such facility or item of equipment available for use by such requesting department, agency, or officer. Unless otherwise required by law, the availability and use resulting therefrom may be with or without charge, at the discretion of the lending department, agency, or officer. Any personal property made available pursuant to this paragraph may be removed to the requesting state, but no such property shall be made available, except for a specified period and pursuant to written agreement. Except when necessary to meet an emergency, no supplies or materials intended to be consumed prior to return shall be made available pursuant to this paragraph.

(b) In recognition of the mutual benefits, in addition to those resulting from article IV, accruing to the party states from the existence and flexible use of professional or technical personnel having special skills or training related to radiation protection, such personnel may be made available to a party state by appropriate departments, agencies, and officers of other party states; provided that the borrower reimburses such party state regularly employing the personnel in question for any cost of making such personnel available, including a prorated share of the salary or other compensation of the personnel involved.

(c) Nothing in this article shall be construed to limit or to modify in any way the provisions of article IV of this compact. (Added 1967, No. 26, §1, eff. March 14, 1967.)

- **§1606. Compact administrators Article VI**

  Each party state shall have a compact administrator who shall be the head of the state agency having principal responsibility for radiation protection, and who:

  (1) Shall coordinate activities pursuant to this compact in and on behalf of his state.

  (2) Serving jointly with the compact administrators of the other party states, shall develop and keep current an interstate radiation incident plan; consider such other matters as may be appropriate in connection with programs of cooperation in the field of radiation protection and allied areas of common interest; and formulate procedures for claims and reimbursement under the provisions of article IV. (Added 1967, No. 26, §1, eff. March 14, 1967.)

- **§1607. Other responsibilities and activities Article VII**

  Nothing in this compact shall be construed to:

  (1) Authorize or permit any party state to curtail or diminish its radiation protection program, equipment, services, or facilities.

  (2) Limit or restrict the powers of any state ratifying the same to provide for the radiological health protection of the public and individuals, or to prohibit the enactment or enforcement of state laws, rules, or regulations intended to provide for such radiological health protection.

  (3) Affect any existing or future cooperative relationship or arrangement between federal, state or local governments and a party state or states. (Added 1967, No. 26, §1, eff. March 14, 1967.)

- **§1608. Withdrawal Article VIII**

  Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal. (Added 1967, No. 26, §1, eff. March 14, 1967.)

- **§1609. Construction and severability Article IX**

It is the legislative intent that the provisions of this compact be reasonably and liberally construed. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be unconstitutional or the applicability thereof, to any state, agency, person, or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof, to any other state, agency, person, or circumstance shall not be affected thereby. (Added 1967, No. 26, §1, eff. March 14, 1967.)

- ***Subchapter 2: Provisions Relating To Compact***
- **§1621. Board of health; duties**

  The state board of health shall formulate and keep current, a radiation incident plan for this state, in accordance with the duty assumed pursuant to article III(a) of the compact. (Added 1967, No. 26, §2, eff. March 14, 1967.)

- **§1622. Administrator**

  The compact administrator for this state, as required by article VI of the compact, shall be the commissioner of health. (Added 1967, No. 26, §3, eff. March 14, 1967.)

Appendix 4.1-11

Vermont Department of Health Survey Instrumentation

Listed below are instruments available for use by the VDH Radioactive materials program staff. The staff also may arrange for radiochemical analysis by the Vermont Department of Health Laboratory. Their instrumentation is in the second table in this appendix.

Manufacturer	Model	Serial #	Probe Model	Probe Serial #	Type
Ludlum	3	140210	44-7	11658	end window GM β-γ
Ludlum	3	27844	44-2	250748	1" NaI gamma Scint
Ludlum	3	99596	44-9	96950	GM pancake probe β-γ
Ludlum	3	99559	44-9	96949	GM pancake probe β-γ
Ludlum	3	27752	43-1	11749	α scintillator 83 cm^2 area
Ludlum	3	27800	44-7	11657	end window GM β-γ
Ludlum	3	33196	44-7	17585	end window GM β-γ
Ludlum	3	99560	44-9	96951	GM pancake probe β-γ
Ludlum	3	104488	44-9	103409	GM pancake probe β-γ and gamma scintillator probe
Ludlum	2221	235019	44-10	252108	1" NaI gamma Scint I-131
Ludlum	19	104588	N/A	N/A	micro R meter γ
Ludlum	2401-P	251158	N/A	N/A	GM pancake probe β-γ
Ludlum	2401-P	231347	N/A	N/A	GM pancake probe β-γ
Canberra	MRAD-213	3069482	N/A	N/A	gamma scintillation
Canberra	MRAD-213	05061537	N/A	N/A	gamma scintillation
Canberra	AN/UDR-13	E08-000120	N/A	N/A	gamma scintillation
Canberra	AN/UDR-13	E08-000121	N/A	N/A	gamma scintillation
Canberra	AN/UDR-13	E08-000122	N/A	N/A	gamma scintillation
Canberra	AN/UDR-13	E08-000126	N/A	N/A	gamma scintillation
Canberra	URAD Plus R/Y	130180012	N/A	N/A	gamma scintillation
Canberra	URAD Plus R/Y	130180025	N/A	N/A	gamma scintillation
Canberra	URAD Plus R/Y	130180019	N/A	N/A	gamma scintillation

Canberra	URAD Plus R/Y	130912023	N/A	N/A	gamma scintillation
Canberra	URAD Plus R/Y	130912021	N/A	N/A	gamma scintillation
Canberra	URAD Plus R/Y	130912024	N/A	N/A	gamma scintillation
Canberra	URAD Plus R/Y	130912022	N/A	N/A	gamma scintillation
NRC	CDV-718	31108	1	31108	end window GM β-γ
NRC	CDV-718	30652	1	30652	end window GM β-γ
NRC	CDV-718	31094	1	31094	end window GM β-γ
F&J Specialty	HV1-BC	2539	N/A	N/A	High Volume Air Sampler
F&J Specialty	HV1-BC	3253	N/A	N/A	High Volume Air Sampler
F&J Specialty	HV1-BC	3294	N/A	N/A	High Volume Air Sampler
F&J Specialty	HV1-BC	3295	N/A	N/A	High Volume Air Sampler
F&J Specialty	HV1-BC	3300	N/A	N/A	High Volume Air Sampler
F&J Specialty	HV1-BC	3302	N/A	N/A	High Volume Air Sampler
Berkeley Nucleonic	SAM 935	22496	N/A	N/A	gamma spectrometer & neutron
Berkeley Nucleonic	SAM 935	25193, Formerly 23613	N/A	N/A	gamma spectrometer
Thermo Scientific	RadEye B20-ER	1121	N/A	N/A	GM pancake probe β-γ
Thermo Scientific	RadEye B20-ER	3696	N/A	N/A	GM pancake probe β-γ
Thermo Scientific	RadEye B20-ER	3707	N/A	N/A	GM pancake probe β-γ
Thermo Scientific	RadEye B20-ER	3684	N/A	N/A	GM pancake probe β-γ
Thermo Scientific	RadEye B20-ER	3701	N/A	N/A	GM pancake probe β-γ
Thermo Scientific	RadEye B20-ER	3632	N/A	N/A	GM pancake probe β-γ
Thermo Scientific	RadEye B20-ER	3635	N/A	N/A	GM pancake probe β-γ
Thermo Scientific	RadEye B20-ER	13947	N/A	N/A	GM pancake probe β-γ
Thermo Scientific	RadEye B20-ER	3638	N/A	N/A	GM pancake probe β-γ
Thermo Scientific	RadEye B20-ER	3637	N/A	N/A	GM pancake probe β-γ
Thermo Scientific	RadEye B20-ER	3634	N/A	N/A	R/hr & cpm
Thermo Scientific	RadEye B20-ER	13950	N/A	N/A	R/hr & cpm
Thermo Scientific	RadEye B20-ER	13938	N/A	N/A	R/hr & cpm
Thermo Scientific	RadEye B20-ER	13943	N/A	N/A	R/hr & cpm
Thermo Scientific	RadEye B20-ER	13941	N/A	N/A	R/hr & cpm
Thermo Scientific	RadEye B20-ER	13932	N/A	N/A	R/hr & cpm
Ludlum	26 Pancake Frisker	PF003218	N/A	N/A	GM pancake β-γ

Ludlum	26 Pancake Frisker	PF003464	N/A	N/A	GM pancake β-γ
Ludlum	26 Pancake Frisker	PF003076	N/A	N/A	GM pancake β-γ
Ludlum	26 Pancake Frisker	PF003406	N/A	N/A	GM pancake β-γ
Ludlum	26 Pancake Frisker	PF003444	N/A	N/A	GM pancake β-γ
Ludlum	26 Pancake Frisker	PF002820	N/A	N/A	GM pancake β-γ
Ludlum	26 Pancake Frisker	PF003445	N/A	N/A	GM pancake β-γ
Ludlum	26 Pancake Frisker	PF003336	N/A	N/A	GM pancake β-γ
Ludlum	26 Pancake Frisker	PF003081	N/A	N/A	GM pancake β-γ
Ludlum	26 Pancake Frisker	PF002541	N/A	N/A	GM pancake β-γ
Ludlum	26 Pancake Frisker	PF002671	N/A	N/A	GM pancake β-γ
Thermo	identiFINDER R400	04u3/2717	N/A	N/A	Portable gamma spectrometer with neutron detection
Thermo	identiFINDER R400	04u3/2679	N/A	N/A	Portable gamma spectrometer with neutron detection
Thermo	identiFINDER R400	696-2816	N/A	N/A	Portable gamma spectrometer with neutron detection

The Vermont Department of Health Laboratory maintains the following radiochemical analysis and portable survey instruments. Routing and emergency radiochemistry work for the radioactive materials program may be arranged easily since both organizations are within the same Department.

Equipment	Make	Model	Serial Number	Calibrated	Calibration Checked
Survey Meter Ludlum Model 14C with Probe Model 44-9 PR270852	Ludlum	14C	254038	Annually	Monthly
Survey Meter Ludlum Model 14C with Probe Model 44-9 PR271452	Ludlum	14C	252227	Annually	Monthly
Survey Meter Ludlum Model 3 with Probe Model 44-9 PR072271	Ludlum	3	77743	Annually	Monthly
Survey Meter Ludlum Model 3 with Probe Model 44-9 PR096949	Ludlum	3	99559	Annually	Monthly
Survey Meter Rad Eye B20-ER	Thermo Scientific	B20-ER	1121	Annually	Monthly
Alpha/Beta Counter	Canberra Tennelec	LB 4110	77671	Annually	Daily
Alpha/Beta Counter	Canberra Tennelec	Series 5 XLB	13000060	Annually	Daily
Gamma Spectrometer System with APEX/Lynx MCA	Canberra (Det #01)	GR2520, ReGe	8996122	Annually	Daily
Gamma Spectrometer System with APEX/Lynx MCA	Canberra (Det #02)	GR2520, ReGe	11871638	Annually	Daily
Liquid Scintillation Analyzer	Perkin Elmer (Purchased 2010)	TriCarb 2910TR	DG05106418	Daily	Daily
Liquid Scintillation Analyzer	Perkin Elmer (Purchased 2013)	TriCarb 2910TR	DG06130408	Daily	Daily