

# ASSOCIATED INDUSTRIES OF VERMONT

REPRESENTING THE VERMONT INDUSTRIAL AND BUSINESS COMMUNITY SINCE 1920

## Proposed Amendments to S.10

### House Natural Resources, Fish, and Wildlife Committee

March 29, 2017

AIV supports and appreciates the Committee amendment discussed this morning addressing "Available defenses; rights" (VT LEG #324064 v.1). Below are draft amendments to S. 10 as passed by the Senate addressing the other issues we identified during our initial testimony. We would very much appreciate the Committee's consideration and support for these amendments as well, and will be happy to discuss them further.

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1) ANR has testified that they see this section as a discretionary tool. However, as drafted it appears to us that it could be interpreted to be non-discretionary. To address this concern, we would recommend the following amendment:

(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 **may** be **held** strictly, jointly, and severally liable for the costs of extending the water supply of a public water system to a property when:

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2) As drafted, the bill would include liability for systems that are not considered likely to fail. It also does not address the question of whether the extension of a municipal water system is the best response. To address these concerns, we would recommend the following amendment:

(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~~ **fail due to** contaminated~~ion~~ 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;

**(4) no other remedial alternative is capable of achieving comparable corrective action objectives; and**

**(5) extension of the public water system is the most cost effective means of delivering water to the property that meets or exceeds drinking water standards set by the Secretary by rule.**

3) As drafted, the bill could require payments for costs that have not yet been established or verified. To address these concerns, we would recommend the following amendment:

(c) Liability payment. A person liable under subsection (b) of this section for the extension of the water supply of a public water system, **following notification of such liability by the Secretary**, 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, **of receipt of the following from the operator of the public water system: (i) a verified construction cost estimate for the extension of the public water system as determined through a public bidding process; and (ii) a verified construction schedule.** 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.

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4) As drafted, the bill would deny access to de novo appeals normally available under 10 VSA §8594(h). To address this concern and clarify public review and comment on the foundation and merits of the Secretary's determinations, we would recommend the following amendment:

(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, **setting forth the factual and legal basis for the Secretary's determination, including a description of the Secretary's analysis of other remedial alternatives and the basis for its conclusion that the extension of the municipal water system is the only remedial alternative capable of achieving the corrective action objectives,** to the website of the Agency of Natural Resources for public notice and written comment for 30 days. **The Secretary shall consider such public comments and publish the Secretary's response to such public comments.** 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. **Any person ordered by the Secretary to pay for an extension of a water system may seek judicial review of the Secretary's decision by filing an appeal in the Environmental Division of the Superior Court in accordance with subsection 8504(h) of this title.**

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