Testimony of Joseph L. Choquette III
Representing the Vermont Petroleum Association
Before the Vermont House Judiciary Committee
April 12, 2018

Good morning Chairman Grad and members of the House Judiciary Committee. My name is Joe Choquette. I am a lobbyist with Downs Rachlin Martin, a Vermont-based law and lobbying firm. I am here today representing the Vermont Petroleum Association, which is a division within the Vermont Retail and Grocers Association.

The VPA is a trade association that represents the interests of the state's motor fuel distributors. Approximately 65 businesses qualify as motor fuel distributors by virtue of the fact that they import petroleum products into the state and collect and remit motor fuel taxes.

We are concerned that the language in S.197 is overly broad, pertains to our industry and the products we provide, and can lead to a new level of potential liability that cannot be estimated. S.197 expands the universe of releases under the current law and greatly expands the type of claims that can be made under existing responsibility for third party compensation.

I believe that similar concerns will apply to many industries, and perhaps more broadly than the petroleum industry.

It is well known that gasoline itself, many of its components and some of its additives are toxic and flammable and that the compound is harmful if ingested, inhaled or applied to the human body in sufficient concentrations over extended periods of time. The same is true to a lesser degree of other petroleum products.

Consumer warnings are printed on the side of portable gasoline containers and posted at the gasoline pump. Most portable containers are bright red to add emphasis to the warnings.

A long list of state and federal laws govern the way petroleum fuels are manufactured, transported, stored and delivered. The product is tightly contained in pipelines, rail cars, tankers and in underground storage tanks. Vapors are recovered from the air when the fuels are delivered to gasoline stations, and a charcoal canister attached to your car's fill pipe captures vapors when you fill up at the pump.

We do everything we can to prevent people from being exposed to these products, but they do get exposed. Since portable containers and power equipment don't have controls available to gas stations and automobiles, consumers are sometimes directly exposed to fumes and liquid fuel when they fill gasoline cans, snow machines, all-terrain vehicles, lawn mowers, snow blowers, chain saws, trimmers and other power tools.

Fortunately the level of exposure associated with refueling and operating petroleum-powered equipment is generally well below the threshold levels and duration of exposure that can cause irritation, discomfort or more serious disease. When you detect gasoline vapors by odor, those

concentrations are well below levels that would trigger a health concern. Exposure is brief. Further, most adults accept and understand that gasoline should not be ingested or inhaled; and most of the cautions also warn against siphoning fuel from gas tanks.

People who regularly interact with the product in their work and in higher concentrations over sustained periods of time are advised to use appropriate health and safety protections and workplace safety laws require that.

S.197 as written casts a wide net. Anybody who emits petroleum fuels or vapors into the air or water or onto the land can be held liable for any damages caused to anybody and anything. Liability accrues to everyone in the chain of control, even if the release was allowed by law, including by permit. It would apply to any intentional or unintentional, permitted or unpermitted release and any act or omission that allows a substance to enter the biosphere.

Second, the liability accrues at any level of exposure. In regulating the use of toxic chemicals, state and federal agencies generally establish thresholds for dose and duration of exposure which, if avoided, will not be harmful to human health and the environment. This bill sets no such exposure limits.

The projected liability in this bill has no timeline. If a substance is eventually found to be hazardous, the liability extends to an unlimited time in history. Thus, companies using materials that were believed to be harmless if properly used may in the future become liable if new science or new testing proves otherwise. This effectively nullifies the current process for regulating the use of chemicals and chemical products, including fuels and fuel additives.

Since the liability is strict, joint and several this might have the effect of penalizing a user who operates under the terms of a permit because of the irresponsible behavior of another secondary party. For example, if someone leaks a large volume of a chemical into groundwater every day for thirty years and another, responsible party has an accidental spill that lasts one hour, both are liable for the full cost of another's injury. If the first party went bankrupt, the second would be pursued.

The medical monitoring provisions in the bill are very broad. Anybody has a cause of action for lifetime medical monitoring of unlimited frequency if they are exposed to a toxic substance, no matter how great the exposure or how long the term. This has the potential to take resources away from people who have a legitimate need for monitoring due to actual exposure to a chemical substance at high concentrations.

In the petroleum world, we are strictly, jointly and severally liable for the cost of cleanup and third party damage for the release of the product from an underground or above ground storage tank. The owners of USTs and ASTs are required by state and federal law to provide insurance for up to $1.25 million per occurrence for the cleanup of petroleum leaks and spills and up to $1 million for compensation to effected third parties.

Since no insurers would provide coverage for these risks, none was available in 1988, and the legislature established the Petroleum Cleanup Fund. The PCF, has provided funding for the cleanup of leaks and spills and for compensating third parties for more than 30 years now.

The rules for what is covered and not covered under the PCF are carefully thought out, and claims against the fund are managed by a state agency, with the right of appeal to the agency and then to the courts. It is a system that has generally worked, but only because the risks are known and well defined, and it is managed by state officials as a public fund. Further expanding both the liability for cleanup and third-party liability without some constraints on the degree of exposure and probability of harm is a threat to the long-term viability of the Petroleum Cleanup Fund.

We understand the desire to hold bad actors responsible for the harm they cause to others, and to ensure that innocent victims are compensated for their exposure to toxic substances that ultimately cause harm and disease. However, we need to assure that whatever limited funding is available to abate these risks are used in a thoughtful and prudent manner.

Thank you.

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