



Representative Amy Sheldon  
Chair of the Vermont House Environment and Energy Committee

March 30, 2023

Representative Sheldon,

Thank you for the opportunity to testify before the House Environment and Energy Committee on March 29. Below is a summary of my comments regarding S.5.

While a performance standard in the energy markets is not unique, it has never been attempted in the United States with regards to the distribution of heating oil, kerosene and propane. Determining what this program will cost and how it will be enforced is incredibly complex. Below is a summary of ten concerns about moving forward with this policy.

### **1) Point of Obligation**

As the legislation is written, the obligated party is the entity that first takes title of the fuel when it enters Vermont for consumption. Whether or not a distributor of fuel is obligated and, as such, required by law to purchase or otherwise obtain clean heat credits has nothing to do with size. It does not matter if you sell 400 gallons or 40 million gallons. The "obligation" is wholly dependent on whether you own title of the fuel. Vermont has more than 100 "obligated entities" and 95% of these "entities" are retail distributors, not wholesalers. And the vast majority of these distributors are small, locally owned fuel retailers. These are the people that live and work in rural Vermont, where the name on the side of the truck is the same as the person driving the truck or person answering the phone at 2am to respond to a service call. If S.5 becomes law, these mom and pop businesses will be competing in a complicated credit market with some of the largest for-profit energy conglomerates and utilities operating in Vermont. The point of obligation should be moved up the supply chain. While this may be legally problematic if Vermont "goes it alone," it would not be if this credit marketplace was a regional energy policy, much like the Regional Greenhouse Gas Initiative (RGGI) or the Transportation Climate Initiative (TCI). Vermont should not go it alone.

### **2) Restrict Obligated Gallons to Thermal Applications**

Not all heating fuel sold in Vermont is used for heating. Propane, natural gas, kerosene, and #2 fuel oil is used for power generation, manufacturing, and transportation. Natural gas and

propane is used for cooking. The energy resource known as #2 fuel oil (ULSD/ULSHO) is the energy that powers train engines, car ferrys, skidders, feller-bunchers, cut-to-length wood processors, forwarders, delimiters, loader slashers, log loaders, whole-tree chippers, stationary screening systems, and firewood processors. Fuel oil (dyed distillate) powers thousands of vehicles that are exempt from the motor fuel excise tax, including school buses, plow trucks, bulldozers, and farm tractors. These sales are not insignificant. Vermonters consume approximately 200 million gallons of distillate fuel every year. Less than half (70 million gallons) is used for residential heating.<sup>1</sup> The local family fuel dealer that picks up #2 fuel oil in North Walpole, NH, will deliver thousands of gallons a year to a farmer in Westminster or a logger in Rockingham. That dealer will be “obligated” and those gallons will count toward their obligation. If that fuel business wants to stay in business, he or she will mark up the cost of fuel to reflect the cost of credits. And there is nothing the farmer or logger can do to mitigate this cost increase. Farm tractors and feller-bunches don’t run on heat pumps.

### **3) Remove Kerosene or Provide More Choices for Savings**

Tony James, Dennis Percy and Rob Stenger are experts on the installation and performance of cold climate heat pumps. All three provided testimony on March 29 before the House Environment and Energy Committee that explained why these devices reduce consumption but fail to eliminate combustion heat in the vast majority of existing homes. While Vermont’s heating and cooling experts explained why a single head mini-split will not provide enough BTUs to heat the average home, there is also a tremendous amount of research in our neighboring states on the limitations and cost of heat pumps. An analysis of installations in Massachusetts from 2019 found that the average conversion cost was \$21,572.<sup>2</sup> A similar study by NYSERDA found the average cost of a whole-home heat pump installation in a single-family detached home in New York with the average square footage of 1,663 sq. ft. was \$16,272.<sup>3</sup> However, as you heard from Vermont’s heating and cooling experts, the high cost of conversion is not the only problem for Vermonters of modest incomes. Even if the installation, equipment and maintenance was free, there are certain homes in which combustion heat is necessary. The reliance on electric heat could cause significant structural damage to the more than 20,000 mobile homes in Vermont.<sup>4</sup> Most mobile homes have exposed water pipes running underneath and can not rely on electric heat pumps which blows warm air from above. Lacking a basement, these homes require an outdoor tank and can not utilize biodiesel. In many cases, the best recommendation to reduce greenhouse gas emissions and costs is to switch from kerosene to propane. S.5 does not allow this

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<sup>1</sup> Energy Information Administration: [https://www.eia.gov/dnav/pet/pet\\_cons\\_821use\\_dcu\\_SVT\\_a.htm](https://www.eia.gov/dnav/pet/pet_cons_821use_dcu_SVT_a.htm)

<sup>2</sup> Diversified Energy Specialists: <https://projectcarbonfreedom.com/wp-content/uploads/2021/01/Diversified-Energy-Specialists.pdf>

<sup>3</sup> NYSERDA: <https://data.ny.gov/Energy-Environment/NYSERDA-Supported-Air-Source-Heat-Pump-Projects-20/dpke-svni>

<sup>4</sup> Vermont ACCD <https://accd.vermont.gov/housing/mobile-home-parks/registry>

energy saving, greenhouse gas saving and money saving approach to be counted as a credit. *Please remove kerosene from the list of fuels that are obligated in order to protect low income Vermonters from the escalating fees or allow kerosene to propane conversions to earn credit.*

#### **4) Concerns about Fuel Assistance**

The federally funded Low Income Home Energy Assistance Program (LIHEAP) is a key part of our energy infrastructure. As of March 28, 2023, \$30,217,638 was spent by the Vermont Fuel Assistance Office this winter. Of the nearly 20,000 families that receive a benefit, less than 4% use electric heat. As written, S.5 provides no exemptions for any of the obligated gallons, even those delivered to low income Vermonters who rely on fossil fuels for heat and hot water and receive this assistance. If S.5 is implemented, the credit cost will increase the cost of fuel delivered, thereby decreasing the state's purchasing power and ability to provide heat for the most vulnerable Vermonters.

#### **5) Cap the Credit Cost and Change the 2030 Requirement**

Given the uncertainty around the regulatory structure for the distribution of an essential commodity that 4 out of every 5 Vermonters needs for heat, hot water and cooking, it is necessary and appropriate that the legislation cap the cost of credits. While the Secretary of the Agency of Natural Resources provided testimony in your committee that the credit cost is approximately 70-cents per gallon, the number is likely low due to the assumption by Secretary Moore that the mom and pop fuel suppliers have the capacity to absorb 25% of the credit cost and not pass on to their customers. The reason the cost of this program is shockingly high is the requirement that the PUC ensures that the program lowers greenhouse gas emissions from the thermal sector by 40%. There is a simple way to prevent this from happening. Create a price cap in the legislation and remove the language that the PUC must design and implement a policy "that achieves Vermont's thermal sector greenhouse gas emissions reductions necessary to meet the requirements of 10 V.S.A. § 578(a)(2) and (3)." Unless and until this is done, it is assumed that 70-cents a gallon will be the cost of credits. The cost could be much, much higher.

#### **6) Double Counting**

The legislation should not allow utilities to "sell the same horse twice." This flaw can be easily fixed by not allowing the electric utility to claim Tier 3 credits under the Renewable Energy Standard and also sell credits under the Clean Heat Standard for the exact same product or service. The bill should be amended with the following language: Clean Heat Credits can not be sold by electric utilities who are using the same product or service to meet their obligations under the Renewable Energy Standard Tier 3 program.

## 7) GREET is Good

S.5 refers to GREET, which stands for “Greenhouse gases, Regulated Emissions, and Energy use in Transportation.” GREET is a full life-cycle model designed by the Argonne National Laboratory at the United States Department of Energy's Office of Energy Efficiency and Renewable Energy. Any greenhouse gas accounting method should be based on this schedule of transparent and accurate emissions. There is a national standard. Vermont should follow it. *Remove the text: “Or an alternative of comparable analytical rigor to fit the Vermont thermal sector context.”* Further, the legislation puts unnecessary limits on clean heat measures delivered to low income Vermonters, requiring new equipment and not allowing lower carbon fuels to count. And in the out years, S.5 limits the ability for biofuels to be counted toward the obligation. *These limitations should be removed.*

## 8) Wrong Regulator

Choosing a regulator to ensure compliance with the Clean Heat Standard is critical. The one state agency that has no jurisdiction over liquid heating fuel and service providers is the Public Utility Commission (PUC), which is the one designated by S.5. The reason the PUC has no jurisdiction is because the hundreds of businesses in and around Vermont that provide heating fuel and service are not utilities. The PUC has power over utilities through rate making in which the utility is guaranteed a rate of return on their capital investment. There are no guarantees for fuel oil, kerosene and propane retailers.

Creating a credit marketplace, corralling the obligated parties and enforcing compliance is a *complicated and expensive endeavor*. S.5 asks for \$1.7 million in FY23 just to figure out how to get the program off the ground. Constructing an exchange where the big utilities and the small fuel dealers buy, sell and swap “non-tangible commodities” called “Clean Heat Credits” is estimated to cost an additional \$1 million just to build.<sup>5</sup> The PUC has not identified how it will be funded. Nor have they identified who the obligated parties are, where their fuel comes from and how the credit market will be enforced.<sup>6</sup>

*This is a problem.* Unless the PUC can police the borders and every rural road making sure that all trucks carrying heating oil, propane and kerosene are registered, compliance will be extremely challenging. How will the PUC insert its authority in a private transaction between a homeowner in Vergennes and truck driver from Hoosick Falls? S.5 anticipates that trucks the PUC has yet to identify that come across the border at all hours of the day, will somehow make quarterly payments to purchase credit obligations based on the gallons they sold the

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<sup>5</sup> According to testimony before the Senate Natural Resources and Energy Committee on 2/14/23. Thomas Knauer and Kyle Landis-Marinello for the Public Utility Commission.

<sup>6</sup> *The question about enforcement, I just don't have an answer right now.....I can't tell you who the obligated parties would be.....I am sorry to say, that I don't have an answer to that question, as to what tools are needed and whether the PUC possesses those tools.* Testimony about the Clean Heat Standard by Thomas Knauer, Public Utility Commission Policy Director, before the House Energy Committee on 2/3/22

prior year. If the fuel is delivered on truck, only law enforcement is empowered to place an obligated party "out of service" for non-compliance. No letter or threat of a fine from an attorney at the PUC will undo the damage to this competitive marketplace because of a lack of enforcement resources or capabilities. An obligation to obtain a "non-tangible commodity" called a "Clean Heat Credit" based on volume of sales from the prior year can not be enforced within the four walls of the Public Utility Commission on 112 State Street. It can only be enforced on Vermont's town roads and state highways. A government policy that relies on businesses to "raise their hand" so that they can pay a competitor to take away their customers is nonsensical. This lack of understanding about how fuel is distributed will insert chaos into the orderly distribution of an essential commodity that a majority of Vermonters depend on for heat, hot water, and/or cooking.

### **9) Time to Re-Think The DDA**

As passed by the Senate, S.5 allows the Designated Default Delivery Agent (DDA) to be a for-profit corporation. In order to ensure a more equitable energy transition, the DDA should not be a for-profit company or a participant in the Clean Heat credit market and instead should be a division of the Office of Economic Opportunity (OEO) or similarly aligned non-profit entity designated by OEO that provides energy services to economically disadvantaged Vermonters. *The DDA should be a state agency, or a non-profit designated by a state agency, and be fuel neutral.*

There are no protections for vulnerable Vermonters and their local fuel dealers should the DDA fail to perform. While a DDA will receive quarterly payments from obligated parties, there are no penalties or refunds should a DDA fail to deliver services or fuel that lowers greenhouse gas emissions. What protections are in place for Vermonters if a foreign owned for-profit energy conglomerate takes payment from a local fuel dealer, becomes a DDA and then does not act? It seems necessary and appropriate as there are penalties in S.5 if the same local fuel dealer is a few days late on their quarterly payments to the DDA.

**The penalty in S.5 for local fuel dealers is 4x the credit cost.**

The implications are worth pondering. Judy Taranovich in Proctor could sell 500,000 gallons of propane in the cold months of October, November and December. If the credit cost is 75-cents a gallon, she will owe the DDA (again, a for-profit energy conglomerate) \$375,000 on January 1. If she is late, she will owe \$1.5 million. This is the busiest month of the heating season, when small family fuel businesses are most stretched for cash flow because they are extending credit to their customers. It is also when these small business are working 18 hour days to keep Vermonters warm. ***The fine for being late to pay their competition for the right to sell fuel in January could be more than value of the entire company.*** Meanwhile, there is no fine or penalty created by S.5 if the DDA takes Judy's money and doesn't comply with the law. **This must be changed.**

## **10) July, Not January**

Given the comments above, this legislation should be reconsidered. At the very least, the legislature should delay implementation by six months. In order to successfully launch a complicated program with significant costs on small distributors of heating fuel, the start date should be moved from January 1, 2026 to July 1, 2026. From cash flow and compliance standpoint, a January implementation date is problematic as it is the time when Vermonters need their local fuel dealer the most. When this was suggested before the Senate Committee on Natural Resources in February, the response was "if we want you to stop selling fossil fuels, we should make it more difficult for you to deliver them."<sup>7</sup>

Heat, hot water and cooking fuel are not luxuries in our cold rural state. They are necessities. The men and women who are out in the cold every winter ensuring that Vermonters are safe and warm are not villains. They are heroes and they deserve our respect. Thank you for treating Rob, Tony and Dennis with dignity and listening to their concerns about S.5. We ask you to make significant changes to the legislation. If there is not enough time to do this in April, please take this bill back up in January for further consideration.

Thank you for your time and consideration

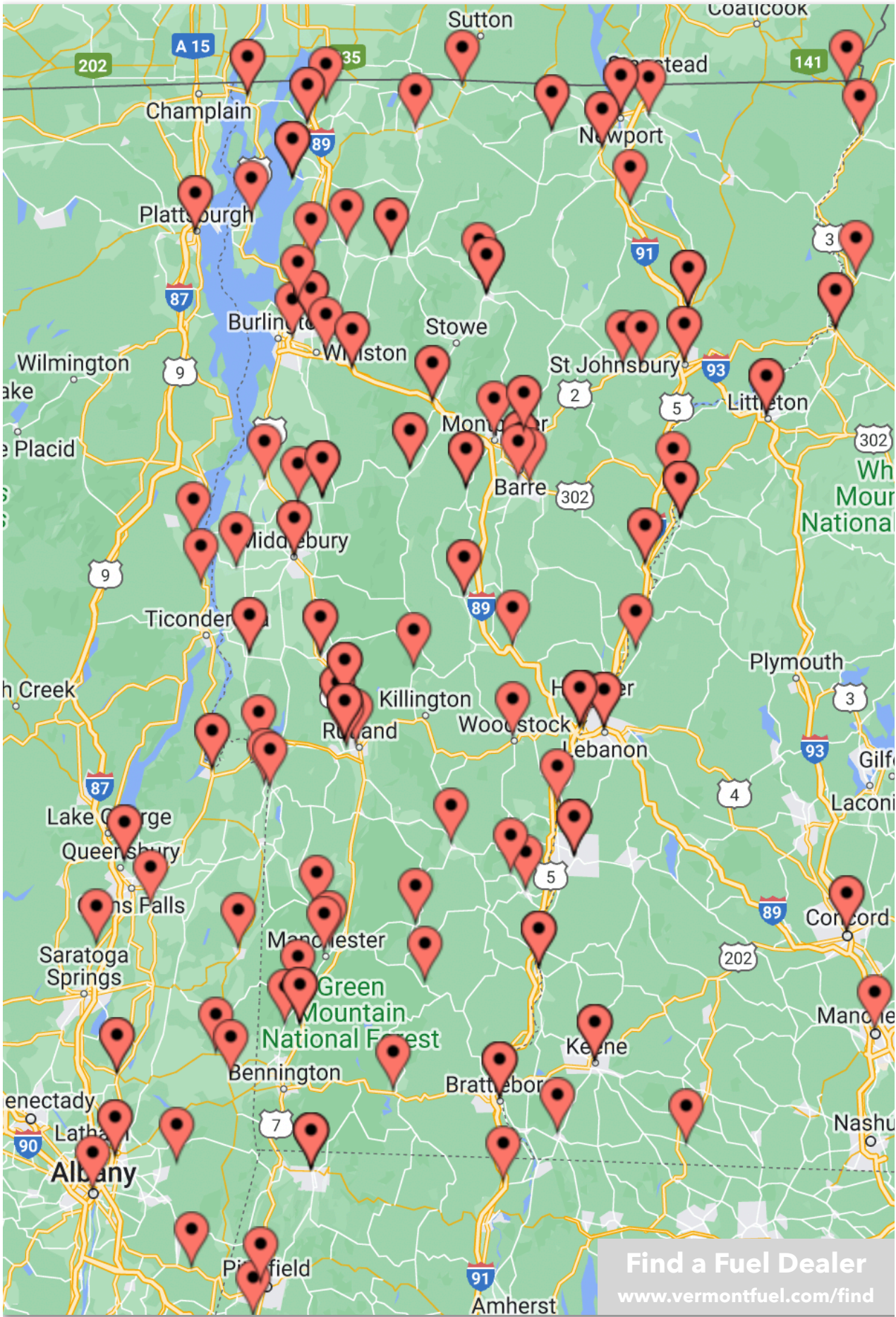
Sincerely,



Matt Cota  
Meadow Hill

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<sup>7</sup> <https://www.meadowhillmedia.com/aha/coldness.html>



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