

# Memo

To: Emergency Management Volunteers  
From: Duncan A. Higgins, Deputy Director, VEM  
Date: May 5, 2010  
Re: Liability for Emergency Management Volunteers

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After a series of memos and emails between Vermont Emergency Management (VEM) and the Office of the Attorney General (AG), a number of issues raised by regional planning commissions, local emergency planning committees, Citizen's Corps, volunteers, and the public relative to liability were researched with the following guidance provided.

1. What is the definition of a volunteer?

The most relevant definition appears in 3 V.S.A. subsection 1101 (b)(4), "any person who volunteers for a state agency by providing services at the request of that agency and under the direction and control of that agency, but who do not receive hourly or salary compensation."

2. Do current statutes outline coverage for volunteers from recruitment, to training and deployment – either for a declared event or an undeclared situation (this could cover a wide range of activities from working to assist in directing traffic at a local fair to working in an emergency operations center BEFORE a declared event, in other words during the event, but prior to any request to the Governor or FEMA?)

Yes. The coverage regarding legal defense and indemnification is outlined in the MOU between the State of Vermont and the Medical Reserve Corps of Southwestern Vermont. The coverage relative to legal defense and indemnification for a volunteer, as defined above, is the same for a declared or undeclared event. The distinction between declared and undeclared events is only relevant to workers compensation coverage. As outlined, in the MOU, workers compensation coverage is available only in emergencies declared pursuant to 20 V.S.A. subsections 9 and 11.

3. Under what circumstances are those volunteers covered by worker's compensation?

The answer to this question is outlined on pages 4-5 of the MOU.

4. Will the state pay for defense of a volunteer sued by someone?

In most circumstances the answer is affirmative. See pages 1-2 of the MOU. Generally, an individual who meets the statutory definition of "volunteer" found in 3 V.S.A. subsection 1101 (b) (4) will be entitled to the defense at state expense to the extent that a state employee would be entitled to a defense.

Attached to this memo is a copy of the MOU with the Medical Reserve Corps of Southwestern Vermont. Taken together the guidance outlined in this memo as received from the Attorney General's Office coupled with the MOU should provide clarification for a number of those issues regarding volunteers and sponsoring agencies.

Pertinent to the issue of liability protection is the protection offered regional planning commissions and local emergency planning commissions as contained in 20 V.S.A. Chapter 1, subsection 20 as quoted below:

#### **§ 20. - Immunities and defenses**

(a) Except in the case of willful misconduct or gross negligence, the state, any of its agencies, political subdivisions, local emergency planning committees or an emergency management worker, individual, partnership, association or corporation involved in civil defense or emergency management activities shall not be liable for the death of or any injury to persons or loss or damage to property resulting from an emergency management service or response activity, including, but not limited to, the development of local emergency plans and the response to those plans.

(b) Any individual, partnership, association, corporation or facility that provides personnel, training or equipment through an agreement with the local emergency planning committee, the state emergency response commission or local emergency response officials is immune from civil liability to the same extent provided in subsection (a) of this section for any act performed within the scope of the agreement. (Amended 1989, No. 252 (Adj. Sess.), § 17.)"

It should be emphasized that the interpretation of statute and definitions with regard to liability is a function of the Attorney General's office. The AG's office also decides whether in a particular instance, coverage is afforded and representation by the AG's office is warranted.