

112 State Street
4th Floor
Montpelier, VT 05620-2701
TEL: 802-828-2358



TTY/TDD (VT): 800-253-0191
FAX: 802-828-3351
E-mail: psb.clerk@vermont.gov
Internet: <http://psb.vermont.gov>

**State of Vermont
Public Service Board**

MEMORANDUM

To: Parties in PSB Docket No. 8791 (Investigation re alleged taking of harsh sunflower plants by Vermont Gas Systems, Inc. in Monkton, VT)

From: Holly R. Anderson, Deputy Clerk of the Board *HRA*

Re: Technical Correction

Date: August 25, 2016

On August 23, 2016, the Vermont Public Service Board issued an Order Opening and Staying Investigation in the above referenced matter. Line three of footnote three on Page Two of that Order mistakenly referenced 8/17/16 as the date of an order in Docket 7970. The date should be 8/23/16.

Please replace the enclosed page for the one sent to you on August 23rd. We apologize for the error and any inconvenience it may have caused. Thank you.

Enclosure (1)

another violation of the 2013 Final Order (the “Lyons Request”),² in addition to an earlier violation alleged on July 8, 2016.³ Also on July 28, the Board set a deadline of August 5, 2016, for the parties in Docket 7970 to file responses to the Lyons Request.

On August 5, 2016, ANR responded to the Lyons Request stating that on July 20, 2016, ANR conducted a site visit at the affected parcel of land in Monkton and observed approximately 77 harsh sunflower plants (*Helianthus strumosus*) that the Company damaged during construction of the pipeline on July 18, 2016. ANR asserts that in so doing the Company violated conditions 2 and 3 of the CPG in Docket 7970.⁴ ANR requests that the Board open an investigation to impose penalties for the violation of these CPG conditions pursuant to 30 V.S.A. § 30 because the “taking was in violation of the state endangered species law, as VGS did not have a takings permit for these plants.”⁵ ANR represents that the Vermont Department of Public Service (the “Department”) joins in its request to open an investigation pursuant to 30 V.S.A. § 30.

2. Condition 3 of the 2013 Final Order states, in part: “The Petitioner shall obtain all necessary permits from the Agency of Natural Resources . . . before commencement of construction or site preparation.”

3. On July 8, 2016, Ms. Lyons moved that the Board: (1) order the Company to show cause why construction should not cease; (2) conduct an investigation into other alleged permit shortfalls in violation of the 2013 Final Order; and (3) impose appropriate sanctions. The Board ruled on this motion in Docket 7970 by Order of 8/23/16.

4. Condition 2 of the CPG states that: “Petitioner shall obtain any state and federal permits required for the Project and shall comply with all conditions set forth in any required permits.” Condition 3 of the CPG requires the Company to comply with the provisions of its Memorandum of Understanding with ANR (the “ANR MOU”). Paragraph 11 of the ANR MOU addresses threatened plants and states that “VGS will re-align the pipe as feasible to avoid the plant species. If the species cannot be avoided, VGS will obtain a takings permit prior to construction.”

5. Letter from Donald J. Einhorn, Esq., to Judith C. Whitney, Clerk of the Board, dated August 5, 2016, at 1-2, citing 10 V.S.A. § 5403 (the “Monkton ANR Comments”). In that letter, ANR also represents that upon discovery of the damaged sunflower plants it:

. . . requested that VGS refrain from all activity on the Peyser parcel until VGS prepared, and submitted to the Agency for review and approval, a detailed avoidance plan in order to prevent further takings of the harsh sunflower. An avoidance plan was subsequently approved by the Agency on July 28, 2016. The major elements of the plan generally include requirements for training of all on-site workers in avoidance, demarcation of the sunflower plants, a detailed site plan depicting plant locations and construction activities, procedures to avoid harming the plants before, during, and after horizontal directional drilling work on the site, and daily oversight and reporting by environmental compliance monitors. Agency staff performed a field inspection to confirm that the plants were correctly demarcated in the course of reviewing the avoidance plan.

PSB Docket No. 8791 - SERVICE LIST

Geoffrey Commons, Esq.
Director for Public Advocacy
✓ Vermont Department of Public Service
112 State Street
Montpelier, VT 05620-2601

Peter H. Zamore, Esq.
✓ Sheehy Furlong & Behm P.C.
30 Main Street, PO Box 66
Burlington, VT 05402-0066

(For Vermont Gas Systems, Inc.)

Donald J. Einhorn, Esq.
✓ Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901

Interested Persons:

✓ James Volz, Margaret Cheney, Sarah Hofmann, Board Members
George Young, Esq., June Tierney, Esq., Michael Tousley, Esq., Jake Marren, Esq., Andrea
McHugh, PSB

✓ JoAnn Q. Carson (Court Reporter)
11 Northshore Drive
Burlington, VT 05408

✓ Kim Sears (Court Reporter)
18 Paddock Lane
Williston, VT 05495

Parties in PSB Docket No. 7970:
Louise C. Porter, Special Counsel
Timothy M. Duggan, Special Counsel
✓ Vermont Department of Public Service
112 State Street
Montpelier, VT 05620-2601

✓ William J. Dodge Esq.
Kimberly K. Hayden, Esq.
Christopher D. Roy, Esq.
Joshua D. Leckey, Esq.
Downs Rachlin Martin PLLC
199 Main Street, PO Box 190
Burlington, VT 05402-0190

(For Vermont Gas Systems, Inc.)

John H. Marshall, Esq.

(For Vermont Gas Systems, Inc.)

✓ Downs Rachlin Martin PLLC
90 Prospect Street, PO Box 99
St. Johnsbury, VT 05819-0099

Peter H. Zamore, Esq.

(For Vermont Gas Systems, Inc.)

Owen J. McClain, Esq.

✓ R. Jeffrey Behm, Esq.
Sheehey Furlong & Behm P.C.
30 Main Street, PO Box 66
Burlington, VT 05402-0066

Donald J. Einhorn, Esq.

✓ Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901

Catherine Gjessing, General Counsel

Fish and Wildlife Department

✓ Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3702

John W. Kessler, General Counsel

(For Vermont Division for
Historic Preservation)

Agency of Commerce and Community Development

✓ National Life Building, Drawer 20
Montpelier, VT 05620-0501

Adam Lougee, Esq., Executive Director

Addison County Regional Planning Commission

14 Seminary Street

✓ Middlebury, VT 05753

Sandra Levine, Esq.

Conservation Law Foundation

15 East State Street, Suite 4

Montpelier, VT 05602-3010

Richard H. Saudek, Esq.

(For Vermont Fuel Dealers Association)

✓ Diamond & Robinson, P.C.

15 East State Street, PO Box 1460

Montpelier, VT 05601-1460

Leonard H. Singer, Esq.

(For International Business Machines)

✓ Adam T. Conway, Esq.

Couch, White, LLP

540 Broadway, PO Box 22222

Albany, NY 12201-2222

David Cain, Esq.

Eric Berliner, Nathan Fiske & Dan Tukey

✓ International Business Machines Corporation

1000 River Street, Mailstop 967-P

Essex Jct., VT 05452

Groups:

(Agricultural Interests):

Thea Schwartz (**contact person**)

(For Agency of Agriculture, Food and Markets)

Assistant Attorney General

✓ Office of Vermont Attorney General

109 State Street

Montpelier, VT 05609-1001

Richard F. Peterson, Jr., Esq.

✓ Vermont Land Trust

13 Jolina Court, PO Box 850

Richmond, VT 05477

Elizabeth M. Egan, Esq.

✓ Vermont Housing and Conservation Board

58 East State Street

Montpelier, VT 05602

(Non-Agricultural Institutional Property Owners):

Toni H. Clithero, Esq. (**contact person**)

(For Vermont Agency of Transportation)

Assistant Attorney General's Office

✓ Vermont Agency of Transportation

One National Life Drive

Montpelier, VT 05633-5001

S. Mark Sciarrotta, Esq.

(For Vermont Electric Power Company, Inc.
and Vermont Transco LLC)

✓ Vermont Electric Power Company, Inc.

366 Pinnacle Ridge Road

Rutland, VT 05701

Thomas R. Melloni, Esq.

(For Chittenden Solid Waste District)

Julia S. Flores, Esq.

✓ Burak Anderson & Melloni, PLC

30 Main Street, Ste. 210, PO Box 787

Burlington, VT 05402-0787

(Municipalities on Proposed Pipeline):

Paul S. Gillies, Esq. (**contact person**)
Tarrant, Gillies, Merriman & Richardson, LLP
44 East State Street, PO Box 1440
Montpelier, VT 05601-1440

(For Town of Williston)

E. M. Allen, Esq.
Stetler, Allen & Kampmann
95 St. Paul Street
Burlington, VT 05401

(For Town of Hinesburg)

William F. Ellis, Esq.
McNeil, Leddy & Sheahan, P.C.
271 South Union Street
Burlington, VT 05401

(For Town of Monkton)

Joseph S. McLean, Esq.
Stitzel, Page & Fletcher, P.C.
171 Battery Street, PO Box 1507
Burlington, VT 05402-1507

(For Monkton Central School)

Cindy Ellen Hill, Esq.
144 Mead Lane
Middlebury, VT 05753

(For Town of New Haven)

(Municipalities Proposed to Receive Service):

Karl W. Neuse, Esq. (**contact person**)
Benjamin W. Putnam, Esq.
Neuse, Duprey & Putnam, P.C.
One Cross Street
Middlebury, VT 05753

(For Town of Middlebury)

James H. Ouimette, Esq.
James W. Runcie, Esq.
Ouimette & Runcie
257 Main Street
Vergennes, VT 05491

(For City of Vergennes)

(Indirectly Affected Municipals):

William Bryant, Town Administrator
Town of Bristol
One South Street, PO Box 249
Bristol, VT 05443

Charles A. Romeo, Esq., City Attorney
City of Rutland
✓ 1 Strongs Avenue
Rutland, VT 05701

(Potential VGS Customers):

Geoffrey H. Hand, Esq. (**contact person**)
Andrew N. Raubvogel, Esq.

(For Agri-Mark Inc./Cabot Creamery)

✓ Dunkiel Saunders Elliott Raubvogel & Hand, PLLC
91 College Street, PO Box 545
Burlington, VT 05401

Wm. Andrew MacIlwaine, Esq.
W. Scott Fewell, Esq.

(For Middlebury College)

✓ Inse, Knapp & McAndrew, P.C.
209 Battery Street, PO Box 988
Burlington, VT 05402-0988

Lowell E. Blackham, Chief Counsel
International Paper Company
✓ International Place II
6400 Poplar Avenue
Memphis, TN 38197

(Economic Development Interests):

James B. Stewart, Executive Director (**contact person**)
Rutland Economic Development Corporation
✓ 100 Merchants Row, Suite 312
Rutland, VT 05701

Robin P. Scheu, Executive Director
Addison County Economic Development Corporation
✓ 1590 Route 7 South, Suite 8
Middlebury, VT 05753

Thomas L. Donahue, Executive Vice President/CEO
Rutland Region Chamber of Commerce
✓ 50 Merchants Row
Rutland, VT 05701

(Individual Landowners):

Frank H. Langrock, Esq. (**contact person**)
✓ Langrock Sperry & Wool, LLP
111 South Pleasant Street, PO Drawer 351
Middlebury, VT 05753

(For Peter & Margaret Carothers)

Jeffrey M. Messina, Esq.

(For Dr. Robert Johnson & Shirley Johnson)

✓ Daniel P. O'Rourke, Esq.

✓ Bergeron, Paradis & Fitzpatrick, LLP

34 Pearl Street

Essex Junction, VT 05453

Robert F. O'Neill, Esq.

(For David Carse and Elizabeth Hazen)

Matthew S. Stern, Esq.

✓ Gravel & Shea PC

76 St. Paul Street, 7th Floor, PO Box 369

Burlington, VT 05402

Aldo E. Speroni, *pro se*

Mary L. Speroni

✓ 4840 St. George Road

Williston, VT 05495

David L. Grayck, Esq.

(For Nathan & Jane Palmer)

✓ Law Office of David L. Grayck, Esq.

✓ 57 College Street

Montpelier, VT 05602

Nathan & Jane Palmer

✓ 986 Rotax Road

North Ferrisburgh, VT 05473

James A. Dumont, Esq.

(For Kristin Lyons)

✓ Law Office of James A. Dumont, PC

(For AARP)

✓ 15 Main Street, PO Box 229

Bristol, VT 05443

Matthew T. Baldwin, *pro se*

✓ 2188 Baldwin Road

Hinesburg, VT 05461

David & Claudia Ambrose

✓ 175 Plank Road

Vergennes, VT 05491

Parties in PSB Docket No. 8643:

Louise Porter, Esq.

✓ Vermont Department of Public Service

112 State Street

Montpelier, VT 05620-2601

William Dodge, Esq.

(For Vermont Gas Systems, Inc.)

✓ Downs Rachlin Martin PLLC
199 Main Street, P.O. Box 190
Burlington, VT 05402-0190

Heidi H. Trimarco, Esq.

(For Vermont Gas Systems, Inc.)

✓ Downs Rachlin Martin PLLC
8 South Park Street, PO Box 191
Lebanon, NH 03766-0191

htrimarco@drm.com

R. Jeffrey Behm, Esq.

(For Vermont Gas Systems, Inc.)

✓ Sheehey Furlong & Behm P.C.
30 Main Street, PO Box 66
Burlington, VT 05402-0066

jbehm@sheefurlong.com

Bud Allen, Esq.

(For the Town of Hinesburg)

✓ Stetler, Allen & Kampmann
95 St. Paul Street
Burlington, VT 05401

*Charlotte Ancel, General Counsel
Melissa Stevens, Legal Support Lead
Sharon Lucia, Paralegal
✓ Green Mountain Power Corporation
163 Acorn Lane
Colchester, VT 05446

James A. Dumont, Esq.

(For William Marks, Nancy Baker, Linda Gage,
Rachel Smolker, Melanie Pulley, Chuck Reiss,
Stephanie Spencer, and Lawrence Shelton)

✓ Law Office of James A. Dumont, Esq., P.C.
15 Main Street, PO Box 229
Bristol, VT 05443

Anderson, Holly

From: Anderson, Holly
Sent: Thursday, August 25, 2016 4:37 PM
To: 'wdodge@drm.com'; 'Einhorn, Donald - ANR'; Gjessing, Catherine; Commons, Geoff; 'htrimarco@drm.com'; 'charlotte.ancel@greenmountainpower.com'; 'jbehm@sheeheyvt.com'; 'Allen, E.M., Esq. - For Town of Hinesburg'; 'Ambrose, David & Claudia'; 'Baldwin, Matthew T.'; 'Bennington, Will - Rising Tide Vermont'; 'Blackham, Lowell E., Esq. - IPC'; 'Bryant, William - Town of Bristol'; 'Cain, David, Esq. - IBM'; 'Changala, Danielle, Esq.'; 'Clithero, Esq., Toni H. - VTrans'; 'Conway, Adam T., Esq. - for IBM'; 'Donahue, Thomas L., Esq. - RRCC'; 'Duggan, Tim, Esq. - DPS'; 'Dumont, James A., Esq. - for VPIRG'; 'Egan, Elizabeth M., Esq. - VHCB'; 'Ellis, William F., Esq. - BED'; 'Fiske, Nathan - IBM'; 'Flores, Julia S., Esq. - For Chittenden Solid Waste District'; 'Foster, Rebecca - For Vermont Intergenerational Stewards'; 'Gillies, Paul S., Esq. - For Town of Williston'; 'Grayck, David L., Esq., - For Palmers'; 'Hand, Esq., Geoffrey H.'; 'Hayden, Kimberly K., Esq.'; 'Hill, Cindy Ellen, Esq. - For Town of New Haven'; 'Kessler, John, Esq. - Historic Preservation'; 'Langrock, Fritz, Esq.'; 'Langrock, Peter F., Esq.,'; 'Levine, Esq., Sandra E.'; 'Lougee, Adam, Esq. - ACRPC'; 'MacIlwaine, William Andrew, Esq. - For Middlebury College'; 'Marshall, John H., Esq. - Entergy'; 'McLean, Joseph S. Esq. - For Monkton Central School'; 'Melloni, Thomas R., Esq. - For Chittenden Solid Waste District'; 'Messina, Jeffrey M., Esq. - For Dr. Robert Johnson & Shirley Johnson'; 'Neuse, Karl W., Esq. - For Town of Middlebury'; 'O'Neill, Robert F., Esq. - For David Carse & Elizabeth Hazen'; 'O'Rourke, Daniel P., Esq. - For Dr. Robert Johnson & Shirley Johnson'; 'Ouimette, James H., Esq. - For City of Vergennes'; 'Palmer, Nathan B. - For Jane Palmer, Raymond & Beverly Latreille'; 'Peterson, Richard F., Esq. - VT Land Trust'; 'Porter, Louise, Esq. - DPS'; 'Putnam, Benjamin W., Esq. - for Town of Middlebury'; 'Raubvogel, Esq., Andrew N.'; 'Romeo, Charles A., Esq. - Rutland City'; 'Roy, Christopher D. - For VGS'; 'Runcie, James W., Esq. - For City of Vergennes'; 'Saudek, Richard H., Esq.'; 'Scheu, Robin P. - ACEDC'; 'Schwartz, Thea'; 'Sciarrotta, Esq., S. Mark'; 'Singer, Leonard H., Esq. - for IBM'; 'Speroni, Aldo E. & Mary L. Speroni'; 'Stern, Matthew S. '; 'Stewart, James B., Esq. - REDC'; 'Tukey, Dan'; 'Woolmington, Robert E., Esq. - For Louise Seline Peyser'; 'Zamore, Peter H., Esq.'

Subject: VT Public Service Board Dkt. 7970 - VGS Phase I Pipeline Project and Dkt. 8791 - Investigation re alleged taking of harsh sunflower plants by VGS in Monkton, VT

Attachments: 7970 Memo & corrected page.pdf; 8791 Memo & corrected page.pdf

Please see the attached Memorandums being issued by the Vermont Public Service Board today regarding technical correction and attached corrected pages in the two dockets referenced above. The memos and corrected pages are in Docket 7970 Order Denying Motion for Order to Show Cause dated 8/23/16 and Docket 8791 Order Opening and Staying Investigation dated 8/23/16.

We apologize for the error and any inconvenience it may have caused.

Holly R. Anderson
Deputy Clerk
Vermont Public Service Board
112 State Street, 4th Floor
Montpelier, VT 05620-2701
802-828-2358
holly.anderson@vermont.gov