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Johanna de Graffenreid



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**To: Chair Sears and Members of the Senate Committee on Judiciary**  
**From: Johanna de Graffenreid, Environmental Advocate, VPIRG**  
**Date: January 17<sup>th</sup>, 2018**  
**Re: VPIRG testimony on S. 197**

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Thank you for the opportunity to speak with you today. My name is Johanna de Graffenreid, and I am VPIRG's Environmental Advocate. **VPIRG supports the overall goals of S.197.**

In 2016, Vermonters witnessed firsthand the unfortunate realities brought on by groundwater contamination in North Bennington. Those exposed to the toxic substance PFOA may face an increased risk of developing a disease or other medical condition, as well as experience a loss in property value.

VPIRG supports policies that will better address the very real concerns of those who are exposed to toxic harm in Vermont. These individuals are often worried about their health or their family's health. They're concerned about the lost value of their property. They may be stressed and fearful about whether they will even have the financial capacity to seek justice for the wrong that has been done to them. These people need help, and S.197 will provide some tangible relief.

One form of relief involves the legal burden placed on those who have been harmed by pollution, as they seek justice in the courts. S.197 would hold polluters strictly liable for the harm they cause. This approach strongly reflects the "Polluter Pays" principle, which means that "those who caused the chemical harm bear the cost of that harm..."<sup>1</sup>

The Strict Liability Standard allows homeowners to claim a loss in property value or personal injury by only having to prove two things in court: (1) the polluter released a toxic chemical into the environment; and (2) the toxic chemical harmed the victim. Currently victims must prove negligence.

When the people of North Bennington are required to **prove negligence under the current standard**, they could incur significant litigation costs. **These costs may end up reducing the victim's overall recovery by tens or even hundreds of thousands of dollars. In addition, proving negligence takes time that can further delay recovery. This time is also time victims spend living**

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<sup>1</sup> S. Rep. No. 96-848, at 13.

Vermont Public Interest Research Group

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in contaminated properties – which may end up leaving generations of children exposed to unsafe levels of toxic chemicals – heightening exposure and stress over health and financial well-being. This added time and expense create leverage for polluters during settlement negotiations that translates into delayed and smaller settlements. Strict liability will remove a potentially significant litigation hurdle and encourage speedier resolution of claims. Vermonters deserve their day in court.

A second area of improvement under S.197 involves medical monitoring for victims of pollution. Under the section of the bill dealing with Medical Monitoring Damages, victims of toxic exposure can seek reparations for the costs of their medical expenses. Exposure to toxic substances can increase the risk of developing a disease or medical condition, and sometimes those outcomes do not present themselves for years after initial exposure. For example, there is a significant link between PFOA exposure and certain types of cancer.<sup>2</sup>

The best way to ensure more successful outcomes and reduce treatment costs is through early detection of cancer and other diseases. However, early detection requires costly medical testing. Medical monitoring allows victims of toxic exposure to recover these expenses.

A well-known example of medical monitoring is the West Virginia class action lawsuit filed against DuPont for contaminating the drinking water for tens of thousands of people with PFOA. West Virginia recognizes a victim's right to damages for medical monitoring costs. The settlement established the C8 Science Panel composed of independent epidemiologists, which led to the discovery of a "probable link" between PFOA exposure and several diseases, including cancer.<sup>3</sup> Following these findings, the settlement established a Medical Panel to develop a protocol for medical monitoring. Approximately 3,500 people with PFOA-linked illnesses in the area have filed claims against DuPont.<sup>4</sup>

Medical Monitoring legislation will provide clarity over whether victims of toxic chemical exposure can hold polluters liable for medical monitoring costs following exposure, while also preventing these issues from being held up in the Vermont court system.

VPIRG has long championed the concept of holding polluters accountable for their actions, and supports the victims of toxic substance exposure. I thank the Committee for your time today, and for your generous consideration of my testimony.

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<sup>2</sup> See e.g., An Overview of Perfluoroalkyl and Polyfluoroalkyl Substances and Interim Guidance for Clinicians Responding to Patient Exposure Concerns, Interim Guidance, National Center for Environmental Health, Agency for Toxic Substances and Disease Registry, U.S. Centers for Disease Control (Jun. 7, 2017), [https://www.atsdr.cdc.gov/pfc/docs/pfas\\_clinician\\_fact\\_sheet\\_508.pdf](https://www.atsdr.cdc.gov/pfc/docs/pfas_clinician_fact_sheet_508.pdf)

<sup>3</sup> [http://www.c8sciencepanel.org/prob\\_link.html](http://www.c8sciencepanel.org/prob_link.html)

<sup>4</sup> <http://www.theintell.com/8dff6946-f1fc-11e6-91df-db15dd726e10.html>