

**VEGI Policy Review Memo
Rep. Cynthia Browning, Arlington
July 28th, 2016**

I have been asked to comment on provision #4 " how to most effectively ensure, through the application and award process, that recipients of VEGI incentives are in compliance with all federal and State water quality and air quality laws and regulations;".

The intent of this provision is to be sure that Vermont tax dollars are not being used to support the activities of any company that is in any way polluting Vermont's air or water. Such a situation would mean that Vermonters were paying to subsidize an entity and then either paying to clean up after it or suffering the health and economic damages from its pollution. I would find that an intolerable and unacceptable situation.

I have no charge to make that this has happened with the VEGI program – I have done no audits or inspections. I just want to ensure as much as possible that it never does happen going forward.

I will note that I am writing at a time when the question of how to clean up Lake Champlain and other waters is a most urgent issue. All Vermonters will be paying higher taxes and fees in order to make progress on this environmental problem, which has profound economic and health implications. It is extremely important that any entity that receives taxpayer dollars in any way is not contributing to these water quality problems. I would also note that down in Bennington County a form of air pollution from PFOA has turned into a damaging groundwater problem. Again, this has both health and economic implications. (The PFOA was not regulated at the time.) Again, I want to try to ensure that no entity that might be causing air pollution in the future will get support from Vermont taxpayers while simultaneously betraying them.

Therefore I think that applicants for VEGI funding must confirm that they have taken responsibility for the effects of their activities in a profound way before qualifying for incentives. I think that this would actually add to the force of our regulations to protect Vermont.

VEGI Policy Review Committee Questions:

- What are the timelines regarding air and water quality compliance and permitting relative to project development and implementation?***
CB: In my opinion no applicant should move forward through the application process unless they can claim compliance. However, in a situation in which a company has been under an order to correct a violation and there is a timeline inherent in the agreement with the regulatory agency, and the applicant is fulfilling that agreement, they should have space on the application to explain this and if the explanation is satisfactory to the VEGI committee they could still move forward in the application process.

- ***What is meant by "compliance"?***

CB: The dictionary defines this as 'conforming or in accordance with'. There may be a more refined definition as a legal term. But from my perspective this would mean that an applicant would be claiming that the entity's operations and activities do not violate any State and federal air quality and water quality laws and regulations. I believe that this would mean that they would be asserting not ONLY that there are no administrative orders or permit violations against them, but ALSO that there are no violating conditions in their activities that might not have been identified by regulators or enforcement agencies.

- ***How would compliance be determined and documented?***

CB: In this application process I think it has to be self-certification subject to random audit and site inspection. This would mean that any successful applicant would know that at some point this issue might be audited and their operations inspected for violations. However, no such inspections would be contemplated as part of the application process. The sanction for violating this would be having to pay back any incentives already paid. I think that the VEGI committee could and should certainly request lists of violators from relevant agencies to check the applicants against. This would catch applicants that have violation orders against them.

- ***What level of assurance is contemplated? (Copies of permits? Certification by regulators? Self-certification by applicants?)***

CB: As indicated above, I was thinking of self-certification subject to random audit or inspection. I don't want to add a new burden to an already time consuming process. If lists of violators are available from any relevant agency they could be cross checked with the applicants.

I would call the attention of the VEGI Policy Review Committee to the fact that a requirement similar to this has been put into law with detailed provisions in Act 154 Section 13. This requires the Administration to incorporate a provision ensuring compliance with water quality regulations as a condition for receiving a state funded grant (there are already other requirements for such applicants), and the Committee can find the content on line. The administration provided a draft version of such a requirement during the legislative process that is likely posted on the website of House Fish & Wildlife under H.507 or Trey Martin.

I would also call the attention of the VEGI committee to the content of my original amendment to H.868 concerning this topic. In that original amendment I actually spelled out the requirement in detail in a way that mirrored the Act 154 Section 13 provision, but adjusted for VEGI. During the consideration of this amendment by legislative committees it was decided that rather than the legislature prescribing how this should be done we should ask the VEGI committee to consider how best to do it, and also it was expanded to cover air quality as well as water quality. The text of my original VEGI amendment can be found in the House Calendar for April 7th, 2016 p. 1446-1448. Note that the

presentation is a little confusing as the provision is essentially offered twice, once on a temporary basis for the next two years, and then as a permanent part of the VEGI statute. My understanding is that this is related to the transitional nature of some of the VEGI governing statutes.

And finally, I would call the attention of the VEGI committee to some of the language in the State's Internal Control standards that call for verification of information supplied by applicants when "reviewing... a participant's eligibility for State program services." This guide says further that "Verification ... is the determination of the completeness, accuracy, authenticity and/or validity of transactions, events or information. It is a control activity that enables management to ensure activities are being performed in accordance with directives. Management should determine what needs to be verified, based on the risk to the department if there were no verification." Vermont Department of Finance and Management, Internal Control Standards: a Guide for Managers, Sections or Chapters 8 and 9, around p.15.

I believe that this is to be applied to state spending. I think it should also apply to the provision of tax incentives, so that self-certification will be subject to random audit or inspection.

Thank you for your time.

**Rep. Cynthia Browning, Arlington
PO Box 389, Arlington, VT 05250
802.375.9019 cbrowning@leg.state.vt.us**