

RUMA KOHLI
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**GLOBALFOUNDRIES Testimony on S.197 - Liability for Toxic Substance
Exposures or Releases
Senate Committee on Judiciary
Ruma Kohli, Product Stewardship Program Manager
Global EHS & CSR
January 26th, 2018**

GlobalFoundries (GF) appreciates the opportunity to provide input on S.197.

GF is the largest for-profit employer in Vermont, and accounts for roughly 69% of all Vermont exports. The majority of the semiconductor chips manufactured in GF's Essex Junction facility are incorporated into consumer products such as cell phones, tablets, televisions, routers, and GPS devices, sold here in Vermont and around the globe by our valued clients.

Our location has a long history of environmental excellence; proactively evaluating the chemicals proposed for or used in our processes and products; reducing usage, identifying potential substitutes that may have less impact on the environment, health and safety; and eliminating, restricting and/or prohibiting the use of substances for which a more preferable alternative is available that is capable of meeting quality and safety requirements of our processes and products. Our record of voluntary material restrictions and prohibitions stretches back over three decades, and is evidence of our commitment to and expertise in safe and responsible chemical use that is protective of human health and the environment. These practices and programs have resulted in our location receiving numerous environmental awards and recognition.

GF's product specification currently bans or restricts over 100 chemicals from our supply chain. As Product Stewardship Program Manager for GF, I ensure that our products meet worldwide chemical content regulations. I also served for several years as a member and as Chair of the Vermont Advisory Committee on Mercury Pollution, served as a member of the State of Vermont Beyond Waste Advisory Group, served as an Act 154 Working Group (WG) member, whose recommendations are the basis of S.197. I was named by Governor Shumlin to the Act 188 Working Group and most recently have been named to the Interagency Committee on Chemical Management as authorized by Executive Order 13-17. Informed by our experience in this arena, we have several key concerns with S.197.

Act 154 Working Group Process:

Act 154, which was effective as of June 2016, directed the Agency of Natural Resources (ANR) to convene the Chemical Use Working Group (WG) whose mission was to develop recommendations to the Vermont General Assembly aimed at closing regulatory gaps related to chemicals of emerging concern (CECs), increase the State's ability to prevent citizens from being exposed to harmful chemicals, increase public access to information about chemicals in their community, and ensure that citizens harmed by releases of toxic substances have sufficient remedies under the law. The Working Group reviewed current federal and state regulatory programs as well as laws in other countries (eg. EU's Registration, Evaluation, Authorization and restriction of Chemicals (REACH)).

The WG came up with a total of 13 recommendations, 2 of those recommendations form the basis of the proposed legislation S.197.

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Specifically these were:

- Medical Monitoring
- Strict Joint and Several Liability with the right to seek contribution

In consideration of the fact that S.197 is being generated as a result of the WG recommendations, there were several concerns we would like to highlight with the WG process:

- There was limited time for meaningful evaluation and discussion of the numerous items with which the WG was charged. It is possible that greater time could have allowed greater cost/benefit analysis and wider stakeholder involvement to refine supportable recommendations. As a result, most if not all, of the recommendations did not receive a full discussion and review by the WG stakeholders.
- Voting results indicate that most recommendations passed marginally by the minimum number of votes required to progress (11 of 20). Only one WG recommendation received 19 votes in support: the recommendation that the Governor acted upon by issuing Executive Order 13-17, which established the Interagency Committee of Chemical Management, of which I am a member.
- The composition of the WG was a shortcoming. There were only 5 representatives that could be classified as potential members of the regulated community (GlobalFoundries, Mack Molding, Burton Snowboards, Seventh Generation, Cabot Creamery), as opposed to 15 representatives that could be characterized as regulators or NGOs. Therefore it was not a balanced consideration of views.
- Lastly, the WG failed to consider costs to the regulated community and state agencies, as well as technical feasibility and costs to Vermonters from reduced exposure to chemicals in formulating the majority policy recommendations. The report states that “these are important considerations and should be considered in the context of specific legislation.”

Strict Joint and Several Liability with a Right to Seek Contribution Concerns:

The proposed bill creates an extremely low threshold for triggering liability and eliminating the need to scientifically connect exposure to a toxic substance at concentrations linked to diseases, ailments, or other physiological changes.

First, it includes both permitted and unpermitted releases. The inclusion of permitted releases essentially negates any statutory scheme to regulate discharges. Companies could be subject to strict liability for discharges that are permitted under, for example, NPDES permits. Second, the phrase “or any other place where the toxic substance may be located” swallows the definition of “release”.

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The “toxic substance” definition is overly broad by defining it as “any other substance that has been shown at any time to cause increased risk of disease.” In the event one scientifically questionable study indicated “increased risk of disease” for exposure to a substance despite the weight of scientific evidence showing otherwise, the discharger would be subject to strict liability. Similarly, a study showing an increased risk of disease only at an exceedingly high dosage, far exceeding any realistic level of human exposure, would still subject the discharger to strict liability.

The definition of “disease” includes any “adverse physiological or chemical change linked with exposure to a toxic substance.” The phrases “chemical change” and “linked with” are overly broad, vague, and not scientifically based.

Medical Monitoring Concerns:

As indicated earlier, the proposed medical monitoring statute is overly broad because strict liability would subject dischargers acting in compliance with state permits to medical monitoring damages even though the discharger is fully compliant with their permit.

Additionally, in asserting a claim, a person need not prove that disease is even likely to develop as a result of the exposure, only that there is a “probable link”. This requirement is overly vague and not scientifically based.

Awarding lump sum damages instead of medical monitoring in a court-supervised program creates incentives for both plaintiffs and contingent fee plaintiffs’ lawyers to seek windfalls using the lax standards for claims established by the draft statute. Furthermore, there is no rational basis for awarding attorney’s fees and costs to medical monitoring awards when this is not provided in similar causes of action.

Conclusions:

- The bill would create an overly expansive strict liability provision, with very lax standards needed to trigger medical monitoring claims.
- It renders meaningless established federal and state permitting and regulatory schemes for chemical discharges, i.e. dischargers may be held liable in strict liability even when compliant with permit requirements.
- Strict liability would trigger claims for insignificant exposure to substances that the weight of scientific evidence might say is harmless, without the need to demonstrate any present injury or even a likelihood of developing a disease in the future

We appreciate your consideration of our views. Should you want additional testimony, please contact me at 1-802-769-4269 or ruma.kohli@globalfoundries.com if I can be of any further assistance.