

Yellow highlighting = Changes from Draft 2.1

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

Yellow highlighting = Changes from Draft 2.1

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 by rule 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.

Yellow highlighting = Changes from Draft 2.1

1 Sec. 5. AGENCY OF NATURAL RESOURCES; GROUNDWATER

2 SOURCE TESTING

3 The Secretary of Natural Resources shall commence rulemaking under
4 10 V.S.A. § 1982 on or before July 1, 2016. The Secretary shall adopt rules
5 under 10 V.S.A. § 1982 on or before January 1, 2017.

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

7 § 501b. CERTIFICATION OF LABORATORIES

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

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

15 (2) of water from a potable water supply, as that term is defined in
16 10 V.S.A. § 1972(6).

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

20 (A) submitted materially false or materially inaccurate
21 information; or

Yellow highlighting = Changes from Draft 2.1

1 (B) violated any material requirement, restriction, or condition of the
2 certificate; or

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

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

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

10 * * *

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

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

17 (b) Disbursements under this subsection may be made for emergency
18 purposes or to respond to other than emergency situations; provided, however,
19 that disbursements in response to an individual situation which is not an
20 emergency situation shall not exceed \$100,000.00 for costs attributable to each
21 of the subdivisions of this subsection, unless the Secretary has received the

Yellow highlighting = Changes from Draft 2.1

1 approval of the General Assembly, or the Joint Fiscal Committee, in case the
2 General Assembly is not in session. Furthermore, the balance in the Fund shall
3 not be drawn below the amount of \$100,000.00, except in emergency
4 situations. If the balance of the Fund becomes insufficient to allow a proper
5 response to one or more emergencies that have occurred, the Secretary shall
6 appear before the Emergency Board, as soon as possible, and shall request that
7 necessary funds be provided. Within these limitations, disbursements from the
8 Fund may be made:

9 * * *

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

14 * * *

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

16 § 6615c. INFORMATION REQUESTS

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

Yellow highlighting = Changes from Draft 2.1

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

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

6 (C) Financial information related to the ability of a person to pay for
7 or to perform a cleanup or information surrounding the corporate structure, if
8 any, of such person who may be subject to liability for a release or threat of
9 release, as detailed in section 6615 of this chapter.

10 (2) A person served with an information request shall respond within
11 10 days of receipt of the request or by the date specified by the Secretary in the
12 request.

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

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

18 (B) copy and furnish to the Secretary all such information at the
19 option and expense of the person or provide a written explanation that the
20 information has already been provided to the Secretary and reference to the
21 matter in the Secretary's possession that contains the information.

Yellow highlighting = Changes from Draft 2.1

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

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

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

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

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

Yellow highlighting = Changes from Draft 2.1

1 (2) the person has not omitted responsive information or will provide the
2 response information according to a production schedule approved by the
3 Secretary.

4 (f) Information that qualifies for the trade secret exemption under 1 V.S.A.
5 § 317(c)(9) and other financial information submitted under this section shall
6 be confidential and shall not be subject to inspection and copying under the
7 Public Records Act. A person subject to an information request under this
8 section shall be responsible for proving that submitted information qualifies for
9 the trade secret exemption under 1 V.S.A. § 317(c)(9). The following
10 information is not trade secret information or financial information for the
11 purposes of this subsection:

12 (1) The trade name, common name, or generic class or category of the
13 hazardous material;

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

17 (3) The hazards to health and the environment posed by the hazardous
18 material, including physical hazards and potential acute and chronic health
19 hazards;

20 (4) The potential routes of human exposure to the hazardous material at
21 the facility;

Yellow highlighting = Changes from Draft 2.1

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

2 (6) Any monitoring data or analysis of monitoring data pertaining to
3 disposal activities;

4 (7) Any hydrogeologic or geologic data; or

5 (8) Any groundwater monitoring data.

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

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

10 § 6615d. NATURAL RESOURCE DAMAGES; LIABILITY;

11 RULEMAKING

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

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

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

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

20 (4) “Injury” means a measurable adverse long-term or short-term change
21 in the chemical or physical quality or viability of a natural resource resulting

Yellow highlighting = Changes from Draft 2.1

1 either directly or indirectly from exposure to a release of hazardous material or
2 exposure to a product of reactions from a release of hazardous materials.

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

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

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

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

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

Yellow highlighting = Changes from Draft 2.1

1 compensation for the interim injury to or loss of natural resources pending
2 recovery, and any reasonable costs of the Secretary in conducting a natural
3 resources damage assessment.

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

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

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

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

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

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

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

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

Yellow highlighting = Changes from Draft 2.1

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 plan.

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

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

Yellow highlighting = Changes from Draft 2.1

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

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

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

10 Sec. **10**. NATURAL RESOURCES DAMAGES; COMMENCEMENT;

11 ADOPTION

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

14 (b) The Secretary of Natural Resources shall commence rulemaking under
15 10 V.S.A. § 6615d on or before January 1, 2017. The Secretary shall adopt
16 rules under 10 V.S.A. § 6615d on or before November 1, 2017.

17 (c) On or before February 15, 2017, the Secretary of Natural Resources
18 shall submit to the Senate and House Committees on Natural Resources and
19 Energy and the House Committee on Fish, Wildlife and Water Resources a
20 copy of the draft rules for natural resource damages required under 10 V.S.A.
21 § 6615d for review.

Yellow highlighting = Changes from Draft 2.1

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

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

5 (b) Access orders and information requests.

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

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

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

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

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

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

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

Yellow highlighting = Changes from Draft 2.1

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

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

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

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

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

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

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

18 (b) Duties. The Working Group shall:

19 (1) recommend actions the State of Vermont could take to improve how
20 data is collected and what data is collected regarding the location of sites
21 where toxic chemicals, hazardous materials, or hazardous waste is used, stored,

Yellow highlighting = Changes from Draft 2.1

1 or managed; and the proximity of these sites to both public and private water
2 supplies;

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

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

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

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

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

Yellow highlighting = Changes from Draft 2.1

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. 10 V.S.A. § 1264(c) is amended to read:

6 (c) Prohibitions.

7 (1) A person shall not commence the construction or redevelopment of
8 ~~one~~ one-half of an acre or more of impervious surface without first obtaining a
9 permit from the Secretary.

10 (2) A person shall not discharge from a facility that has a standard
11 industrial classification identified in 40 C.F.R. § 122.26 without first obtaining
12 a permit from the Secretary.

13 (3) A person that has been designated by the Secretary as requiring
14 coverage for its municipal separate storm sewer system may not discharge
15 without first obtaining a permit from the Secretary.

16 (4) A person shall not commence a project that will result in an earth
17 disturbance of one acre or greater, or less than one acre if part of a common
18 plan of development, without first obtaining a permit from the Secretary.

19 (5) A person shall not expand existing impervious surface by more than
20 5,000 square feet, such that the total resulting impervious area is greater than
21 ~~one~~ one-half of an acre, without first obtaining a permit from the Secretary.

Yellow highlighting = Changes from Draft 2.1

1 (6)(A) In accordance with the schedule established under subdivision
2 (g)(2) of this section, a municipality shall not discharge stormwater from a
3 municipal road without first obtaining:

4 (i) an individual permit;

5 (ii) coverage under a municipal road general permit; or

6 (iii) coverage under a municipal separate storm sewer system
7 permit that implements the technical standards and criteria established by the
8 Secretary for stormwater improvements of municipal roads.

9 (B) As used in this subdivision (6), “municipality” means a city,
10 town, or village.

11 (7) In accordance with the schedule established under subdivision (g)(3)
12 of this section, a person shall not discharge stormwater from impervious
13 surface of three or more acres in size without first obtaining an individual
14 permit or coverage under a general permit issued under this section if the
15 discharge was never previously permitted or was permitted under an individual
16 permit or general permit that did not incorporate the requirements of the 2002
17 Stormwater Management Manual or any subsequently adopted Stormwater
18 Management Manual.

19 **Sec. 14. APPLICABILITY OF AGENCY RULES**

20 All Agency of Natural Resources rules applicable to the construction or
21 redevelopment of one acre or more of impervious surface or the expansion of

Yellow highlighting = Changes from Draft 2.1

1 existing impervious surface by more than 5,000 square feet, such that the total
2 resulting impervious area is greater than one acre, shall be applicable to the
3 construction or redevelopment of one-half of an acre or more of impervious
4 surface or the expansion of existing impervious surface by more than 5,000
5 square feet, such that the total resulting impervious area is greater than
6 one-half of an acre.

7 **Sec. 15. TRANSITION**

8 The construction or redevelopment of less than one acre of impervious
9 surface and the expansion of existing impervious surface by more than 5,000
10 square feet, such that the total resulting impervious surface is less than one
11 acre, shall not require a permit under 10 V.S.A. § 1264(c)(1) or (5) provided
12 that:

13 (1) except for application for permits issued pursuant to 10 V.S.A.
14 § 1264(c)(4), complete applications for all local, State, and federal permits
15 related to the regulation of land use or a discharge to waters of the State have
16 been submitted as of the effective date of this act, the applicant does not
17 subsequently file an application for a permit amendment that would have an
18 adverse impact on water quality, and substantial construction of the project
19 commences within two years of the effective date of this act;

20 (2) except for permits issued pursuant to 10 V.S.A. § 1264(c)(4), all
21 local, State, and federal permits related to the regulation of land use or a

Yellow highlighting = Changes from Draft 2.1

1 discharge to waters of the State have been obtained as of the effective date of
2 this act, and substantial construction of the project commences within two
3 years of the effective date of this act;

4 (3) except for permits issued pursuant to 10 V.S.A. § 1264(c)(4), no
5 local, State, or federal permits related to the regulation of land use or a
6 discharge to waters of the State are required, and substantial construction of the
7 project commences within two years of the effective date of this act; or

8 (4) the construction, redevelopment, or expansion is a public
9 transportation project, and as of the effective date of this act, the Agency of
10 Transportation or the municipality principally responsible for the project has
11 initiated right-of-way valuation activities or determined that right-of-way
12 acquisition is not necessary, and substantial construction of the project
13 commences within five years of the effective date of this act.

14 Sec. 16. EFFECTIVE DATES

15 (a) This section and Secs. 1–3 (surface water source; potable water supply),
16 6 (certification of laboratories), 7 (Environmental Contingency Fund), 8 (ANR
17 information requests), 9–10 (natural resources damages), 11 (ANR
18 enforcement), and 12 (ANR working group on toxic chemicals) shall take
19 effect on passage.

Yellow highlighting = Changes from Draft 2.1

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

4 (c) Secs. 13–15 (stormwater; impervious surface threshold) shall take effect
5 45 days after the effective date of the next amendment by rule of the Agency of
6 Natural Resources’ Stormwater Management Manual.

7
8

9 (Committee vote: _____)

10
11
12

Senator _____

FOR THE COMMITTEE