

State of Vermont  
Department of Health  
Office of the Commissioner  
108 Cherry Street - PO Box 70  
Burlington, VT 05402-0070  
healthvermont.gov

[phone] 802-863-7280  
[fax] 802-951-1275  
[tdd] 800-464-4343

**TO:** Vermont Public Service Board  
**FROM:** David C. Englander, Senior Policy and Legal Advisor  
**DATE:** October 10, 2014  
**SUBJECT:** Public Service Board Dockets and the Public Health Criterion

---

## Introduction

30 V.S.A. § (b)(5) states that before issuing a Certificate of Public Good, the Board must find that a proposal “will not have an undue adverse effect on esthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and the public health and safety...” Today, while petitioners and parties examine public health and safety in some dockets, not every petitioner undertakes an analysis of whether or not a project has an adverse effect on public health. In part, this is due to either unknown or uncertain health effects but also because there is not an accepted analytic framework to determine if there is an adverse public health effect and whether that effect is undue.

The Department of Health recommends the Board adopt a framework such as the one proposed below. The proposal mirrors the *Quechee* Test used to examine the aesthetics criterion,<sup>1</sup> utilizes relevant criteria found in the existing definition for “public health hazard” pursuant to 18 V.S.A. § 2 (9), and was developed with Department scientists and medical personnel.

## The Public Health Test

### Is there an adverse health effect?

What is the weight of medical and scientific evidence?

### If so, does it affect public health?

What is the number of people at risk?

Are there populations that are particularly vulnerable?

What is the characteristic or condition of the agent of harm?

Are there potential public health benefits that outweigh the public health risk?

---

<sup>1</sup> Previously adopted by the Board. *See, e.g.,* Docket 7156, *Order* of 8/8/07; In Re: Northern Loop Project, Docket 6792, *Order* of 7/17/03.



### **Is the adverse public health effect undue?**

What is the degree of potential harm?

What is the cost, availability, and efficacy of treatment?

Has the Applicant taken generally available mitigating steps to reduce or avoid potential risk?

### **The Health Test Briefly Explained**

*Is there an adverse health effect?*

The criterion asks whether a project poses a risk of having an adverse health effect. That is, is there any effect at all in a way that can be predicted? The Board could determine what the weight of credible medical and scientific literature and research suggests. If the answer is that the weight of the evidence supports the existence of an adverse health effect, then one proceeds to the next prong.

*If so, does it affect public health?*

Not all adverse health effects are public in nature. In determining whether a health effect is public, one can look to 18 V.S.A. § 2 (9), which provides the definition for public health hazard. The first sub-question is “What is the number of people at risk?” The second, related sub-question is “Are there populations that are particularly vulnerable?” That is, are there people (e.g. children or the aged) within the affected area that might be particularly impacted by a proposed project.

The third sub-question is “What is the characteristic of the condition or agent that is the source of potential harm?” Is the agent or condition particularized or something that could spread? Is it something that causes a rash or is it a carcinogen?

A fourth sub-question is “Are there potential public health benefits that outweigh the public health risk?” This gives parties an opportunity to articulate, or the Board to determine, that while there may be adverse health effect(s), the public health benefits may outweigh them. In effect, it asks what is the net health effect?

*Is the health effect undue?*

If it has been determined that there is a public health effect, then one should ask: “What is the degree of potential harm?” What are the long and short-term health effects? Second, “What is the cost, availability and efficacy of treatment?” What does the scientific literature indicate?



Lastly, akin to *Quechee*, the question is: “Has the Applicant taken generally available mitigating steps to reduce or avoid potential risk?” What could be done to eliminate or reduce the impact to human health? What are the barriers to implementation and what are the costs?

### **Resources**

It is critical to note that the Vermont Department of Health is currently working with the Department of Public Service to explore ways to devote resources to reviewing potential health effects of proposals subject to Section 248. These resources would serve to provide technical assistance to the Board and parties in implement this proposed framework but the Departments lacks those resources today.

### **Conclusion**

While this particular approach is novel, it is consistent with the Board’s recent practice of setting health- based conditions on certain projects.<sup>2</sup> The Department supports this direction and is prepared to draft additional guidance to provide the Board, the state, and the public with additional detail how these criteria may be examined.

It should be noted that this proposal is not intended to disturb the current examination of noise under the aesthetics criterion. Sound might be examined under 248 V.S.A. § 248(b)(5) as “noise,” “public health” or “air pollution” in the same way that the visual impact of a project might be examined under aesthetics and impact to public investment. We also note that this proposal is intended to apply to human, public health and is not suggesting that impacts to wildlife be examined in the same manner.

Lastly, this proposal is not intended to be the test in its final form. In addition to comments made by parties to this docket, and refinements by the Board, it will, if adopted, be shaped by the decisions of the Board as a framework becomes practice.

---

<sup>2</sup> See, *inter alia*, Docket No. 7508 Order of 6/11/2010; Docket No. 7628 Order of 5/31/2011.



