

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 § 6615e regardless of the date of the relevant release of perfluorooctanoic acid.

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. 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.