

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred  
3 House Bill No. 595 entitled “An act relating to potable water supplies from  
4 surface waters” respectfully reports that it has considered the same and  
5 recommends that the Senate propose to the House that the bill be amended by  
6 striking out all after the enacting clause and inserting in lieu thereof the  
7 following:

8 Sec. 1. 10 V.S.A. § 1978(a) is amended to read:

9 (a) The Secretary shall adopt rules, in accordance with 3 V.S.A. chapter 25,  
10 necessary for the administration of this chapter. These rules shall include the  
11 following:

12 \* \* \*

13 (15) Provisions authorizing the use by a residential dwelling of surface  
14 water as a source of a potable water supply permitted under this chapter.

15 Sec. 2. 10 V.S.A. § 1981 is added to read:

16 § 1981. SURFACE WATER SOURCE; POTABLE WATER SUPPLY

17 The Secretary shall approve the use of a surface water as the source of a  
18 potable water supply under this chapter if the following conditions are  
19 satisfied:

20 (1) the building or structure using the surface water as a source is a  
21 single-family residence occupied by the owner of record;

1           (2) only one single-family residence shall be served by a potable water  
2           supply using a surface water as a source;

3           (3) a single-family residence with a potable water supply using a surface  
4           water as a source shall not be used as the site of a home occupation that  
5           employs persons other than family members and is visited by the public in a  
6           manner or duration that would presume the need for use of a potable water  
7           supply;

8           (4) a professional engineer shall design the potable water supply using a  
9           surface water as a source, including a treatment system for the surface water;

10           (5) only surface waters that meet criteria adopted by the Secretary by  
11           rule are eligible as the source of a potable water supply permitted under this  
12           chapter; and

13           (6) the applicant or permit holder shall comply with other criteria and  
14           requirements adopted by the Secretary by rule for potable water supplies using  
15           a surface water as a source.

16           Sec. 3. SURFACE WATER SOURCE; RULEMAKING

17           The Secretary shall adopt rules to implement 10 V.S.A. § 1981 on or before  
18           July 1, 2017.

1 Sec. 4. 10 V.S.A. § 1982 is added to read:

2 § 1982. TESTING OF NEW GROUNDWATER SOURCES

3 (a) As used in this section, “groundwater source” means that portion of a  
4 potable water supply that draws water from the ground, including a drilled  
5 well, shallow well, driven well point, or spring.

6 (b) Prior to use of a new groundwater source as a potable water supply,  
7 where testing is not otherwise required, the person who owns or controls the  
8 groundwater source shall test the groundwater source for the parameters set  
9 forth in subsection (c) of this section.

10 (c) A water sample collected under this section shall be analyzed for, at a  
11 minimum: arsenic, lead, uranium, gross alpha radiation, total coliform  
12 bacteria, total nitrate and nitrite, fluoride, manganese, and any other parameters  
13 required by the Agency by rule. The Agency by rule may require testing for a  
14 parameter by region or specific geographic area of concern.

15 (d) The Secretary, after consultation with the Department of Health, the  
16 Wastewater and Potable Water Supply Technical Advisory Committee, the  
17 Vermont Realtors, the Vermont Association of Professional Home Inspectors,  
18 private laboratories, and other interested parties, shall adopt by rule  
19 requirements regarding:

20 (1) when, prior to use of a new groundwater source, the test required  
21 under subsection (b) of this section shall be conducted;

1           (2) who shall be authorized to sample the source for the test required  
2           under subsection (b) of this section, provided that the rule shall include the  
3           person who owns or controls the groundwater source and licensed well drillers  
4           among those authorized to conduct the test;

5           (3) how a water sample shall be collected in order to comply with the  
6           requirements of the analyses to be performed; and

7           (4) any other requirements necessary to implement this section.

8           Sec. 5. AGENCY OF NATURAL RESOURCES; GROUNDWATER  
9           SOURCE TESTING

10           The Secretary of Natural Resources shall commence rulemaking under  
11           10 V.S.A. § 1982 on or before July 1, 2016. The Secretary shall adopt rules  
12           under 10 V.S.A. § 1982 on or before January 1, 2017.

13           Sec. 6. 18 V.S.A. § 501b is amended to read:

14           § 501b. CERTIFICATION OF LABORATORIES

15           (a) The ~~commissioner~~ Commissioner may certify a laboratory that meets  
16           the standards currently in effect of the National Environmental Laboratory  
17           Accreditation Conference and is accredited by an approved National  
18           Environmental Laboratory Accreditation Program accrediting authority or its  
19           equivalent to perform the testing and monitoring:

20           (1) required under 10 V.S.A. chapter 56 and the federal Safe Drinking  
21           Water Act; and

1 (2) of water from a potable water supply, as that term is defined in  
2 10 V.S.A. § 1972(6).

3 (b)(1) The ~~commissioner~~ Commissioner may by order suspend or revoke a  
4 certificate granted under this section, after notice and opportunity to be heard,  
5 if the ~~commissioner~~ Commissioner finds that the certificate holder has:

6 (A) submitted materially false or materially inaccurate  
7 information; or

8 (B) violated any material requirement, restriction, or condition of the  
9 certificate; or

10 (C) violated any statute, rule, or order relating to this title.

11 (2) The order shall set forth what steps, if any, may be taken by the  
12 certificate holder to relieve the holder of the suspension or enable the  
13 certificate holder to reapply for certification if a previous certificate has been  
14 revoked.

15 (c) A person may appeal the suspension or revocation of the certificate to  
16 the ~~board~~ Board under section 128 of this title.

17 \* \* \*

18 (f) A laboratory certified to conduct testing of groundwater sources or  
19 water supplies from under 10 V.S.A. § 1982 or other statute for use by a  
20 potable water supply, as that term is defined in 10 V.S.A. § 1972(6), shall  
21 submit the results of groundwater analyses to the ~~department of health~~  
22 Department of Health and the ~~agency of natural resources~~ Agency of Natural

1 Resources in a format required by the ~~department of health~~ Department of  
2 Health.

3 Sec. 7. 10 V.S.A. § 1283(b) is amended to read:

4 (b) Disbursements under this subsection may be made for emergency  
5 purposes or to respond to other than emergency situations; provided, however,  
6 that disbursements in response to an individual situation which is not an  
7 emergency situation shall not exceed \$100,000.00 for costs attributable to each  
8 of the subdivisions of this subsection, unless the Secretary has received the  
9 approval of the General Assembly, or the Joint Fiscal Committee, in case the  
10 General Assembly is not in session. Furthermore, the balance in the Fund shall  
11 not be drawn below the amount of \$100,000.00, except in emergency  
12 situations. If the balance of the Fund becomes insufficient to allow a proper  
13 response to one or more emergencies that have occurred, the Secretary shall  
14 appear before the Emergency Board, as soon as possible, and shall request that  
15 necessary funds be provided. Within these limitations, disbursements from the  
16 Fund may be made:

17 \* \* \*

18 (7) to pay costs of management oversight provided by the State for  
19 investigation and cleanup efforts conducted by voluntary responsible parties  
20 ~~where those responsible parties have contributed monies to the Fund pursuant~~  
21 ~~to a written agreement under subsection (f) of this section;~~

22 \* \* \*

1 Sec. 8. 10 V.S.A. § 6615c is added to read:

2 § 6615c. INFORMATION REQUESTS

3 (a)(1) When the Secretary has reasonable cause to believe that the  
4 Secretary has identified a person who may be subject to liability for a release  
5 or threat of release under section 6615 of this title, the Secretary may require  
6 the person to furnish information related to:

7 (A) The type, nature, and quantity of any commercial chemical  
8 product or hazardous material that has been or is being used, generated,  
9 treated, stored, or disposed of at a facility or transported to a facility.

10 (B) The nature or extent of a release or threatened release of a  
11 hazardous material from a facility.

12 (C) Financial information related to the ability of a person to pay for  
13 or to perform a cleanup or information surrounding the corporate structure, if  
14 any, of such person who may be subject to liability for a release or threat of  
15 release under section 6615 of this title.

16 (2) A person served with an information request shall respond within  
17 10 days of receipt of the request or by the date specified by the Secretary in the  
18 request.

19 (b)(1) A person who has received a request under subsection (a) of this  
20 section shall, at the discretion of the Secretary, either:

1           (A) grant the Secretary access, at reasonable times, to any facility,  
2           establishment, place, property, or location to inspect and copy all documents or  
3           records relating to information that was related to the request; or

4           (B) copy and furnish to the Secretary all such information at the  
5           option and expense of the person or provide a written explanation that the  
6           information has already been provided to the Secretary and a reference to the  
7           permit, enforcement action, or other matter under which the Secretary obtained  
8           the requested information.

9           (2) A person responding to a request under subsection (a) of this section  
10          may assert any privilege under statute, rule, or common law that is recognized  
11          in the State of Vermont to limit access to such information, including the  
12          attorney-client privilege. A person responding to a request for information  
13          under this section shall not assert privileges related to business confidentiality,  
14          including trade secrets, in order to withhold requested information. Any  
15          information that is privileged shall be provided to the Secretary with the  
16          privileged material redacted. The Secretary may require that a person asserting  
17          a privilege under this section provide an index of all privileged information.

18          (c) The Secretary may require any person who has or may have knowledge  
19          of any information listed in subdivisions (a)(1) of this section to appear at the  
20          offices of the Secretary and may take testimony and require the production of  
21          records that relate to a release or threatened release of a hazardous material.



1        (d) Any request for information under this section shall be served  
2        personally or by certified mail.

3        (e) A response to a request under this section shall be personally certified  
4        by the person responding to the request that:

5                (1) the response is accurate and truthful; and

6                (2) the person has not omitted responsive information or will provide the  
7        responsive information according to a production schedule approved by the  
8        Secretary.

9        (f) Information that qualifies for the trade secret exemption under 1 V.S.A.  
10       § 317(c)(9) and other financial information submitted under this section shall  
11       be confidential and shall not be subject to inspection and copying under the  
12       Public Records Act. A person subject to an information request under this  
13       section shall be responsible for proving that submitted information qualifies for  
14       the trade secret exemption under 1 V.S.A. § 317(c)(9). The following  
15       information is not trade secret information or financial information for the  
16       purposes of this subsection:

17                (1) the trade name, common name, or generic class or category of the  
18        hazardous material;

19                (2) the physical properties of the hazardous material, including its  
20        boiling point, melting point, flash point, specific gravity, vapor density,  
21        solubility in water, and vapor pressure at 20 degrees Celsius;

1           (3) the hazards to health and the environment posed by the hazardous  
2           material, including physical hazards and potential acute and chronic health  
3           hazards;

4           (4) the potential routes of human exposure to the hazardous material at  
5           the facility;

6           (5) the location of disposal of any waste stream at the facility;

7           (6) any monitoring data or analysis of monitoring data pertaining to  
8           disposal activities;

9           (7) any hydrogeologic or geologic data; or

10          (8) any groundwater monitoring data.

11          (g) As used in this section, “information” means any written or recorded  
12          information, including all documents, records, photographs, recordings, e-mail,  
13          or correspondence.

14          Sec. 9. 10 V.S.A. § 6615d is added to read:

15          § 6615d. NATURAL RESOURCE DAMAGES; LIABILITY;

16                   RULEMAKING

17          (a) Definitions. As used in this section:

18               (1) “Baseline condition” means the condition or conditions that would  
19               have existed at the area of assessed damages had the release of hazardous  
20               material not occurred.

21               (2) “Damages” means the amount of money sought by the Secretary for  
22               the injury, destruction, or loss of natural resources.

1           (3) “Destruction” means the total and irreversible loss of natural  
2 resources.

3           (4) “Injury” means a measurable adverse long-term or short-term change  
4 in the chemical or physical quality or viability of a natural resource resulting  
5 either directly or indirectly from exposure to a release of hazardous material or  
6 exposure to a product of reactions from a release of hazardous materials.

7           (5) “Loss” means a measurable adverse reaction of a chemical or  
8 physical quality of viability of a natural resource.

9           (6) “Natural resources” means fish, wildlife, biota, air, surface water,  
10 groundwater, wetlands, drinking water supplies, or State-held public lands.

11           (7) “Natural resource damage assessment” means the process of  
12 collecting, compiling, and analyzing information, statistics, or data through  
13 prescribed methodologies to determine the damages for injuries to natural  
14 resources.

15           (8) “Restoring,” “restoration,” “rehabilitating,” or “rehabilitation”  
16 means actions undertaken to return an injured natural resource to its baseline  
17 condition, as measured in terms of the injured resource’s physical, chemical, or  
18 biological properties or the services it had previously provided, when such  
19 actions are in addition to a response action.

20           (b) Authorization. The Secretary may assess damages against any person  
21 found to be liable under section 6615 of this title for a release or threatened  
22 release of hazardous material for injury to, destruction of, or loss of natural

1 resources from the release or threatened release. The measure of damages that  
2 may be assessed for natural resources damages shall include the cost of  
3 restoring or rehabilitating injured, damaged, or destroyed natural resources,  
4 compensation for the interim injury to or loss of natural resources pending  
5 recovery, and any reasonable costs of the Secretary in conducting a natural  
6 resources damage assessment.

7 (c) Rulemaking; methodology. The Secretary shall adopt rules to  
8 implement the requirements of this section, including a methodology by which  
9 the Secretary shall assess and value natural resources damages. The rules shall  
10 include:

11 (1) requirements or acceptable standards for the preassessment of  
12 natural resources damages, including requirements for:

13 (A) notification of the Secretary or other necessary persons;

14 (B) authorized emergency response to natural resources  
15 damages, and

16 (C) sampling or screening of the potentially injured natural resources;

17 (2) requirements for the a natural resources damages assessment plan to  
18 ensure that the natural resources damage assessment is performed in a designed  
19 and systematic manner, including:

20 (A) the categories of reasonable and necessary costs that may be  
21 incurred as part of the assessment plan;

22 (B) the methodologies for identifying and screening costs;

1           (C) the types of assessment procedures available to the Secretary,  
2           when the available procedures are authorized, and the requirements of the  
3           available procedures;

4           (D) how injury or loss shall be determined and how injury or loss is  
5           quantified; and

6           (E) how damages are determined;

7           (3) requirements for post-natural resources damages assessment,  
8           including:

9           (A) the documentation that the Secretary shall produce to complete  
10          the assessment;

11          (B) how the Secretary shall seek recovery; and

12          (C) when and whether the Secretary shall require a restoration  
13          plan; and

14          (4) other requirements deemed necessary by the Secretary for  
15          implementation of the rules.

16          (d) Exceptions. The Secretary shall not seek to recover natural resources  
17          damages under this section when the person liable for the release or threatened  
18          release:

19               (1) demonstrates that the alleged natural resources damages were  
20               identified as a potential irreversible or irretrievable environmental effect on  
21               natural resource damages in an application for, renewal of, review of, or other

1 environmental assessment of a permit, certification, license or other required  
2 authorization;

3 (2) the Secretary authorized the identified effect on natural resources in  
4 an issued permit, certification, license, or other authorization; and

5 (3) the person liable for the release or threatened release was operating  
6 within the terms of its permit, certification, license, or other authorization.

7 (e) Limitations. The natural resources damages authorized under this  
8 section and the requirements for assessment under the rules authorized by this  
9 section shall not limit the authority of the Secretary of Natural Resources to  
10 seek or recover natural resource damages under other State law, federal law, or  
11 common law.

12 Sec. 10. NATURAL RESOURCES DAMAGES; COMMENCEMENT;

13 ADOPTION

14 (a) The Secretary of Natural Resources shall consult with interested parties  
15 in the adoption of rules under 10 V.S.A. § 6615d.

16 (b) The Secretary of Natural Resources shall commence rulemaking under  
17 10 V.S.A. § 6615d on or before January 1, 2017. The Secretary shall adopt  
18 rules under 10 V.S.A. § 6615d on or before November 1, 2017.

19 (c) On or before February 15, 2017, the Secretary of Natural Resources  
20 shall submit to the Senate and House Committees on Natural Resources and  
21 Energy and the House Committee on Fish, Wildlife and Water Resources a

1 copy of the draft rules for natural resource damages required under 10 V.S.A.  
2 § 6615d for review.

3 (d) The Secretary of Natural Resources shall not seek natural resources  
4 damages under 10 V.S.A. § 6615d until the rules required under 10 V.S.A.  
5 § 6615d(c) are effective.

6 Sec. 11. 10 V.S.A. § 8005(b) is amended to read:

7 (b) Access orders and information requests.

8 (1) A Superior Court judge shall issue an access order when access has  
9 been refused and the investigator, by affidavit, describes the property to be  
10 examined and identifies:

11 (A) a provision of a permit that authorizes the inspection; or

12 (B) the property as being scheduled for inspection in accordance with  
13 a neutral inspection program adopted by the Secretary or the Natural Resources  
14 Board; or

15 (C) facts providing reasonable grounds to believe that a violation  
16 exists and that an examination of the specifically described property will be of  
17 material aid in determining the existence of the violation.

18 (2) A Superior Court shall issue an order requiring compliance with an  
19 information request submitted pursuant to section 6615c of this title when:

20 (A) the person served with the request fails to respond to the request  
21 in the time frame identified by the Secretary;

1           (B) the Secretary submits, by affidavit, facts providing reasonable  
2           grounds that a release or threatened release has taken place; and

3           (C) the information will be of material aid in responding to the  
4           release or threatened release.

5           (3) Issuance of an access order shall not negate the Secretary’s authority  
6           to initiate criminal proceedings in the same matter by referring the matter to  
7           the Office of the Attorney General or a State’s Attorney.

8           Sec. 12. AGENCY OF NATURAL RESOURCES’ WORKING GROUP ON  
9           TOXIC CHEMICAL USE IN THE STATE

10          (a) Formation. On or before July 1, 2016, the Secretary of Natural  
11          Resources shall establish a working group of interested parties to develop  
12          recommendations for how to improve the ability of the State to:

13                (1) prevent citizens and communities in the State from being exposed to  
14                toxic chemicals, hazardous materials, or hazardous wastes;

15                (2) identify and regulate the use of toxic chemicals or hazardous  
16                materials that currently are unregulated by the State; and

17                (3) inform communities and citizens in the State of potential exposure to  
18                toxic chemicals, including contamination of groundwater, public drinking  
19                water systems, and private potable water supplies

20          (b) Duties. The Working Group shall:

21                (1) recommend actions the State of Vermont could take to improve how  
22                data is collected and what data is collected regarding the location of sites



1 where toxic chemicals, hazardous materials, or hazardous waste is used, stored,  
2 or managed; and the proximity of these sites to both public and private water  
3 supplies;

4 (2) recommend actions the State of Vermont could take to improve what  
5 information is made available to the public, and how it is made publically  
6 available, regarding the risks to private and public drinking water supplies and  
7 groundwater from toxic chemicals, hazardous materials, or hazardous waste;

8 (3) recommend actions the State of Vermont could take to improve the  
9 identification process and consistency of listing and regulating hazardous  
10 materials, hazardous waste, and toxic chemicals regulated within DEC and the  
11 Department of Health, to ensure the State is adequately identifying chemicals  
12 that pose a threat to human health, and that it has the necessary tools to prevent  
13 and respond to chemical threats to human health;

14 (4) recommend actions the State of Vermont could take to improve the  
15 prevention, detection, and response to the contamination of public drinking  
16 water supplies and groundwater from toxic chemicals, hazardous materials, or  
17 hazardous waste;

18 (5) identify potential fiscal issues related to its recommendations, and  
19 make recommendations on actions the State of Vermont could take to better  
20 fund existing programs and any recommended improvements; and

21 (6) develop recommended legislative changes that may be needed to  
22 implement recommendations and strategies.

1       (c) The Working Group shall submit a report to the Senate and House  
2       Committees on Natural Resources and Energy and to the House Committee on  
3       Fish, Wildlife and Water Resources with its findings and recommendations on  
4       or before January 15, 2017.

5       Sec. 13. EFFECTIVE DATES

6       (a) This section and Secs. 1 (ANR authorization to adopt surface water  
7       rules), 3 (surface water source rules; potable water supply), 6 (certification of  
8       laboratories), 7 (Environmental Contingency Fund), 8 (ANR information  
9       requests), 9–10 (natural resources damages), 11 (ANR enforcement), and 12  
10      (ANR working group on toxic chemicals) shall take effect on passage.

11      (b) Secs. 4–5 (testing of new groundwater sources) shall take effect on  
12      passage, except that 10 V.S.A. § 1982(b) (the requirement to test new  
13      groundwater sources) shall take effect on January 1, 2017.

14      (c) Sec. 2 (permitting of surface water sources) shall take effect July 1,  
15      2017.

16

17

18      (Committee vote: \_\_\_\_\_)

19

\_\_\_\_\_

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Senator \_\_\_\_\_

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FOR THE COMMITTEE