

Testimony of Joseph L. Choquette III
Representing the Vermont Petroleum Association
Before the Vermont Senate Judiciary Committee
January 26, 2018

Good morning Chairman Sears and members of the Senate Judiciary Committee. My name is Joe Choquette. I am a lobbyist with Downs Rachlin Martin, a Vermont-based law and lobbying firm. I am not an attorney. 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 80 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 level of potential liability that cannot be estimated. I believe the same concerns will apply to many industries.

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.

S.197 as written casts a wide net. Anybody who emits gasoline or gasoline vapor 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.

The definitions contained in the bill pertaining to strict, joint and several liability can also include many other common compounds such as salt, ink, alcohol and coffee. All of these in some form and at some concentration can cause harm to a person.

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 generally 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 broad and expansive. 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.

It also makes the potential liability impossible to estimate. In the petroleum world, we are required to have insurance for third party liability of up to \$1 million per occurrence. Since this insurance is not available in the market place the Petroleum Cleanup Fund was established. That funding has been used from time to time over the 30 year history of the fund, but it has been used sparingly. We are concerned about a large number of claims from persons who have little likelihood of actually being harmed.

Finally, the bill would allow an exposed person to collect a lump sum and the cost of litigation in lieu of entering a medical monitoring program. Under this draft of the bill there is no requirement that the financial award be used for actual monitoring.

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 ask that the committee take these concerns into consideration if you move forward with this bill.

Thank you.

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