

**Testimony of Jon Groveman, Policy and Water Program Director,
Vermont Natural Resources Council
Senate Judiciary Committee on S.259**

My name is Jon Groveman. I am the Policy and Water Program Director for the Vermont Natural Resources Council (VNRC). Thank you for the opportunity to testify on S.259.

The focus of my testimony is on the consistency between the approach to holding polluters accountable for harm caused by their actions in S.259 and approaches that Vermont is already authorized to take under Vermont law to address the harm caused when hazardous materials are released into the environment.

My background relevant to my testimony today includes that I am an attorney who has practiced environmental law in Vermont for 30 years. This experience includes serving as General Counsel of the Vermont Agency of Natural Resources and working in Vermont and with partners across the country to address the harm caused by toxic chemicals, including the significant harm caused by the use of PFAS chemicals in Vermont.

S.259 represents an important step towards holding polluters accountable for the harm caused by climate change. In Vermont the impacts of climate change have manifested in a number of ways. Most recently, this summer climate change brought us an immense amount of rain in a 24 hour period that we saw throughout Vermont. The July rains destroyed homes and businesses, tore up roads, washed away bridges and blew out culverts.

As you all know, the costs of recovering from the July floods have been immense. We saw these same effects in the aftermath of Tropical Storm Irene in 2011, and some communities suffered more flood damage during the rains we experienced this December. These disasters are just a few examples of the harm that Vermont is experiencing as a result of climate

change and, sadly, scientists predict there are more of these disasters to come.

S.259 would allow Vermont to hold parties responsible for these climate change impacts strictly liable for the harm they have contributed to. S.259 also authorizes ANR to assess a charge on parties deemed responsible for these impacts in order to recover costs incurred by Vermont in responding to the impacts of climate change.

The idea is simple: if you extracted fossil fuels or refined crude oil to the extent that under S.259 you are considered a responsible party, then Vermont may hold you strictly liable for the harm caused by your contribution to climate change in our state.

Strict liability is a familiar concept in Vermont. Strict liability means that if you engage in an activity that is inherently harmful and that activity causes harm you will be held legally liable for the harm that activity caused.

Historically, strict liability has been applied to ultrahazardous activities like the use, transport and storage of hazardous materials. In Vermont, entities that release hazardous materials are already strictly liable for the harm caused by the release of these materials under Title 10, Chapter 159.

Title 10, Chapter 159 is the Vermont version of the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), known as the Superfund law. CERCLA holds polluters retroactively and strictly liable for the harm caused the disposal of toxic substances and hazardous wastes that caused harm to public health and the environment and must be cleaned up.

Like S.259, under Title 10, Chapter 159, ANR may assess damages against responsible parties to recover costs for the harm caused by a release of hazardous materials without first going to court. Accordingly, S.259 represents an expansion of tools that Vermont is already using to hold polluters accountable. It's merely applying that authority to the

atmosphere/our climate, as opposed to cleaning up contaminated water or soil contaminated by toxic chemicals.

Recently the Legislature passed a bill that amended Title 10, Chapter 159 to add to ANR's authority the ability to hold the manufacturer of a hazardous material who knew or should have known that the material posed a threat of harm to human health or the environment strictly liable for the harm caused by the release of these hazardous materials in Vermont. This provision was added as part of Vermont's response to the harm caused by PFAS chemicals in our state. The bill added a tool that allowed the State of Vermont to hold the manufacturers of chemicals like PFAS responsible for the harm they caused under a theory that the manufacturers who created and distributed these incredibly harmful chemicals should be held responsible for the damages from PFAS and not innocent Vermonters.

The similarities between the need for the state to hold the manufacturers of PFAS and entities at the root cause of greenhouse gas emissions that led to climate change responsible for the harm they have caused is evident. The goal of both policies is to ensure that Vermonters are not unfairly saddled with paying for all of the immense costs for the harm climate change is causing or for the harm caused by the widespread use of PFAS. It is only fair that the corporations who reap significant benefits from engaging in these harmful activities should have to pay their fair share for cleaning up the resulting mess.

VNRC strongly supports S.259 and urges the Committee to pass the bill. Simple fairness says that large fossil fuel companies should pay their fair share of the price for recovering from climate-related disasters and preparing our communities for more extreme weather and the other effects caused by the climate change resulting from their products.

When Congress passed the Superfund Act - CERCLA - in 1980, it made a choice to hold powerful, polluting industries financially responsible for the damage caused by pollution they created. No doubt it would have been

much easier for Congress to allow the status quo to continue, to leave those polluters off the hook and leave American communities across the country stuck with the effects of their pollution and the financial responsibility for addressing it. Congress, ultimately, made the harder choice - to pass the Superfund law and require polluting companies pay their fair share. The impacts from climate change are so vast and serious, we can't afford not to try to make the oil companies responsible for this harm pay its fair share.

Other witnesses will address the nuts and bolts of how S.259 works to impose liability on polluters. However, I am happy to take any questions on my testimony.