

House Committee on Fish, Wildlife and Water Resources
Testimony
April 21, 2016

H. 595- An act relating to potable water supplies from surface waters

Thank you for allowing me to offer this testimony. My name is Stuart Hurd. I write to you today as Bennington's Town Manager, having served in that role since 1992, and as a municipal employee experienced with Federal CERCLA legislation and the potential costly impacts arising therefrom.

Bennington has survived two EPA led investigations into former landfill sites, the first resulting in a Superfund designated site formally closed under CERCLA in the period 1991-1999. This former landfill had been closed under Vermont law in 1987. The second site was identified in 2011 following a hearsay allegation of PCB dumping at this site, now a portion of Willow Park, a multi-use public park. The EPA individual saw rust colored water seeping from the long closed landfill (1969), and determined this site to be an immediate threat to human health. (There exists a school across the street from the site.) The Town tested the surface water, found no contamination above State and Federal standards and recommended fencing the slope to avoid human contact. Soon thereafter, the Town was notified that an EPA led investigation would be undertaken at the site. EPA made no attempt to determine other Potentially Responsible Parties (PRP's). In 2014, after spending in excess of \$70,000, on legal and engineering fees, the Town finally succeeded in convincing EPA that this should be a State led site. Ultimately, the Town and the State agreed to a closure plan nearly the same as the Town had suggested in 2011. It cost just over \$30,000 to close the site. Some monitoring was also required to insure no releases were occurring. There was no surface, surface water, or ground water contamination above State and Federal standards found. The Town was notified thereafter that EPA had spent \$800,000 in testing, laboratory, and other costs, and the Town would be required to pay \$175,000 in principal and interest to EPA. The Town has done that. We await a Sites Management Action Closed (SMAC) letter from the State following two years of seasonal monitoring with excellent results.

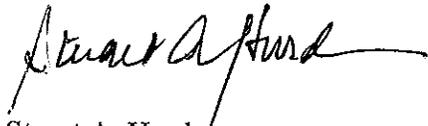
Unfortunately, now we have found PFOA/PFOS at both sites. I must tell you that I am very concerned about the potential for re-opening both sites.

I have told this story to underline the ultimate power that EPA has, and note that H.595 now proposes to give that power to the Secretary of ANR. In my opinion, the State does not have the capacity in manpower, in funding, and in scientific expertise to wield that power with care and caution. Although CERCLA has had a devastating financial impact on the Town, I have seen it used with caution and common sense (the first instance) and with absolutely no regard to science, the community, and common sense (the second instance). It is the second instance that troubles me the most. This legislation places too much authority in the hands of the Secretary; it provides no independent oversight; and it provides no avenue of appeal, other than to the courts. Of particular concern, are Sections 9 and 10, relating to Natural Resources Damage claims. Here the independent review by an experienced agency or other party as required in the CERCLA legislation is simply left to the Secretary. In our first experience with EPA, this investigation was

handled by U. S. Fish and Wildlife, a separate agency of the Federal government. If damage is determined to have occurred (it was), the cost to repair or, in most cases, replace the damaged land or habitat can run in the hundreds of thousands, even millions of dollars. In Bennington's case, it was estimated by EPA to cost \$158,600. Bennington was fortunate to have under its ownership a natural wetland area which we enhanced with trails for public use at minimal cost. In H. 595, there is no independent review required. A determination is made by the Secretary and that's that. No science, no consultation, no appeal.

In conclusion, I ask that you give thought to every municipality in the State. Historically, the laws of this State required Towns to handle disposal of municipal waste, residential, commercial and industrial. Every former landfill is a potential source of a release, or a threatened release, or the allegation of same. How many of your constituents will face the hundreds of thousands of dollars to investigate, defend, and comply with H. 595 in the future? Please slow down this rush to address what some see as a problem for State enforcement. Think it through. Temper the power the legislation creates. Shield, to some extent, municipalities. They are here forever. Businesses may not be. Provide for some independent review by agencies or parties not under the ANR umbrella.

Once again, thank you for your consideration.

A handwritten signature in black ink, appearing to read "Stuart A. Hurd". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Stuart A. Hurd
Town Manager