

VCV and VNRC Proposed Addition to S.103 to Address Groundwater and Drinking Water Contamination

As I testified previously, the main impetus behind Act 154 was the release of PFOA in Bennington, and the contamination of private water supplies, drinking water wells, with high concentrations of PFOA.

The Act 154 Working Group, examined the gap in Vermont's laws and programs that protect groundwater and drinking water, and made several recommendations for closing this gap. Only one of these recommendations is included in S.103 - to require the testing of new wells for certain toxics.

Two recommendations were not included in S.103, to require well testing at point of sale, and for the state to develop a program to help Vermonters test all wells for toxic contamination.

Requiring new wells to be tested for certain toxics is a positive step, that we must take now. New well testing passed the House and Senate two years ago, but was vetoed by then Governor Shumlin along with a provision to require well testing at point of sale of property. Last year, toxic testing for new wells passed the Senate. The time to implement at a minimum toxic testing for new wells is passed due, however more must be done.

There seems to be an acknowledgement from key stakeholders that we need to develop a holistic, comprehensive approach for protecting groundwater and drinking water at higher risk form toxic contamination.

To move us toward this goal, VNRC recommends that the language be added to the Interagency Committee on Chemical Management Report in Section 2 of the bill. VNRC recommends replacing existing provision (4) in Section 2 of the bill with the following and make existing provision (4) provision (5):

(4) Recommend statutory amendments to implement a program to test groundwater and drinking determined to be at risk for toxic contamination including:

- (A) Identify criteria for determining groundwater and drinking water supplies at risk for contamination by toxic substances;
- (B) Identify procedures notifying owners of drinking water supplies determined to be at risk for contamination by toxic substances; and
- (C) Recommend funding to assist owners of drinking water supplies determined to be at risk for contamination by toxic substances to conduct testing of the water supply for toxics.

VCV and VNRC Proposed Addition to S.103 to Address Flaws in Vermont's Program on Chemical Exposure to Children

In Act 188, the chemicals of high concern in children's products program, we support several provisions that aim to ensure the program works as intended to (a) provide information that is useful to consumers about which toxic chemicals are used in children's products, and (b) to allow the Commissioner of Health, working with a stakeholder group, to regulate the use of toxic chemicals in children's products if the Commissioner deems it appropriate, based on scientific criteria, to protect public health.

- Specifically, you can see in the attached document the proposal to be explicit that reporting from manufacturers should include product model, brand name, and universal product code.
 - Rationale: That will be the information most useful for consumers, and currently the Department of Health is getting different data from different companies, so it's very difficult for consumers to use it. Providing clarity in statute will give certainty to manufacturers, and will ensure data collected moving forward is provided in a consumer-friendly format.
- We recommend striking the phrase "weight of" credible, scientific data from the section on the Commissioner's powers to identify new chemicals to add to the list of chemicals of high concern via rulemaking.
 - Rationale: "Weight of scientific data" is a term of art that's been used by industry groups at the federal EPA to stall action on chemicals for years, and considerable time and work has gone into defining exactly what that means for different programs. It means, for example, that all available information must be analyzed and assessed, then a process must be developed for determining how to weigh different information (for example, do you weigh an industry-funded study the same as a independent study; and what standards for the quality of the data do you set?). Rather than include this standard that we know will be extremely labor-intensive and time-consuming and used by industry groups to stall progress, we should instead use the standard "credible scientific data" or similar language that makes clear any proposed rules must be based on strong scientific evidence, but avoid the problematic "weight of" standard that's proven extremely challenging at the federal level.
- We recommend allowing the Commissioner of Health to act to regulate a chemical of high concern to children in children's products *after consultation with* the working group.
 - Rationale: We don't believe a group of citizen stakeholders should have the ability to dictate to a Commissioner of Health what actions they are able to take to protect children's health.
- We recommend changing the criteria the Commissioner and stakeholder group must use to assess if a chemical of high concern to children should be restricted in children's products.

- Rationale: Using the existing criteria, it will be virtually impossible to ever regulate a chemical of high concern to children. The type of data it calls for, and the certainty around exposure and health impacts, are a higher bar than can likely be met with the kind of scientific data available on these chemicals. This approach will either be unable to make any recommendations, or will be ripe for litigation.
- Instead, this language proposes the “safer alternative” standard similar to the approach used in Maine’s program. There, like VT’s program, chemicals are listed due to well-documented potential for harm to human health, and evidence that people are being exposed to the chemicals. Then they assess if safer alternatives are available. For example they banned BPA from certain products because they determined BPA harms human health, and there were similar products available on the market that did not contain BPA. Similarly, when Vermont legislators banned BPA, they looked at (a) the evidence that the chemical is toxic, (b) the evidence that people are being exposed to the chemical from consumer products, and (c) the evidence that there are safer alternatives available that can be used in its place. This approach has been successful, with numerous bans of toxic chemicals in place from the Vermont Legislature (BPA, phthalates, flame retardants, etc) and no evidence of harm to industry.