



**House Fish Wildlife and Water Resources
H. 595, Potable Water Supply
April 21, 2016**

Thank you for the opportunity to testify on H. 595.

The Department of Environmental Conservation responded quickly and completely to the discovery of PFOA in water supplies in the southern part of the state. It has been a commendable response, particularly in light of the response to similar discoveries in other states.

We believe that H. 595, particularly Section 9, reaches far beyond the situation in Bennington County and DEC's response there.

Municipalities own and operate a variety of infrastructure which include wastewater treatment facilities, public works garages, recreation fields, municipal water supplies, and landfills and dumps – many that ceased operation decades ago.

We are very concerned about the extent to which Section 9 of H. 595 would grant the Agency of Natural Resources authority to assess natural resource damage assessments and valuations. This undertaking must be considered in juxtaposition to laws currently on the books that address the release of hazardous materials and the liability that attaches to certain parties.

The committee heard this morning from Peter Van Oot, and also received comments from the Town Manager in Bennington, Stuart Hurd with respect to Section 9. We urge the committee to consider the impacts on local communities across the state.

Section (b) of H. 595 Section 9 states, “The Secretary may assess damages against any person found to be liable under section 6615 of this title for a release or threatened release of hazardous material for injury to, destruction of, or loss of natural resources from the release or threatened release. The measure of damages that may be assessed for natural resources damages shall include the cost of restoring or rehabilitating injured, damaged, or destroyed natural resources, compensation for the interim injury to or loss of natural resources pending recovery, and any reasonable costs of the Secretary in conducting a natural resources damage assessment.”

Current law in 10 VSA section 6615 (c) states, “In any suit to enforce claims of the State under this section, it is not necessary for the State to plead or prove negligence in any form or manner on the part of the person specified in subsection (a) of this section. The State need only plead and prove the fact of the release or threatened release and that the person in question was as specified in subsection (a) of this section, or that the release or threatened release occurred at or involved any real property, structure, equipment, or conveyance under the control of that person.”

The key is that the agency needs only to prove a release, but does not need to prove any negligence under the plain language of this section. Municipalities are already potentially liable under CERCLA and the VWMA. The liability scheme proposed under H.595 is not transparent in terms of how that liability is determined. As you are aware, the “pockets” of villages, cities, and towns are not deep, although they are often determined to be so. We are very concerned that municipalities may be found liable under H. 595 for damages they have not caused, and may have to pay for damages they have already addressed under different law and legal action.

In H. 595, damages would be defined only as “the amount of money sought by the Secretary for the injury, destruction, or loss of natural resources”. That definition is wide open and we cannot propose language to establish parameters around that without extensive consideration of all the implications.

Our real concern with this legislation is the potential liability for extensive damages being assessed against a municipality without clear parameters established around what that means. State and federal governments, and our judicial system, have spent decades fleshing out and restructuring laws and liability schemes regarding hazardous material releases. We urge the committee to look at this bill carefully in relation to current laws, resources, and potential impacts on all parties covered by this legislation.

Thank you for the opportunity to express our members views on this important legislation.

Karen Horn, Director

Public Policy & Advocacy