

S.103. An Act Relating to the Regulation of Toxic Substances and Hazardous Materials

Overview and Section by Section Summary

Overview

- Act 154 of 2016 required ANR to establish a working group with expertise in chemical use and regulation to develop recommendations for how to improve the State's ability to:
 1. Prevent citizens and communities from exposure to toxic chemicals, hazardous materials, or hazardous wastes;
 2. Identify and regulate the use of toxic chemicals or hazardous materials that currently are unregulated by the State; and
 3. Inform communities and citizens of potential exposure to toxic chemicals, including contamination of groundwater, public drinking water systems, and private water supplies.
- The Act 154 Working Group submitted 13 recommendations to the General Assembly, and S.103, as introduced, included all of the Working Group's recommendations.
- S.103, as proposed by the Committee on Natural Resources, Fish and Wildlife would implement three of the Working Group's recommendations:
 1. the creation of an Interagency Committee on Chemical Management;
 2. the testing of groundwater for chemicals; and
 3. making it easier to regulate children's products containing chemicals of high concern.
- S.103, as proposed, also would require the newly formed Interagency Committee on Chemical Management, in consultation with citizen experts, to provide additional information on how to implement 5 of the other recommendations of the Act 154 Working Group.
 1. Expanding the list of chemicals subject to the toxic use reduction program;
 2. Requiring toxic use reduction plans to be completed by persons certified in toxics management planning;
 3. Providing greater access to information submitted by companies under the toxic use reduction program;
 4. Increasing the information available to the public regarding chemical use in the State; and
 5. Constructing a centralized database that businesses can use to submit required information and that the State and the public can use to review chemical use in the State.
- With the creation of the Interagency Committee on Chemical Management, and the information it will provide, the State will begin to more effectively coordinate chemical use and management in the State.
- With the requirement to test groundwater for chemicals, the State will take a proactive, precautionary approach to ensuring drinking water from wells is safe for Vermont citizens.

Section by Section Summary

Section 1. 10 V.S.A. §6633. Interagency Committee on Chemical Management (ICCM)

- Establishes the Interagency Committee on Chemical Management as part of the existing ANR Toxic Use and Hazardous Waste Reduction Program.¹
- The Committee would be charged with:
 - Evaluating chemical inventories in the State on an annual basis;
 - Identifying risks to human health or the environment from chemical inventories; and
 - Proposing measures to address identified risks from chemical inventories.
- The Committee is composed of the following:
 - One member of the House, appointed by the Speaker;
 - One member of the Senate, appointed by the Committee on Committees;
 - Secretary of Agriculture (pesticides);
 - Secretary of Natural Resources (hazardous waste and materials; toxic use reduction);
 - Commissioner of Health (public health risks; chemicals of high concern to children);
 - Commissioner of Labor (VOSHA);
 - Commissioner of Public Safety (emergency response);
 - Commissioner of Commerce and Community Development; and
 - Commissioner of Information and Innovation.
- The Committee is required to:
 - Convene a citizen advisory panel with expertise in chemical use, management, and health.
 - Review federal action under the Toxic Substances Control Act and its effect on State law;
 - Annually review chemical inventories to identify unregulated chemicals of concern.
- The Committee shall report annually to the General Assembly regarding the chemical inventories in the state and recommended legislative or regulatory action to reduce health or environmental risks from chemicals of high concern.

¹ Also known as the Act 100 Pollution Prevention Planning Program.

Section 2. ICCM Report on Toxic Use Reduction and Reporting

- Requires the first ICCM report to the General Assembly to recommend draft legislation to:
 1. Establish a centralized electronic chemical reporting system for businesses to use to report chemical use and for citizens to use to review data on chemical use, including:
 - What agency should administer the system;
 - How businesses would report;
 - What information is reported and maintained on the system;
 - How much the system will cost; and
 - A schedule for implementation;
 2. Amend existing State recordkeeping and reporting requirements about chemical use, including: thresholds for reporting; persons subject to recordkeeping; and ways to streamline reporting; and
 3. Amend the Toxic Use and Hazardous Waste Reduction Program, including: what chemicals should be reported; the thresholds for reporting; the information submitted; and how the plans are completed.

Sec. 3. 10 V.S.A. § 1982. Testing of Groundwater Sources

- Adds a section to the statutory requirements regulating potable water supplies (wells)
- The section requires a new groundwater source to be tested by the person who owns or controls the groundwater source for specified chemicals prior to use as a well.
 - A groundwater source is any supply of water from the ground, including a drilled well, shallow well, driven well point or spring.
- The groundwater source shall be tested for: arsenic, lead uranium, gross alpha radiation, total coliform bacteria, nitrate and nitrite, fluoride, and manganese.
 - The groundwater source shall also be tested for any chemical ANR requires by rule.
- ANR may require testing for a certain chemical by region or area.
- The test results shall be submitted to the Department of Health. Under Sec. 5, labs conducting the tests are required to submit the results to the Department of Health.
- ANR shall adopt rules to implement the requirement, including when to test; who is authorized to test; how to sample; and any other requirement to implement the program.
 - The rules shall authorize well drillers and owners of the source to conduct testing.
- Failure to test a groundwater source shall not affect marketability of title, provided that the test results are forwarded to the Department of Health prior to conveyance of the property.

Sec. 4. Timeline for ANR Rulemaking on Groundwater Source Testing

- Requires ANR to commence rulemaking for the groundwater testing rule on or before July 1, 2017 and requires adoption of the rules by January 1, 2018.

Sec. 5. 18 V.S.A. § 501b. Certifying Laboratories to Conduct Groundwater Source Testing

- Provides that a laboratory certified by the Department of Health to conduct groundwater source tests shall submit the results to ANR and the Department of Health.

Sec. 6. 10 V.S.A. § 1974. Exemption from Permit Requirements for Failed Supply

- Provides that a permit to operate a failed potable water supply is not required to use a failed supply that consists of only 1 groundwater source providing water to a single family residence
 - This means that a home owner who fails a groundwater source test will not need a permit to use the failed supply. But, they will be on notice of the need to treat the water supply.

Sec. 7. 18 V.S.A. § 1775(b). Chemicals of High Concern to Children; Notice

- Requires a manufacturer of a children's product that contains a chemical of high concern to children to report the brand name, product model, and universal product code of the product, if such a code is available.
 - Manufacturers of children's products with a chemical of high concern report every 2 years.

Sec. 8. 18 V.S.A. § 1776. Chemicals of High Concern to Children; Rulemaking

- § 1776(b), allows the Commissioner of Health to add new chemicals of high concern to children to the list of chemicals on the basis of independent, peer reviewed research.
 - Current law requires the determination to be made on the weight of evidence, which is considered a difficult threshold to meet.
- § 1776(d), allows the Commissioner of Health to adopt a rule restricting the sale of or requiring the labelling of a children's product that contains a chemical of high concern after consultation with the Chemical of High Concern Working Group.
 - Currently, the Commissioner may act only upon recommendation of the Working Group.
- § 1776(d)(1)(A): Authorizes the Commissioner of Health to restrict the sale or require the labeling of a children's product with a chemical of high concern if the Commissioner determines children may be exposed to the chemical in the product.
 - Current law requires a determination that a child will be exposed, and that there is a probability of harm from the exposure—both of which are considered difficult to prove.

Sec. 9. Effective Dates

- The Interagency Committee on Chemical Management, the first required ICCM report, and ANR authority for groundwater source testing go into effect on passage.
- The remainder of the act goes into effect July 1, 2018.