

1 S.10

2 Introduced by Senators Campion and Sears

3 Referred to Committee on Natural Resources and Energy

4 Date: January 10, 2017

5 Subject: Conservation and development; waste management; liability;  
6 contaminated potable water supplies

7 Statement of purpose of bill as introduced: The bill proposes to provide that a  
8 person who released perfluorooctanoic acid into the air, groundwater, or  
9 surface water, or onto the land is strictly, jointly, and severally liable for the  
10 costs of extending the water supply of a public water system to a property  
11 when the property is served by a potable water supply and the Secretary of  
12 Natural Resources has determined that the potable water supply on the  
13 property is a failed supply due to perfluorooctanoic acid contamination or is  
14 likely to be contaminated by perfluorooctanoic acid.

15 An act relating to liability for the contamination of potable water supplies

16 It is hereby enacted by the General Assembly of the State of Vermont:

17 ~~Sec. 1, 10 V.S.A., § 6615e is added to read:~~

18 ~~§ 6615e. RELIEF FOR CONTAMINATED POTABLE WATER SUPPLIES~~

19 ~~(a) Definitions. As used in this section:~~

1 (1) "Public water system" means any system or combination of systems  
2 owned or controlled by a person that provides drinking water through pipes or  
3 other constructed conveyances to the public and that has at least 15 service  
4 connections or serves an average of at least 25 individuals daily for at least  
5 60 days out of the year. A "public water system" includes all collection,  
6 treatment, storage, and distribution facilities under the control of the water  
7 supplier and used primarily in connection with the system, and any collection  
8 or pretreatment storage facilities not under the control of the water supplier  
9 that are used primarily in connection with the system. "Public water system"  
10 shall also mean any part of a system that does not provide drinking water, if  
11 use of such a part could affect the quality or quantity of the drinking water  
12 supplied by the system. "Public water system" shall also mean a system that  
13 bottles drinking water for public distribution and sale.

14 (2) "Public community water system" means a public water system that  
15 serves at least 15 service connections used by year-round residents or regularly  
16 serves at least 25 year-round residents.

17 (b) Extension of public community water system. In addition to a response  
18 action required under section 6615 or 6615b of this title, any person who the  
19 Secretary has determined released perfluorooctanoic acid into the air,  
20 groundwater, surface water, or onto the land shall be strictly, jointly, and  
21 severally liable for the costs of extending the water supply of a public water

1 system to a property when:

2 (1) the property is served by a potable water supply regulated under  
3 chapter 64 of this title; and

4 (2) the Secretary has determined that the potable water supply on the  
5 property:

6 (A) is a failed supply under chapter 64 of this title due to  
7 perfluorooctanoic acid contamination; or

8 (B) is likely to be contaminated by perfluorooctanoic acid due to the  
9 proximity of the public water supply to other public water supplies  
10 contaminated by perfluorooctanoic acid or due to other relevant factors.

11 (c) Liability payment. A person liable under subsection (b) of this section  
12 for the extension of the water supply of a public water system shall pay the  
13 operator of the public water system for the extension of the water supply  
14 within 30 days of notification of liability by the Secretary or within an  
15 alternate time frame ordered by the Secretary. If the person liable for the  
16 extension of the water supply does not pay the operator within the required  
17 time frame, the person shall be liable for interest on the assessed cost of the  
18 extension of the water supply.

19 (d) Appeal standard. Notwithstanding subsection 8504(h) of this title, the  
20 Environmental Division of the Superior Court shall review an appeal of a  
21 decision of the Secretary under this section on the record pursuant to Rule 74

1 ~~of the Vermont Rules of Civil Procedure. Prior to issuing a final liability~~  
2 ~~determination under subsection (b) of this section, the Secretary shall post a~~  
3 ~~proposed liability determination to the website of the Agency of Natural~~  
4 ~~Resources for public notice and written comment for 30 days. In developing~~  
5 ~~the record of a decision under this section, the Secretary shall provide any~~  
6 ~~person an opportunity to supplement the record of the liability determination.~~

7 Sec. 2. EFFECTIVE DATE AND APPLICATION

8 This act shall take effect on passage and shall apply to any determination of  
9 liability by the Secretary of Natural Resources thereafter under 10 V.S.A.

10 ~~§ 6615c regardless of the date of the relevant release of perfluorooctanoic acid.~~

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

§ 6615c. RELIEF FOR CONTAMINATED POTABLE WATER SUPPLIES

(a) Definitions. As used in this section:

(1) "Public water system" means any system or combination of systems owned or controlled by a person that provides drinking water through pipes or other constructed conveyances to the public and that has at least 15 service connections or serves an average of at least 25 individuals daily for at least 60 days out of the year. A "public water system" includes all collection, treatment, storage, and distribution facilities under the control of the water supplier and used primarily in connection with the system, and any collection or pretreatment storage facilities not under the control of the water supplier that are used primarily in connection with the system. "Public water system" shall also mean any part of a system that does not provide drinking water, if use of such a part could affect the quality or quantity of the drinking water supplied by the system. "Public water system" shall also mean a system that bottles drinking water for public distribution and sale.

(2) "Public community water system" means a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

~~(b) Extension of public community water system. In addition to a response~~

~~action required under section 6615 or 6615b of this title, any person who the Secretary has determined released perfluorooctanoic acid into the air, groundwater, surface water, or onto the land shall be strictly, jointly, and severally liable for the costs of extending the water supply of a public water system to a property when:~~

~~(1) the property is served by a potable water supply regulated under chapter 64 of this title;~~

~~(2) the Secretary has determined that the potable water supply on the property:~~

~~(A) is a failed supply under chapter 64 of this title due to perfluorooctanoic acid contamination; or~~

~~(B) is likely to be contaminated by perfluorooctanoic acid due to the proximity of the public water supply to other public water supplies contaminated by perfluorooctanoic acid or due to other relevant factors; and~~

~~(3) the person the Secretary determined released perfluorooctanoic acid into the air, groundwater, surface water, or onto the land is the cause of or contributor to the perfluorooctanoic acid contamination or likely contamination of the potable water supply.~~

~~(c) Liability payment. A person liable under subsection (b) of this section for the extension of the water supply of a public water system shall pay the operator of the public water system for the extension of the water supply within 30 days of notification of liability by the Secretary or within an alternate time frame ordered by the Secretary. If the person liable for the extension of the water supply does not pay the operator within the required time frame, the person shall be liable for interest on the assessed cost of the extension of the water supply.~~

~~(d) Appeal standard. Notwithstanding subsection 8504(h) of this title, the Environmental Division of the Superior Court shall review an appeal of a decision of the Secretary under this section on the record pursuant to Rule 74 of the Vermont Rules of Civil Procedure. Prior to issuing a final liability determination under subsection (b) of this section, the Secretary shall post a proposed liability determination to the website of the Agency of Natural Resources for public notice and written comment for 30 days. In developing the record of a decision under this section, the Secretary shall provide any person an opportunity to supplement the record of the liability determination.~~

## ~~Sec. 2. APPLICATION OF LIABILITY~~

~~(a) This act shall apply to any determination of liability made by the Secretary of Natural Resources under 10 V.S.A. § 6615e after the effective date~~

~~of the act.~~

~~(b) Notwithstanding any contrary provision of 1 V.S.A. § 214, this act shall apply to any relevant release of perfluorooctanoic acid regardless of the date of the relevant release, including releases that occurred prior to the effective date of this act.~~

~~Sec. 3. EFFECTIVE DATE~~

~~This act shall take effect on passage.~~

~~\*\*\* Contaminated Potable Water Supplies \*\*\*~~

~~Sec. 1. 10 V.S.A. § 6615e is added to read:~~

~~§ 6615e. RELIEF FOR CONTAMINATED POTABLE WATER SUPPLIES~~

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

~~(1) "Public water system" means any system or combination of systems owned or controlled by a person that provides drinking water through pipes or other constructed conveyances to the public and that has at least 15 service connections or serves an average of at least 25 individuals daily for at least 60 days out of the year. A "public water system" includes all collection, treatment, storage, and distribution facilities under the control of the water supplier and used primarily in connection with the system, and any collection or pretreatment storage facilities not under the control of the water supplier that are used primarily in connection with the system. "Public water system" shall also mean any part of a system that does not provide drinking water, if use of such a part could affect the quality or quantity of the drinking water supplied by the system. "Public water system" shall also mean a system that bottles drinking water for public distribution and sale.~~

~~(2) "Public community water system" means a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.~~

~~(b) Extension of public community water system.~~

~~(1) The Secretary, after due consideration of cost, may initiate a proceeding under this section to determine whether a person that released perfluorooctanoic acid into the air, groundwater, surface water, or onto the land is liable for the costs of extending the water supply of a public water system to an impacted property. A person who released perfluorooctanoic acid shall be liable for the extension of a municipal water line when:~~

~~(A) the property is served by a potable water supply regulated under chapter 64 of this title;~~

(B) the Secretary has determined that the potable water supply on the property:

(i) is a failed supply under chapter 64 of this title due to perfluorooctanoic acid contamination; or

(ii) is likely to fail due to contamination by perfluorooctanoic acid due to the proximity of the potable water supply to other potable water supplies contaminated by perfluorooctanoic acid or due to other relevant factors; and

(C) the person the Secretary determined released perfluorooctanoic acid into the air, groundwater, surface water, or onto the land is a cause of or contributor to the perfluorooctanoic acid contamination or likely contamination of the potable water supply.

(2) A person liable for the extension of a public water system under this section shall be strictly, jointly, and severally liable for all costs associated with that public water system extension. The remedy under this section is in addition to those provided by existing statutory or common law.

(c) Liability payment.

(1) Following notification of liability by the Secretary, a person liable under subsection (b) of this section for the extension of the water supply of a public water system shall pay the owner of the public water system for the extension of the water supply within 30 days of receipt of a final engineering design or within an alternate time frame ordered by the Secretary.

(2) If the person liable for the extension of the water supply does not pay the owner within the time frame required under subdivision (1) of this subsection, the person shall be liable for interest on the assessed cost of the extension of the water supply.

(d) Available defenses; rights. All defenses to liability and all rights to contribution or indemnification available to a person under section 6615 of this title are available to a person subject to liability under this section.

## Sec. 2. APPLICATION OF LIABILITY

(a) 10 V.S.A. § 6615e, enacted under Sec. 1 of this act, shall apply to any determination of liability made by the Secretary of Natural Resources under 10 V.S.A. § 6615e after the effective date of the section.

(b) Notwithstanding any contrary provision of 1 V.S.A. § 214, 10 V.S.A. § 6615e shall apply to any relevant release of perfluorooctanoic acid regardless of the date of the relevant release, including releases that occurred prior to the effective date of 10 V.S.A. § 6615e.

*\* \* \* Hazardous Materials \* \* \**

*Sec. 3. 10 V.S.A. § 6602(16) is amended to read:*

*(16)(A) “Hazardous material” means all petroleum and toxic, corrosive, or other chemicals and related sludge included in any of the following:*

*(i) any substance defined in section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980;*

*(ii) petroleum, including crude oil or any fraction thereof; ~~or~~*

*(iii) hazardous wastes, as determined under subdivision (4) of this section; or*

*(iv) a chemical or substance that, when released, poses a risk to human health or other living organisms and that is listed by the Secretary by rule.*

*(B) “Hazardous material” does not include herbicides and pesticides when applied consistent with good practice conducted in conformity with federal, State, and local laws and regulations and according to manufacturer’s instructions. Nothing in this subdivision shall affect the authority granted and the limitations imposed by section 6608a of this title.*

*Sec. 4. 10 V.S.A. § 6602(12) is amended to read:*

*(12) “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any ground or surface waters.*

*\* \* \* Brownfields \* \* \**

*Sec. 5. 10 V.S.A. § 6652(b) is amended to read:*

*(b) Upon receipt of the completion report, the Secretary shall determine whether additional work is required in order to complete the plan. The applicant shall perform any additional activities necessary to complete the corrective action plan as required by the Secretary and shall submit a new completion report. When the Secretary determines that the applicant has successfully completed the corrective action plan and paid all fees and costs due under this subchapter, the Secretary shall issue a certificate of completion, which certifies that the work is completed. The certificate of completion shall include a description of any land use restrictions and other conditions required by the corrective action plan. The Secretary may establish land use restrictions in the certificate of completion for a property, but the Secretary*

shall not acquire interests in the property in order to establish a land use restriction.

Sec. 6. 10 V.S.A. § 6653 is amended to read:

§ 6653. *RELEASE FROM LIABILITY; PERSONAL RELEASE FROM LIABILITY*

(a) *An applicant who has obtained a certificate of completion pursuant to section 6652 of this title and successor owners of the property included in the certificate of completion who are not otherwise liable under section 6615 for the release or threatened release of a hazardous material at the property shall not be liable under subdivision 6615(a)(1) of this title for any of the following:*

(1) *A release or threatened release that existed at the property at the time of the approval of the corrective action plan and complies with one or both of the following:*

(A) *was discovered after the approval of the corrective action plan by means that were not recognized standard methods at the time of approval of the corrective action plan;*

(B) *the material was not regulated as hazardous material until after approval of the corrective action plan.*

(2) *Cleanup after approval of the corrective action plan was done pursuant to more stringent cleanup standards effective after approval of the corrective action plan.*

(3) *Natural resource damages pursuant to section 6615d of this title, provided that the applicant did not cause the release that resulted in the damages to natural resources.*

\* \* \*

(c) *A release from liability under this section or forbearance from action provided by section 6646 of this title does not extend to any of the following:*

(1) *A release or threatened release of a hazardous material that was not present at the time the applicant submitted an application pursuant to this subchapter where the release or threatened release:*

(A) *has not been addressed under an amended corrective action plan approved by the Secretary; or*

(B) *was caused by intentional or reckless conduct by the applicant or agents of the applicant.*

(2) *Failure to comply with the general obligations established in section 6644 of this title.*

*(3) A release that occurs subsequent to the issuance of a certificate of completion.*

*(4) Failure to comply with the use restrictions contained within the certificate of completion for the site issued pursuant to subsection 6652(b) of this title.*

\* \* \*

*\* \* \* Groundwater Classification \* \* \**

*Sec. 7. 10 V.S.A. § 1392(d) is amended to read:*

*(d) The groundwater management strategy, including groundwater classification and associated technical criteria and standards, shall be adopted as a rule in accordance with the provisions of 3 V.S.A., chapter 25. ~~The secretary shall file any final proposed rules regarding the groundwater management strategy, with the natural resources board not less than 30 days prior to filing with the legislative committee on administrative rules. The board shall review the final proposed rules and comment regarding their compatibility with the Vermont water quality standards and the objectives of the Vermont Water Pollution Control Act. The secretary shall include the natural resources board's comments in filing the final proposed rules with the legislative committee on administrative rules.~~*

*Sec. 8. 10 V.S.A. § 1394(a) is amended to read:*

*(a) ~~The state~~ State adopts, for purposes of classifying its groundwater, the following classes and definitions thereof:*

\* \* \*

*(4) Class IV. Not suitable as a source of potable water but suitable for some agricultural, industrial and commercial use, provided that the Secretary may authorize, subject to conditions, use as a source of potable water supply or other use under a reclassification order issued for the aquifer.*

*\* \* \* Effective Date \* \* \**

*Sec. 9. EFFECTIVE DATE*

*This act shall take effect on passage.*