



Vermont Agency of Natural Resources

Office of General Counsel

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To: Vermont Climate Council
From: Ed McNamara, General Counsel
Date: August 15, 2022
Re: Legal Assistance for the Climate Council

The Global Warming Solutions Act (“GWSA”) mandates that “the Council shall have the administrative, technical, and legal assistance of the Agency of Natural Resources and the Department of Public Service and may request the assistance of any Executive Branch Agency and Department.”¹ This memorandum addresses the scope and form of legal assistance provided to the Council.

By way of background, there are numerous instances where the General Assembly forms a board, council, etc., and rather than assign specific resources, states that a particular Executive Branch agency or Legislative Counsel shall provide “administrative, technical, and legal assistance.” In addition to assistance to the Climate Council, other entities the Agency is required to provide assistance to includes: the Clean Water Board;² the Interagency Committee on Chemical Management;³ the Surface Water Diversions and Transfers Study Group;⁴ and the Chemicals of High Concern to Children Working Group.⁵

It is important to note at the outset that legal counsel for the Agency represents the Agency and not the Climate Council or any other body. In addition, any requests for legal assistance from Councilors will need to be reviewed by the full Council (or the Steering Committee if so delegated) to ensure that the request represents the scope and priorities of the Council. This step is necessary as the GWSA provides that the Council, not individual Councilors, will have the legal assistance of the Agency. When the Council requests legal assistance from the Agency, it should recognize that the Agency’s Office of General Counsel has many competing demands and would work with the Council to clearly define the scope and level of assistance requested.

The type of assistance provided to the Council is similar to a lawyer providing testimony to a Legislative Committee; for example, an Agency lawyer could explain how ANR has interpreted a statute or could potentially interpret provisions contained in the bill. The Agency lawyer would not generally be making declarative statements that would bind ANR but instead provide the Agency’s perspective on a bill or statute and raise legal issues that the Committee should consider. The lawyer is representing the Agency during the testimony and is also providing assistance to the Committee. It’s worth noting that in any such interactions, Agency lawyers are bound by the Rules of Professional Conduct, including Rule 4.1: “In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.”⁶

¹ 10 V.S.A. §591(e).

² 10 V.S.A. § 1389(f).

³ 10 V.S.A. § 6633(d).

⁴ No. 173. An act relating to surface water diversions and financial surety requirements for holding tanks. 2020

⁵ 18 V.S.A. § 1774(d)(2).

⁶ [VermontRulesofProfessionalConduct.pdf \(vermontjudiciary.org\)](https://www.vermontjudiciary.org/VermontRulesofProfessionalConduct.pdf).