

Draft Language for Toxics Legislation 2016

- **Citizen Suit**
 - Pursuant to 10 VSA § 1390 (5), Vermont has recognized that groundwater resources of the state are held in trust for the public, and the state has an obligation to manage this public trust resource. To further protection of groundwater in Vermont, any person may commence a civil action on that person's own behalf in the Environmental Division of Superior Court against any person alleged to be in violation of a permit, standard, resolution, condition, requirement prohibition or order issued pursuant to any of the provisions of Title 10, Chapters 48 (Groundwater Protection) and 159 (Waste Management).
 - Include language providing 60-day notice of intent to sue, and allowing ANR to participate.
- **Private Well Testing**
 - Use language from S.77, 2011, updated as needed (e.g., dates)
- **Restrict the use of PFOA and PFOS**
 - Restrict the use of PFOA and PFOS in consumer products and food packaging sold in Vermont
 - DOH, in consultation with ANR, shall report back to the legislature on recommendations for further potential restrictions on the use of other PFCs in consumer products.
- **Summer Study on Regulating Toxic Chemicals in Consumer Products:**
 - Context: The contamination of private wells and a public water supply in North Bennington and Pownal have brought to light the threats to Vermonters' drinking water supplies and groundwater. While the focus on the crisis in North Bennington and Pownal has appropriately been on responding to the immediate needs of the communities and beginning to address long-term solutions to the water supply contamination, there is a need to ensure that tools exist to prevent future contamination of water supplies, detect contamination early, in addition to responding when contamination is discovered.
 - The contamination in North Bennington and Pownal likely existed for some time, and could have remained undetected. In order to understand the potential for contamination of drinking water supplies and groundwater statewide, and to evaluate whether communities have sufficient access to information about the potential for drinking water and groundwater contamination in their communities, the Legislature requires the following:
 - On or before December 15, 2016, the Agency of Natural Resources (ANR) shall submit a report to the Senate Committee on Natural Resources and Energy, the House

Committee on Natural Resources and Energy, and the House Committee on Fish, Wildlife and Water that outlines the following:

- All information ANR collects on the location of sites where toxic substances, hazardous materials, and/or hazardous waste is used, stored, and/or managed;
- All information ANR has on the proximity of sites where toxic substances, hazardous materials, and/or hazardous waste is used, stored, and/or managed to public water supplies, and how this information is made available to the public;
- All information ANR has on the proximity of sites where toxic substances, hazardous materials, and/or hazardous waste is used, stored, and/or managed to private wells and how this information is made available to the public;
- Any risk assessments that ANR conducts regarding the threat of contamination of public water supplies, private wells and/or groundwater from sites where toxic substances, hazardous materials, and/or hazardous waste is used, stored, and/or managed;
- Any actions that ANR takes in response to risk assessments that ANR conducts regarding the threat of contamination of public water supplies, private wells and/or groundwater from sites where toxic substances, hazardous materials, and/or hazardous waste is used, stored, and/or managed, including but not limited to monitoring groundwater quality, testing private wells and testing public water supplies;
- Recommended legislation for:
 - improving the collection of information on the location of sites where toxic substances, hazardous materials, and/or hazardous waste is used, stored, and/or managed and linking the location of such sites to the threat of contamination of public water supplies, private wells and/or groundwater; and
 - toxic substances, hazardous materials and/or hazardous waste that should be added to the list of substances currently reported to ANR; and
 - how to fund private well testing and/or premium groundwater mapping as set forth in the ANR 2003 Report on the Status of Groundwater and Aquifer Mapping in the State of Vermont in areas where a risk assessment indicates there is a high risk of contamination.
- ANR shall collaborate on the report with following: VLCT, RPC's, TAC, VCV, VNRC, VPIRG, AIV

○ **Assessing the adequacy of Act 188 for protecting public health from toxic chemicals in consumer products:**

▪ **Context:** Given that Vermont has restricted the use of toxic chemicals in a range of consumer products including lead, mercury, phthalates, and flame retardants; and that chemicals of high concern to children have been identified by the Legislature and are maintained at the Vermont Department of Health, with requirements around disclosure of their use in children's products and with potential regulatory action authorized under Act 188 of 2014; and given that a perfluorinated chemical (PFOS) similar to PFOA, the chemical contaminating water in the Bennington area, is on the list of Chemicals of High Concern to Children; and given that a number of similarly toxic chemicals are commonly used in consumer products; and that hazardous chemicals lists are maintained and regulated in various ways by both the Vermont Department of Health and the Agency of Natural Resources:

- On or before December 15, 2016, the Department of Health, in consultation with the Agency of Natural Resources (ANR), shall submit a report to the Senate Committee on Natural Resources and Energy, the House Committee on Natural Resources and Energy, the House Committee on Fish, Wildlife and Water, the Senate Committee on Health and Welfare, and the House Committee on Human Services that outlines the following:
 - Whether the Act 188 list of Chemicals of High Concern to Children is consistent with the lists of hazardous substances in other toxics laws (RCRA, Clean Air Act, Clean Water Act, etc) or if this list, or any of the hazardous substance lists, should be updated to be more consistent;
 - Examine if the scope of products covered under Act 188 should be updated to be sure it is adequately protective of the health impacts to pregnant women, immunocompromised individuals, teenagers, and other vulnerable populations; and
 - Make recommendations on how to improve the process for regulating Chemicals of High Concern in consumer products, such as by:
 - Updating the Working Group's charge, as proposed in amendment language to S.139 in 2015, to improve the process for regulating chemicals

- Adopt the regulatory language enacted by Oregon on these same chemicals of high concern in 2015