

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 as  
6 follows:

7 First: In Sec. 2, 10 V.S.A. § 1981, by striking out subdivision (6) in its  
8 entirety and inserting in lieu thereof the following:

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

12 Second: By striking out Sec. 4 in its entirety and inserting in lieu thereof  
13 the following:

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

15 § 1982. TESTING OF NEW GROUNDWATER SOURCES

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

19 (b) Prior to use of a new groundwater source as a potable water supply,  
20 where testing is not otherwise required, the person who owns or controls the

1 groundwater source shall test the groundwater source for the parameters set  
2 forth in subsection (c) of this section.

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

8 (d) The Secretary, after consultation with the Department of Health, the  
9 Wastewater and Potable Water Supply Technical Advisory Committee, the  
10 Vermont Realtors, the Vermont Association of Professional Home Inspectors,  
11 private laboratories, and other interested parties, shall adopt by rule  
12 requirements regarding:

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

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

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

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

1 Sec. 5. 18 V.S.A. § 501b is amended to read:

2 § 501b. CERTIFICATION OF LABORATORIES

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

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

10 (2) of water from a potable water supply, as that term is defined in  
11 10 V.S.A. § 1972(6).

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

15 (A) submitted materially false or materially inaccurate  
16 information; or

17 (B) violated any material requirement, restriction, or condition of the  
18 certificate; or

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

20 (2) The order shall set forth what steps, if any, may be taken by the  
21 certificate holder to relieve the holder of the suspension or enable the

1 certificate holder to reapply for certification if a previous certificate has been  
2 revoked.

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

5 \* \* \*

6 (g) In accrediting a laboratory to conduct testing of potable water supplies  
7 under 10 V.S.A. § 1982, the Commissioner shall require a laboratory  
8 accredited under this section to submit in an electronic format to the  
9 Department of Health and the Agency of Natural Resources the results of  
10 groundwater analyses conducted pursuant to 10 V.S.A. § 1982.

11 Sec. 6. 10 V.S.A. § 1283(b) is amended to read:

12 (b) Disbursements under this subsection may be made for emergency  
13 purposes or to respond to other than emergency situations; provided, however,  
14 that disbursements in response to an individual situation which is not an  
15 emergency situation shall not exceed \$100,000.00 for costs attributable to each  
16 of the subdivisions of this subsection, unless the Secretary has received the  
17 approval of the General Assembly, or the Joint Fiscal Committee, in case the  
18 General Assembly is not in session. Furthermore, the balance in the Fund shall  
19 not be drawn below the amount of \$100,000.00, except in emergency  
20 situations. If the balance of the Fund becomes insufficient to allow a proper  
21 response to one or more emergencies that have occurred, the Secretary shall

1 appear before the Emergency Board, as soon as possible, and shall request that  
2 necessary funds be provided. Within these limitations, disbursements from the  
3 Fund may be made:

4 \* \* \*

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

9 \* \* \*

10 Sec. 7. 10 V.S.A. § 6615c is added to read:

11 § 6615c. INFORMATION REQUESTS

12 (a) When the Secretary has reasonable cause to believe that a person caused  
13 or contributed to a release of a hazardous material or illegal disposal of waste,  
14 the Secretary, upon reasonable notice, may require the person to furnish  
15 information related to:

16 (1) the type, nature, and quantity of any commercial chemical product,  
17 hazardous material, or waste that has been or is being used, generated, treated,  
18 stored, or disposed of at a facility or transported to a facility;

19 (2) the nature or extent of a release or threatened release of a hazardous  
20 material or waste from a facility; and

1           (3) financial information and information surrounding the corporate  
2           structure, if any, of a person alleged to have caused or contributed to a release,  
3           including information related to the ability of a person to pay for or to perform  
4           a cleanup.

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

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

10                   (2) copy and furnish to the Secretary all such documents or records, at  
11                   the option and expense of the person.

12           (c) The Secretary may require any person who has or may have knowledge  
13           of any information listed in subdivisions (a)(1) through (3) of this section to  
14           appear at the offices of the Secretary and may take testimony and require the  
15           production of records that relate to a release or threatened release of a  
16           hazardous material.

17           (d) Any request for access or information under this section shall be served  
18           personally or by certified mail.

19           (e) Trade secret information and confidential business information  
20           submitted under this section shall be exempt from public inspection and  
21           copying under 1 V.S.A. § 317(c)(9). Financial information submitted under

1 this section shall be exempt from public inspection and copying under 1 V.S.A.  
2 § 317(c)(7).

3 (f) As used in this section, “information” means any written or recorded  
4 information, including all documents, records, photographs, recordings, e-mail,  
5 or correspondence.

6 Sec. 8. 10 V.S.A. § 6615d is added to read:

7 § 6615d. NATURAL RESOURCE DAMAGES; LIABILITY;

8 RULEMAKING

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

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

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

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

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

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

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

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

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

14           (b) Authorization. The Secretary may assess damages against any person  
15           found to be liable under section 6615 of this title for a release or threatened  
16           release of hazardous material for injury to, destruction of, or loss of natural  
17           resources from the release or threatened release. The measure of damages that  
18           may be assessed for natural resources damages shall include the cost of  
19           restoring or rehabilitating injured, damaged, or destroyed natural resources,  
20           compensation for the interim injury to or loss of natural resources pending

1 recovery, and any reasonable costs of the Secretary in conducting a natural  
2 resources damage assessment.

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

7 (1) Requirements or acceptable standards for the preassessment of  
8 natural resources damages, including requirements for:

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

10 (B) authorized emergency response to natural resources  
11 damages, and

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

13 (2) Requirements for the a natural resources damages assessment plan to  
14 ensure that the natural resources damage assessment is performed in a designed  
15 and systematic manner, including:

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

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

19 (C) the types of assessment procedures available to the Secretary,  
20 when the available procedures are authorized, and the requirements of the  
21 available procedures;

1           (D) how injury or loss shall be determined and how injury or loss is  
2 quantified; and

3           (E) how damages are determined.

4           (3) Requirements for post-natural resources damages assessment,  
5 including:

6           (A) the documentation that the Secretary shall produce to complete  
7 the assessment;

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

9           (C) when and whether the Secretary shall require a restoration plan.

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

13           (1) demonstrates that the alleged natural resources damages were  
14 identified as a potential irreversible or irretrievable environmental effect on  
15 natural resource damages in an application for, renewal of, review of, or other  
16 environmental assessment of a permit, certification, license or other required  
17 authorization;

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

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

1       (e) Limitations. The natural resources damages authorized under this  
2       section and the requirements for assessment under the rules authorized by this  
3       section shall not limit the authority of the Secretary of Natural Resources to  
4       seek or recover natural resource damages under other State law, federal law, or  
5       common law.

6       Sec. 9. NATURAL RESOURCES DAMAGES; COMMENCEMENT;

7       ADOPTION;

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

10       (b) The Secretary of Natural Resources shall commence rulemaking under  
11       10 V.S.A. § 6615d on or before January 1, 2017. The Secretary shall adopt  
12       rules under 10 V.S.A. § 6615d on or before November 1, 2017.

13       (c) On or before February 15, 2017, the Secretary of Natural Resources  
14       shall submit to the Senate and House Committees on Natural Resources and  
15       Energy and the House Committee on Fish, Wildlife and Water Resources a  
16       copy of the draft rules for natural resource damages required under 10 V.S.A.  
17       § 6615d for review.

18       (d) The Secretary of Natural Resources shall not seek natural resources  
19       damages under 10 V.S.A. § 6615d until the rules required under 10 V.S.A.  
20       § 6615d(c) are effective.

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

2 (b) Access orders and information requests.

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

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

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

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

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

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

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

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

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

4 **Sec. 11. AGENCY OF NATURAL RESOURCES' WORKING GROUP ON**  
5 **TOXIC CHEMICAL USE IN THE STATE**

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

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

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

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

16           (b) Duties. The Working Group shall:

17                 (1) recommend actions the State of Vermont could take to improve how  
18 data is collected and what data is collected regarding the location of sites  
19 where toxic chemicals, hazardous materials, or hazardous waste is used, stored,  
20 or managed; and the proximity of these sites to both public and private water  
21 supplies;

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

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

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

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

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

20          (c) The Working Group shall submit a report to the Senate and House  
21          Committees on Natural Resources and Energy and to the House Committee on

1 Fish, Wildlife and Water Resources with its findings and recommendations on  
2 or before January 15, 2017.

3 Sec. 12. EFFECTIVE DATES

4 (a) This section and Secs. 1–3 (surface water source; potable water supply),  
5 5 (certification of laboratories), 6 (Environmental Contingency Fund), 7 (ANR  
6 information requests), 8–9 (natural resources damages), 10 (ANR  
7 enforcement), and 11 (ANR toxic chemical report) shall take effect on passage.

8 (b) Sec. 4 (testing of new groundwater sources) shall take effect on  
9 passage, except that 10 V.S.A. § 1982(b) (the requirement to test new  
10 groundwater sources) shall take effect on January 1, 2017.

11  
12  
13 (Committee vote: \_\_\_\_\_)

14 \_\_\_\_\_

15 Senator \_\_\_\_\_

16 FOR THE COMMITTEE