

**GLOBALFOUNDRIES Testimony on S.197 - Liability for Toxic Substance Exposures or Releases**  
**House Committee on Judiciary**  
**Ruma Kohli, Product Stewardship Program Manager**  
**Global EHS & CSR**  
**April 12th, 2018**

GLOBALFOUNDRIES (GF) appreciates the opportunity to provide input on S.197.

GF is the largest for-profit employer in Vermont, and accounts for roughly 69% of all Vermont exports. The majority of the semiconductor chips manufactured in GF's Essex Junction facility are incorporated into consumer products such as cell phones, tablets, televisions, routers, and GPS devices, sold here in Vermont and around the globe by our valued clients.

Our location has a long history of environmental excellence: proactively evaluating the chemicals proposed for or used in our processes and products; reducing usage, identifying potential substitutes that may have less impact on the environment, health and safety; and eliminating, restricting and/or prohibiting the use of substances for which a more preferable alternative is available that is capable of meeting quality and safety requirements of our processes and products. Our record of voluntary material restrictions and prohibitions stretches back over three decades, and is evidence of our commitment to and expertise in safe and responsible chemical use that is protective of human health and the environment. These practices and programs have resulted in our location receiving numerous environmental awards and recognition.

GF's product-related environmental specification currently bans or restricts over 100 chemicals from our supply chain. As Product Stewardship Program Manager for GF, I ensure that our products meet worldwide chemical content regulations. I also served for several years as a member and as Chair of the Vermont Advisory Committee on Mercury Pollution, served as a member of the State of Vermont Beyond Waste Advisory Group, served as an Act 154 Working Group member, whose recommendations are the basis of S.197. I was named by Governor Shumlin to the Act 188 Working Group and most recently have been named to the Citizen Advisory Panel of the Interagency Committee on Chemical Management as authorized by Executive Order 13-17. Informed by our experience in this arena, we have several key concerns with S.197.

**Act 154 Working Group Process and recommendations:**

Act 154, which was effective as of June 2016, directed the Agency of Natural Resources (ANR) to convene the Chemical Use Working Group whose mission was to develop recommendations to the Vermont General Assembly aimed at closing regulatory gaps related to chemicals of emerging concern (CECs), increase the State's ability to prevent citizens from being exposed to harmful chemicals, increase public access to information about chemicals in their community, and ensure that citizens harmed by releases of toxic substances have sufficient remedies under the law. The Working Group reviewed current federal and state regulatory programs as well as laws in other countries (e.g. the EU's **Registration, Evaluation, Authorization and restriction of Chemicals (REACH)**).

Although the intent of the Working Group was to provide a comprehensive evaluation of the regulatory gaps for the restriction of chemicals, it has to be noted that the time frame for this type of endeavor to provide information and recommendations to the General Assembly was quite limited. As a result, most if not all of the 13 Working Group recommendations did not receive a full discussion and review by the

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Working Group stakeholders to evaluate costs and/or impact to Vermont regulatory agencies or businesses.

As only a simple majority (11 of 20) of the Working Group was needed to move a recommendation forward, it is important to note that the 2 recommendations that comprise the basis for S.197 (medical monitoring and joint and strict liability) only received 11 and 12 votes respectively to move forward. Given that the makeup of the Working Group was comprised of 5 businesses and 15 non-governmental organizations (NGOs) and academia, the support for the provisions was less than overwhelming.

There was only one unanimous recommendation made by the Working Group, which in fact was acted on by the Governor by his issuance of Executive Order 13-17, which established the Interagency Committee of Chemical Management and the Citizen Advisory Panel of which I am a member. The ICCM and CAP are working to make recommendations by or before July 1, 2018 on:

- A centralized chemical reporting system
- Improvements to recordkeeping/reporting requirements
- Improvements to the Toxics Use Reduction Act (TURA)

The Committee shall issue a report and make recommendations to the Governor on any regulatory or legislative actions to reduce risks to Vermonters from unsafe chemicals on December 15, 2018 and biennially thereafter. The Biennial report shall contain:

- A summary of chemical use in Vermont
- Identified risks to human health/environment from chemical use in Vermont
- Changes to federal statute/rules
- Proposed VT Legislative/regulatory actions to reduce risks

**Key concerns with S.197:**

In its current form as approved by the Senate, GF does not support the bill. Some of the key concerns with the approved bill are as follows:

- The definition of a “release” still includes both permitted and unpermitted releases. The inclusion of permitted releases essentially negates any statutory scheme to regulate discharges of potentially harmful substances to protect human health and the environment. Dischargers may be held strictly liable even when compliant with permit requirements under, for example, state Clean Water and Clean Air permits.

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- The exclusion of certain parties and sectors from joint and several liability:
  - a. Joint and several liability is a risk-sharing mechanism that is intended to ensure a plaintiff can be fully compensated for damages jointly caused by multiple parties, even if one or more of those parties is insolvent or judgment-proof. A blanket exclusion for any parties or industrial sectors would undermine the policy rationale for joint and several liability because it would limit the universe of parties that could be held responsible for actions causing the alleged harms at issue.
  - b. Moreover, such exclusions would be inequitable because they would further shift the risk of liability to, and disproportionately increase the potential share of damages to be borne by, those parties that are not the beneficiaries of such exclusions.
  - c. The bill would exempt certain parties or sectors but not others, without any clear risk-based rationale for excluding certain entities.
    - i. In fact, the Committee’s stated rationale to exclude liability for the use and application of pesticides, herbicides and other agricultural chemicals as they are regulated, managed and monitored by the Department of Agriculture should also apply to the permitted emissions of the regulated community for chemicals in air, water, and land. Air, water and land programs are administered by the Agency of Natural Resources and similarly take into consideration the health and safety of Vermonters potentially exposed. These considerations are then translated into facility permits. Thus, all permitted releases should be excluded from this bill.
- The level of exposure should be included as a criteria for award in the bill and this level of exposure should be above background levels.
  - a. Specifically, a plaintiff should have to demonstrate that their exposure to a chemical is different than the general public in order to be entitled to medical monitoring. A person should not be entitled to medical monitoring for exposure that every person may have as a result of living in modern society. Limiting claims to those individuals with a significantly increased risk due to exposure to a particular substance is crucial to limiting medical monitoring to those who may truly need it.
- Consistent with the previous point above, the threshold for the risk of developing a latent disease (as a determining factor for provision of medical monitoring) should be defined as a “significantly increased risk” above that faced by the general public.

In mitigation of the above concerns, GLOBALFOUNDRIES requests that all defenses to liability and all rights to contribution or indemnification available to a person under 10 V.S.A. § 6615e are available to a person subject to liability under this bill.

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No other state has adopted such unlimited exposure liability legislation. For example, Pennsylvania conditions for awarding Medical Monitoring require a plaintiff to prove, among other elements:

- (1) exposure to greater than normal background levels;
- (2) to a proven hazardous substance;
- (3) caused by a defendant's negligence; and
- (4) as a proximate result of the exposure, plaintiffs have a significantly increased risk of contracting a serious latent disease. In addition, expert testimony is required to prove these elements.

The proposed Vermont bill sets a much lower bar of proof for a plaintiff to recover medical monitoring damages.

We appreciate your consideration of our views. Please contact me at 1-802-769-4269 or ruma.kohli@globalfoundries.com if I can be of any further assistance.