

Senate Committee on Natural Resources and Energy
Testimony
January 31, 2017

S. 11 - An act relating to the liability of municipalities for hazardous material releases from landfills

Thank you for allowing me to offer this testimony. My name is Stuart Hurd. I am Bennington's Town Manager, having served in that role since 1992, and am a municipal employee experienced with the strict liability doctrine and the potential costly impacts arising therefrom.

Bennington has survived two EPA led investigations into former landfill sites, the first resulting in a Superfund designated site formally closed under CERCLA in the period 1991-1999. The second site was identified in 2011 following a hearsay allegation of PCB dumping at this site, a municipal landfill closed in 1969, now a portion of Willow Park, a multi-use public park. Ultimately, the Town and the State agreed to a \$30,000 closure plan. There was no surface, surface water, or ground water contamination above State and Federal standards found at the site. Under the Superfund law, EPA ordered the Town to pay \$175,000 in principal and interest using the strict liability determination. When PFOA/PFOS was recently found at both sites, I became very concerned about the potential for re-opening both sites. My fear increased when the State identified PFOA at the Shaftsbury landfill last year and, using newly adopted legislation, ordered the Town to provide water to adjoining, and potentially impacted, neighbors at its expense.

This legislation addresses that very concern. It recognizes that, historically, the State had mandated that municipalities operate landfills or otherwise provide solid waste disposal options to their residents and businesses, including industries. It recognizes that to impose the strict liability doctrine upon a municipality can be very costly when, in fact, the municipality was simply following the law. It offers an exemption from liability "when the Secretary of Natural Resources determines that the municipality was not responsible for the generation or transport of the hazardous material". Furthermore, this legislation outlines the conditions for approval of an application for exemption from liability.

By providing this opportunity for exemption and detailing how it can be achieved, this legislation will save municipalities thousands of dollars in litigation, investigation, and construction. It minimizes the risk that the determination hinges on the good graces of the Secretary by providing specific conditions that the application must meet for approval. It reduces the uncertainty all municipalities that operated landfills now face.

In conclusion, I ask that you give thought to every municipality in the State. Historically, the laws of this State required Towns to handle disposal of municipal waste, residential, commercial and industrial. Every former landfill is a potential source of a release, or a threatened release, or the allegation of same. This legislation offers municipalities very necessary protection.

Thank you for your consideration.

Stuart A. Hurd
Town Manager