

1 Introduced by Senator Campion

2 Referred to Committee on

3 Date:

4 Subject: Conservation and development; environmental health; hazardous
5 materials; toxic substances

6 Statement of purpose of bill as introduced: This bill proposes to amend
7 requirements under the State Toxics Use Reduction and Hazardous Waste
8 Program. The bill would establish an Interagency Committee on Chemical
9 Management to evaluate chemical inventories in the State and identify
10 potential risks from the inventories. The bill would establish a private right of
11 action for medical monitoring damages. The bill authorizes a citizen suit of
12 action a person may commence for equitable or declaratory relief for violation
13 of any solid waste or hazardous waste permit, standard, regulation, condition,
14 requirement, prohibition, or order. The bill would require testing of new
15 groundwater sources and potable water supplies for specified chemical
16 parameters. The bill also would require manufacturers of consumer products
17 to notify the Department of Health of the presence of a chemical of high
18 concern in a consumer product. In addition, the bill would prohibit the
19 manufacture, sale, or distribution in the State of dental floss or food contact
20 substances that contain perfluorooctanesulfonic acid.

1 An act relating to the regulation of toxic substances and hazardous materials

2 It is hereby enacted by the General Assembly of the State of Vermont:

3 * * * Toxics Use Reduction * * *

4 Sec. 1. 10 V.S.A. chapter 159, subchapter 2 is amended to read:

5 Subchapter 2. Toxics Use Reduction and Hazardous Waste Reduction

6 § 6623. GOALS AND PURPOSE

7 (a) The goals of this subchapter are to:

8 (1) eliminate or reduce the use of hazardous, particularly toxic, materials
9 wherever feasible;

10 (2) reduce the generation of hazardous waste;

11 (3) reduce the release into the environment of chemical contaminants
12 which have adverse and serious health or environmental effects;

13 (4) document hazardous waste reduction and toxics use reduction
14 information; and

15 (5) make that information regarding the use of toxic substances in the
16 State available to State and local government and the public.

17 (b) It is the intent of this subchapter to encourage reduction of toxic
18 substances and to reduce the generation of hazardous waste whenever
19 technically and economically practicable, without shifting risks from one part
20 of a process, environmental medium, or product to another. Priority shall be
21 given to methods that reduce the amount of toxics used and, where that is not

1 technically and economically practicable, methods that reduce the generation
2 of hazardous waste.

3 § 6624. DEFINITIONS

4 ~~For purposes of~~ As used in this subchapter, in addition to the provisions of
5 section 6602 of this title, the following definitions apply:

6 (1) “Class A generator” means a generator who generates ~~1,000 kg~~
7 ~~(2,200 lbs)~~ or more than an amount of hazardous waste established by the
8 Secretary by rule in one calendar month.

9 (2) “Class B generator” means a generator who generates ~~more than~~
10 ~~100 kg (220 lbs) but less than 1,000 kg (2,200 lbs)~~ of an amount of hazardous
11 waste established by the Secretary in one calendar month and generates more
12 than ~~1,200 kg (2,640 lbs)~~ an amount of hazardous waste established by the
13 Secretary by rule in one calendar year.

14 (3) “Exempt small quantity generator” means a generator, as defined by
15 40 CFR § 261.5, who generates less than 100 kg (220 lbs) of hazardous waste
16 or who generates less than 1 kg (2.2 lbs) of acute hazardous waste in one
17 calendar month.

18 (4) “Large user” means a facility with ~~40~~ five or more full-time
19 employees that is in the Standard Industrial Classification (SIC) Code required
20 by the Secretary to report and that:

1 (A) Manufactures, processes, or otherwise uses, exclusive of sales or
2 distribution, more than ~~4,545.5 kg (10,000 lbs)~~ the amount established by the
3 Secretary by rule of a toxic substance per year; or

4 (B) Manufactures, processes, or otherwise uses, exclusive of sales or
5 distribution, more than 454.4 kg (1,000 lbs) ~~but less than 4,545.5 kg~~
6 ~~(10,000 lbs)~~ the amount established by the Secretary by rule of a toxic
7 substance per year if that substance accounts for more than 10 percent of the
8 total of toxic substances used at the facility during the year.

9 (5)(A) “Hazardous waste reduction” means any recycling or other
10 activity applied after hazardous waste is generated that is consistent with the
11 general goal of reducing present and future threats to public health, safety, and
12 the environment. Reduction may be proportionate to the increase or decrease
13 in production or other business changes. The recycling or other activity shall
14 result in:

15 (i) the reduction of total volume or quantity of hazardous waste
16 generated that would otherwise be treated, stored, or disposed of; or

17 (ii) the reduction of toxicity of hazardous waste that would
18 otherwise be treated, stored, or disposed of; or

19 (iii) both the reduction of total volume or quantity and the
20 reduction of toxicity of hazardous waste.

1 (B) “Hazardous waste reduction” shall not:

2 (i) result in the significant transfer of hazardous constituents from
3 one environmental medium to another;

4 (ii) include concentrating waste solely for the purposes of
5 reducing volume;

6 (iii) use dilution as a means of reducing toxicity; or

7 (iv) include incineration.

8 (C) “Hazardous waste reduction” may include on-site and off-site
9 treatment where it can be shown that ~~such~~ treatment confers a higher degree of
10 protection of the public health, safety, and the environment than other
11 technically and economically practicable waste reduction alternatives.

12 (6) “Risk reduction” means a reduction in volume or toxicity, or both, of
13 a hazardous or toxic substance by a method that does not merely shift the risk
14 to another environmental medium, or create a new environmental risk to
15 human health or the environment.

16 (7)(A) “Toxic substance” or “toxics” mean any substance in a gaseous,
17 liquid, or solid state listed ~~pursuant to~~ under:

18 (i) Title III, Section 313 of the Superfund Amendments and
19 Reauthorization Act of 1986.

20 (ii) the list of chemicals of high concern in 18 V.S.A. § 1773;

1 (iii) a list adopted by the Secretary by rule under section 6625 of
2 this title;

3 (iv) the U.S. Environmental Protection Agency list of substances
4 identified as persistent, bioaccumulative, and toxic chemical substances.

5 ~~This list of substances may be altered as specified in subsection~~
6 ~~6625(d) of this title.~~

7 (B) “Toxic substance” or “toxics” ~~does~~ shall not include constituents
8 of fuels used to provide energy, unless those fuels include hazardous wastes
9 from a generator’s process.

10 (8)(A) “Toxics use reduction” means in-plant changes in production or
11 other processes or operations, products, or raw materials that reduce, avoid, or
12 eliminate the use or production of toxic substances or raw materials that result
13 in generation of hazardous wastes, without creating substantial new risks to
14 public health, safety, and the environment, through the application of any of
15 the following techniques:

16 (i) input substitution, meaning to replace a toxic substance, or a
17 raw material that results in the generation of hazardous waste, used in a
18 production or other process or operation with a nontoxic or less toxic
19 substance;

1 (ii) product reformulation, meaning to modify an existing end
2 product in order to reduce toxic substance inputs or raw materials that result in
3 the generation of hazardous wastes;

4 (iii) production or other process or operation redesign or
5 modifications;

6 (iv) production or other process or operation modernization,
7 including upgrading or replacing existing equipment and methods with other
8 equipment and methods;

9 (v) improved operation and maintenance controls of production or
10 other process or operation equipment and methods, by modifying or adding to
11 existing equipment or methods including techniques such as improved
12 housekeeping practices, system adjustments, product and process inspections,
13 or production or other process or operation control equipment or methods; or

14 (vi) recycling, reuse, or extended use of toxics or raw materials
15 that result in the generation of hazardous waste, by using equipment or
16 methods that become an integral part of the production or other process or
17 operation of concern, including filtration and other methods.

18 (B) “Toxics use reduction” includes proportionate changes in the
19 usage of a particular toxic substance, or a raw material that results in the
20 generation of hazardous waste, by any of the methods set forth in subdivision

1 (8)(A) of this section as the usage of that toxic substance or raw material
2 changes as a result of production changes or other business changes.

3 (9) “Toxics use” means use or production of a toxic substance, exclusive
4 of sales or distribution.

5 § 6625. TOXICS USE REDUCTION AND HAZARDOUS WASTE

6 REDUCTION PROGRAM

7 (a) The Secretary shall establish a program for toxics use reduction and
8 hazardous waste reduction pursuant to this subchapter.

9 (b) The Secretary shall coordinate the activities of all State agencies with
10 responsibilities and duties relating to toxics use and hazardous waste and shall
11 promote coordinated efforts to encourage toxics use reduction and hazardous
12 waste reduction, with emphasis on the merits of use reduction as a means of
13 reducing the amount of hazardous waste generated or hazardous material
14 released into the environment. Coordination between the program and other
15 relevant State agencies and programs shall, to the fullest extent possible,
16 include joint planning processes and joint research and studies.

17 (c) The planning and reporting requirements of this subchapter shall apply
18 only to generators who routinely generate, through ongoing process and
19 operation, more than ~~1,200 kg (2,640 lbs)~~ the amount of hazardous waste per
20 year established by the Secretary by rule or more than ~~12 kg (26.4 lbs)~~ the

1 amount of acutely hazardous waste per year established by the Secretary by
2 rule, and to large users.

3 (d) The Secretary shall adopt rules to carry out this subchapter. The rules
4 shall establish the amount of toxic substances manufactured, processed, or
5 otherwise used, exclusive of sales or distribution that would designate a user a
6 large user under this chapter. The rules shall establish the amount of
7 hazardous waste or acutely hazardous waste generated per year that would
8 subject a generator to the planning requirements of subsection (c) of this
9 section. The rules shall establish the other thresholds or amount of toxic
10 substances used or hazardous waste generated that subject a user or generator
11 to requirements of this chapter. The rules shall include a provision for
12 exempting from the requirements of this subchapter generators for whom the
13 Secretary determines no source reduction opportunities exist. The Secretary
14 may, by rule, add or remove any toxic substance or hazardous waste from the
15 provisions of this subchapter. In order to add or remove any toxic substance or
16 hazardous waste from the provisions of this subchapter, the Secretary shall
17 make findings with respect to toxicity, potential impact on public health and
18 the environment, and the potential for use reduction or waste reduction of the
19 toxic substance or hazardous waste.

20 (e) The Secretary shall adopt, by rule, a list of SIC codes that identifies
21 those facilities that are subject to this subchapter as a large user. The list

1 initially must include SIC codes 20 through 39. In adding additional SIC
2 codes, the Secretary shall make findings with respect to chemical use within
3 the SIC category, and shall find:

4 (1) that the potential impact on public health and the environment is
5 significant; and

6 (2) that the potential for use reduction and waste reduction within the
7 category is significant.

8 (f) This subchapter shall not apply to farmers, dealers, or applicators
9 regulated under 6 V.S.A. chapters 81 and 87, or any other persons to the extent
10 they are regulated under any other chapters of Title 6.

11 § 6626. PLAN AND REPORT FORMATS; DATA INFORMATION

12 SYSTEM

13 (a) ~~On or before January 1, 1992, the~~ The Secretary shall adopt a format to
14 be used by generators and large users for completing the toxics use reduction
15 and hazardous waste reduction plan required by section 6629 of this title. ~~On~~
16 ~~or before July 1, 1993, the~~ The Secretary shall adopt a format for the toxics use
17 reduction and hazardous waste reduction performance report required by
18 section 6630 of this title.

19 (b) ~~On or before July 1, 1992, After consultation with the Interagency~~
20 Committee on Chemical Management, the Secretary shall establish ~~a data and~~
21 ~~information system~~ a unified electronic reporting system for use in

1 administering the provisions of this subchapter. In establishing the ~~data and~~
2 ~~information system~~ unified electronic reporting system, the Secretary shall:

3 (1) establish methods and procedures for appropriately processing or
4 managing hazardous waste reduction and toxics use reduction information;

5 (2) use the data management expertise, resources, and forms of already
6 established environmental protection programs, to the extent practicable;

7 (3) establish computerized data retrieval and data processing systems,
8 including safeguards to protect trade secrets designated pursuant to section
9 6632 of this title or protected under 1 V.S.A. § 317;

10 (4) identify additional data and information needs of the program; and

11 (5) provide the public with nonconfidential information regarding the
12 use of toxic substances and the generation of hazardous wastes in each
13 municipality of the State.

14 § 6627. TECHNICAL AND RESEARCH ASSISTANCE PROGRAM

15 The Secretary shall establish a technical and research assistance program to
16 assist generators, exempt small quantity generators, and large users in
17 identifying and applying toxics use reduction methods and hazardous waste
18 reduction methods. The program shall emphasize assistance to smaller
19 businesses ~~which~~ that have inadequate technical and financial resources to
20 obtain information, assess and develop and apply toxics use reduction and
21 hazardous waste reduction methods. The program shall also emphasize the

1 merits of use reduction as a means of reducing the amount of hazardous waste
2 generated or hazardous materials released into the environment. In the
3 program:

4 (1) The Department shall encourage presentations by private or public
5 consultants, including onsite consultation at sites or locations where hazardous
6 waste is generated or toxic substances are used to aid those generators or large
7 users requiring assistance in developing and implementing the toxics use
8 reduction and hazardous waste reduction plan, plan summary, and performance
9 report required by this subchapter.

10 (2) The Department shall conduct plan assistance programs, seminars,
11 workshops, training programs, and other similar activities to assist generators
12 and large users to evaluate toxics use reduction and hazardous waste reduction
13 alternatives and to identify opportunities for toxics use reduction and
14 hazardous waste reduction.

15 (3) The Department shall establish a program to assemble, catalogue,
16 and disseminate information about source reduction methods, with emphasis
17 on the merits of use reduction, available consultant services, and regulatory
18 requirements.

19 (4) The Department shall identify the range of technical solutions that
20 can be applied by particular types of hazardous waste generators to reduce
21 hazardous waste generation.

1 (5) The Department may also direct on-site technical assistance to
2 generators and large users in developing the plans.

3 (6) The Department shall coordinate its technical assistance with trade
4 associations and local colleges and universities as appropriate.

5 (7) Technical services provided under this section shall not result in
6 inspection or other enforcement actions unless there is reasonable cause to
7 believe there is an imminent threat to human health or the environment.

8 (8) The Department shall provide direct technical assistance to solid
9 waste management districts and regional planning entities including training
10 and information exchange and shall coordinate technical assistance with the
11 solid waste management districts and regional planning entities.

12 § 6628. PLAN, PLAN SUMMARY, AND PERFORMANCE REPORT

13 REVIEW

14 (a) Except as provided for in this section, a toxics use reduction and
15 hazardous waste reduction plan developed under this subchapter shall be
16 retained at the facility and is not a public record under 1 V.S.A. § 317. If a
17 person developing a toxics use reduction and hazardous waste reduction plan
18 under this chapter chooses to send all or a portion of the plan to the Secretary
19 for review, it is exempt from public inspection and copying under the Public
20 Records Act and shall be kept confidential. A plan summary submitted

1 pursuant to section 6629 of this title shall be submitted to the Secretary and
2 shall be a public record.

3 (b) For the purposes of this subchapter, a Class A generator, Class B
4 generator, or large user shall permit any designated employee of the
5 Department to inspect the toxics use reduction and hazardous waste
6 reduction plan.

7 (c) The Department may review a plan, plan summary, or annual
8 performance report to determine whether the plan, plan summary, or
9 performance report is adequate according to the provisions of sections 6629
10 and 6630 of this title. If a Class A generator, Class B generator, or large user
11 fails to complete an adequate plan, plan summary, or annual performance
12 report, the Department, upon review of the plan, plan summary, or
13 performance report shall notify the generator or user of the inadequacy,
14 identifying the specific deficiencies. The Department shall specify a
15 reasonable time frame of not less than 90 days nor more than 180 days within
16 which the generator or user shall modify a plan, plan summary, or performance
17 report to address the specified deficiencies, and the Department shall make
18 technical assistance available to aid the generator or user in modifying its plan,
19 plan summary, or performance report.

20 (d) If the Department determines that a modified plan, plan summary, or
21 performance report is inadequate, the Department may either require further

1 modification or issue an administrative order pursuant to subsection (e) of this
2 section.

3 (e) If after having received a list of specified deficiencies from the
4 Department, a Class A generator, Class B generator, or large user fails to
5 develop an adequate plan, plan summary, or performance report within a time
6 frame specified pursuant to subsection (c) or (d) of this section, the Department
7 may order that generator or user to submit an adequate plan, plan summary, or
8 performance report within a reasonable time frame of not less than 90 days. If
9 the generator or user fails to develop an adequate plan, plan summary, or
10 performance report within the time frame specified, a meeting shall be held
11 between the generator or user, the Department, and the Secretary in a final
12 attempt to resolve outstanding concerns and issues. If no compromise can be
13 reached to modify the plan, plan summary, or performance report, the
14 generator or large user shall submit to the Secretary any inadequate plan, and
15 the Department shall conduct a public hearing on the plan, plan summary, or
16 performance report. Except as provided under 1 V.S.A. § 317, in any hearing
17 under this section, the relevant plan, plan summary, or performance report
18 shall be considered a public record as defined in 1 V.S.A. § 317.

19 (f) On or after October 1, ~~1992~~, and every two years thereafter, the
20 Secretary shall select, by the SIC Code, at least two categories of generators

1 with potential for toxics use reduction and hazardous waste reduction and
2 shall:

3 (1) examine the plans of selected generators and large users in the
4 category, unless the Secretary determines that Agency resources are inadequate
5 to complete plan reviews for all generators and users in the category, in which
6 case the Secretary need only complete those that resources will accommodate;

7 (2) determine whether the selected generators and large users that are
8 reviewed comply with section 6629 of this title;

9 (3) identify successful toxics use reduction and hazardous waste
10 reduction approaches, including risk reduction, employed by generators and
11 large users in the category and disseminate information concerning those
12 approaches to generators and large users within the category.

13 ~~(g) On or after October 1, 1992 for Class A generators, on or after July 1,~~
14 ~~1993 for Class B generators, and on or after July 1, 1996 for large users, the~~
15 The Secretary may inspect the plan, plan summary, or performance report. For
16 ~~generators, that are both Class A or Class B generators and large users, the~~
17 ~~toxics use reduction portion of the plan required for chemicals included in the~~
18 ~~planning process solely by the large user definition is not due until July 1,~~
19 ~~1996.~~

20 (h) In reviewing the adequacy of any plan, plan summary, or performance
21 report, the Department shall base its determination solely on whether the plan,

1 plan summary, or performance report is complete and prepared in accordance
2 with section 6629 or 6630 of this title. The Department shall consider
3 information provided under subsection 6629(b) in its review.

4 (i) The Department shall maintain a log of each plan, plan summary, or
5 performance report it reviews, a list of all plans, plan summaries or
6 performance reports that have been found inadequate under subsection (e) of
7 this section and descriptions of corrective actions taken. This information shall
8 be available to the public at the Department's office.

9 (j) Fees shall be submitted annually on March 31. Fees shall be submitted
10 to the Secretary and deposited into the hazardous waste management account
11 of the Waste Management Assistance Fund established under section 6618 of
12 this title. Fees shall be computed according to the following:

13 (1) \$400.00 per toxic ~~chemical~~ substance identified pursuant to
14 subdivision 6629(c)(4) of this title.

15 (2) \$400.00 per hazardous waste stream identified pursuant to
16 subdivision 6629(c)(3) of this title.

17 (3) Up to a maximum amount of:

18 (A) \$2,000.00 per plan for Class A generators.

19 (B) \$400.00 per plan for Class B generators.

20 (C) \$2,000.00 per plan for large users.

21 (D) \$4,000.00 per plan for Class A generators that are large users.

1 (E) \$1,200.00 per plan for Class B generators that are large users.

2 § 6629. TOXICS USE REDUCTION AND HAZARDOUS WASTE

3 REDUCTION PLAN; PLAN SUMMARY

4 (a) Each Class A and Class B generator and each large user shall prepare a
5 toxics use reduction and hazardous waste reduction plan for any toxic
6 substance or hazardous waste identified pursuant to subdivisions (c)(3) or
7 (c)(4) of this section. ~~Initial plans shall be due: on or before October 1, 1992~~
8 ~~for Class A generators; on or before July 1, 1993 for Class B generators; and~~
9 ~~on or before July 1, 1996 for large users. Updated plans shall be prepared no~~
10 ~~later than July 1, 1996 and every third July 1 thereafter~~ Plans shall be updated
11 on or before July 1 every three years after the date of the submission of the
12 initial plan. ~~For generators that are both Class A or Class B generators and~~
13 ~~large users, the toxics use reduction portion of the plan required for chemicals~~
14 ~~included in the planning process solely by the large user definition is due on~~
15 ~~July 1, 1996 as an integrated component of a toxics use and hazardous waste~~
16 ~~reduction plan.~~ A toxics use reduction and hazardous waste reduction plan
17 shall:

18 (1) determine any toxics use reduction and hazardous waste reduction
19 methods that may be implemented to reduce the use of toxic substances and
20 hazardous waste generated without significantly shifting risks from one part of
21 a process, environmental medium, or product to another; and

1 (2) include a plan to document and implement toxics use reduction
2 methods and hazardous waste reduction methods identified in subdivision (1)
3 of this subsection which are technically and economically feasible for the
4 generator, including performance goals for the reduction of toxic substances
5 and hazardous waste, and including a reasonable implementation schedule.

6 (b) A facility required to complete a toxics use reduction and hazardous
7 waste reduction plan may include as a preface to its initial plan:

8 (1) ~~An~~ an explanation and documentation regarding toxics use reduction
9 and hazardous waste reduction efforts completed or in progress before the first
10 reporting date-; and

11 (2) ~~An~~ an explanation and documentation regarding impediments to
12 toxics use reduction and hazardous waste reduction specific to the individual
13 facility.

14 (c) The toxics use reduction and hazardous waste reduction plan shall be
15 prepared for each site pursuant to the format adopted under section 6626 of this
16 title and shall include:

17 (1) The name and location of the site, including State plane coordinates.

18 (2) The SIC Codes of the site.

19 (3) Identification of each routinely generated hazardous waste resulting
20 from ongoing processes or operations that has:

1 (A) a yearly weight exceeding five percent of the total yearly weight
2 of hazardous waste generated;

3 (B) for acutely hazardous waste, a yearly weight exceeding five
4 percent of the total yearly weight of acutely hazardous waste generated at
5 the site.

6 (4) Identification of each routinely used toxic substance resulting from
7 ongoing processes or operations, exclusive of sale or distribution, that has:

8 (A) a yearly weight ~~exceeding 4,545.5 kg (10,000 lbs)~~ established by
9 the Secretary by rule; or

10 (B) a yearly weight ~~of between 454.5 kg (1,000 lbs) and 4,545.4 kg~~
11 ~~(10,000 lbs)~~ established by the Secretary by rule if the toxic substance
12 comprises 10 percent or more of the total toxic substances used;

13 (5) For each toxic substance and hazardous waste identified in
14 subdivision (3) or (4) of this subsection, the plan shall include:

15 (A) an estimate of the quantity of toxic substance, or raw material
16 resulting in hazardous waste, used and hazardous waste generated;

17 (B) an evaluation of feasible toxics use reduction and hazardous
18 waste reduction methods available to the generator or large user.

19 (6) A specification of, and a rationale for the technically and
20 economically feasible toxics use reduction and hazardous waste reduction
21 methods which will be taken by the generator or large user with respect to each

1 toxic substance or hazardous waste identified in subdivision (3) or (4) of this
2 subsection. The plan shall give priority to toxics use reduction methods. The
3 plan shall document the generator’s or large user’s rationale for rejecting any
4 available toxics use reduction or hazardous waste reduction method identified
5 in subdivision (5) of this subsection. The generator or large user shall have the
6 sole and final authority to determine which, if any, toxics use reduction or
7 hazardous waste reduction methods will be implemented.

8 (7) An evaluation of the effects of the chosen toxics use reduction or
9 hazardous waste reduction method on emissions and discharges to air, water,
10 or land, and with respect to whether or not that method adversely affects
11 compliance with applicable laws and regulations.

12 (8) A written statement articulating upper management and corporate
13 policy with respect to the toxics use reduction and hazardous waste reduction
14 plan and a commitment to implement plan goals.

15 (9) A description of employee awareness programs which may include
16 training programs specific to the implementation of the planning process to
17 inform and involve the employees in toxic use reduction and hazardous waste
18 reduction planning and implementation to the extent technically and
19 economically feasible.

1 (d) As part of each plan developed under this section, a large user or
2 generator shall establish specific performance goals for the reduction of toxics
3 and hazardous waste in the following categories:

4 (1) Any toxic substance used per year in quantities in excess of ~~4,545.5~~
5 ~~kg (10,000 lbs) a year or any toxic substance used in quantities between 454.5~~
6 ~~kg (1,000 lbs) and 4,545.5 kg (10,000 lbs) per year that constitutes 10 percent~~
7 ~~or more of the total toxic substances used~~ an amount established by the
8 Secretary by rule.

9 (2) For Class A and Class B generators, ~~any~~ an amount established by
10 the Secretary by rule of hazardous waste representing 10 percent or more by
11 ~~weight of the cumulative hazardous waste stream generated per year generated~~
12 per year.

13 (3) ~~Whenever technically and economically practicable, the~~ The specific
14 performance goals established shall be expressed in numeric terms. If the
15 establishment of numeric goals is not practicable, the performance goals shall
16 include a clearly stated list of objectives designed to lead to the establishment
17 of numeric goals as soon as is practicable.

18 (e) Each generator or large user shall explain the rationale for each
19 performance goal. The rationale for a particular performance goal shall
20 address any impediments to toxics use reduction and hazardous waste
21 reduction, including the following:

1 (1) The availability of technically practicable toxics use reduction and
2 hazardous waste reduction methods, including any anticipated changes.

3 (2) The economic practicability of available toxics use reduction and
4 hazardous waste reduction methods, including any anticipated changes.

5 Examples of situations where toxics use reduction or hazardous waste
6 reduction may not be economically practicable include:

7 (A) For valid reasons of prioritization, a particular facility has chosen
8 to first address other more serious toxics use reduction or hazardous waste
9 reduction concerns.

10 (B) Necessary steps to reduce toxics use and hazardous waste are
11 likely to have significant adverse impacts on product quality.

12 (C) Legal or contractual obligations interfere with the necessary steps
13 that would lead to toxics use reduction or hazardous waste reduction.

14 (f) Class A and Class B generators and large users shall prepare and submit
15 plan summaries and updated plan summaries by the respective deadlines
16 established under subsection (a) of this section for the completion of plans and
17 updated plans. The plan summary shall include:

18 (1) For each toxic substance or hazardous waste identified in
19 subdivision (c)(3) or (c)(4) of this section, a matrix form that indicates the
20 toxics use reduction and hazardous waste reduction methods the large user or
21 generator plans to implement in the next three years. On the horizontal axis of

1 the matrix shall be listed the toxics use reduction and hazardous waste
2 reduction methods of: input substitution, product reformulation, production
3 unit redesign, production unit modernization, improved operation and
4 maintenance of production units, recycling or reuse integral to the production
5 unit, and recycling outside the production process after the waste is generated.

6 On the vertical axis shall be listed the following: method not considered,
7 method considered but rejected (economic feasibility), method considered but
8 rejected (technical feasibility), and method to be implemented. The large user
9 or generator shall mark the intersection of a reduction or management
10 technique on the horizontal axis with one of the options in the vertical axis.

11 The larger user or generator shall provide a general written description of the
12 information provided in the matrix and may provide any additional information
13 to summarize the plan.

14 (2) A list of toxic substances and hazardous wastes that are covered by
15 the plan.

16 (3) A written statement articulating upper management and corporate
17 policy with respect to the toxics use reduction and hazardous waste reduction
18 plan and a commitment to implement plan goals.

19 (4) As an option, a description of the specific performance goals
20 established under subsection (d) of this section.

1 (g) A toxics use reduction and hazardous waste reduction plan required
2 under this section shall be prepared by a certified planner who meets the
3 requirements of section 6629a of this title.

4 § 6629a. TOXICS USE REDUCTION PLANNERS; PLANNING

5 PROGRAM

6 (a) Toxic use reduction plans required under section 6629 of this title shall
7 be completed only by a toxics use reduction planner certified by the Secretary
8 under this section.

9 (b) The Secretary shall certify a person as a toxics use reduction planner, if
10 the person:

11 (1) satisfactorily completed a toxics use reduction planning program
12 developed under subsection (f) of this section and passed a uniform
13 certification examination prepared by the Secretary; or

14 (2) has at least two years of work experience in toxics use reduction
15 activities, subject to the limitation on scope of work in subsection (c) of this
16 section.

17 (c) A person who qualifies as a toxics use reduction planner under
18 subdivision (b)(2) of this section who has not satisfactorily completed the
19 toxics use reduction planning program and passed the uniform certification
20 examination shall only be authorized to engage in toxics use reduction
21 activities in the facilities owned or operated by his or her employer.

1 (d) Certification under this section shall be for not more than two years and
2 shall be renewable for additional two-year periods. For a certification to be
3 renewed, a toxics use reduction planner shall successfully complete continuing
4 education instruction established by the Secretary by rule.

5 (e) The Secretary may suspend or revoke a certification issued under this
6 section based on a finding of fraud, gross negligence in the certification of
7 toxics use reduction plans, or other good cause.

8 (f) The Secretary, after consultation with the Commissioner of Health, shall
9 establish a toxics use reduction planning program for individuals who wish to
10 be certified as toxics use reduction planners under this section.

11 (g) The Secretary may adopt rules to implement the requirements of this
12 section.

13 § 6630. TOXICS USE REDUCTION AND HAZARDOUS WASTE

14 REDUCTION PERFORMANCE REPORT

15 ~~(a) On or before March 31, 1994, or March 31 of the year following the~~
16 ~~first plan, whichever is later, and annually thereafter,~~ Annually on or before
17 March 1, each generator or large user shall prepare and submit a hazardous
18 materials management performance report to the House Committee on Natural
19 Resources, Fish and Wildlife and ~~the Senate Committees~~ Committee on
20 Natural Resources and Energy, documenting toxics use reduction and

1 hazardous waste reduction methods implemented by the generator or
2 large user.

3 (b) The performance report shall be prepared for each site in accordance
4 with the format adopted pursuant to section 6626 of this title, and shall include:

5 (1) The name and location of the site, including State plane coordinates.

6 (2) The SIC Code for the site.

7 (3) The following information for each hazardous waste or toxic
8 substance identified under subsection 6629(c) of this title:

9 (A) an estimate of the quantity of hazardous waste generated and the
10 quantity of hazardous waste managed, both onsite and offsite, during the
11 current reporting year and the baseline year, as specified in subsection (c) of
12 this section;

13 (B) an estimate of the quantity of toxic substances, or raw material
14 resulting in hazardous waste, used during the current reporting year and the
15 baseline year, as specified in subsection (c) of this section;

16 (C) an estimate of the percentage of toxics use reduction and
17 hazardous waste reduction achieved by each toxics use reduction and
18 hazardous waste reduction measure implemented since the baseline year as
19 specified in subsection (c) of this section;

20 (D) an assessment of the effect, during the current year, of each
21 hazardous waste reduction measure and toxics use reduction measure

1 implemented since the baseline year relative to each performance goal
2 established in subsection 6629(d) of this title;

3 (E) a description of factors during the current reporting year that have
4 affected toxics use, hazardous waste generation, releases into the environment
5 caused by use or waste generation as defined by the large user, Class A
6 generator, and Class B generator status, and onsite and offsite hazardous waste
7 management since the baseline year, including:

8 (i) changes in business activity;

9 (ii) changes in waste classification;

10 (iii) natural phenomena;

11 (iv) other factors that have affected either the quantity of toxics
12 used or hazardous waste generated or onsite and offsite hazardous waste
13 management requirements;

14 (F) a description of wastes concentrated solely for purposes of
15 reducing volume.

16 (c) ~~For purposes of~~ As used in subsection (b) of this section, the following
17 definitions apply:

18 (1) The current reporting year is the calendar year immediately
19 preceding the year in which the report is to be prepared.

20 (2) The baseline year is either of the following, whichever is applicable:

1 (A) For the initial performance report, the baseline year is the
2 calendar year selected by the generator or large user for which substantial
3 toxics use, hazardous waste generation, or onsite or offsite management data is
4 available, before the initial planning year. If the generator or large user selects
5 the initial planning year as the baseline year for the initial report, the
6 information required pursuant to subdivision ~~(3)~~ of subsection (b)(3) of this
7 section, for the initial report shall be provided for the initial planning year.
8 The generator or large user may include as part of the report a description of
9 accomplishments in toxics use reduction and hazardous waste reduction prior
10 to the baseline year.

11 (B) For all subsequent reports, the information of subsection (b) of
12 this section shall be compared against the baseline year, the plan year and the
13 year immediately preceding this report if different than the plan year.

14 (d) Every report completed pursuant to this section shall be submitted by
15 the generator or large user for review and certification by an engineer who is
16 registered as a Vermont professional engineer or by an individual who is
17 responsible for the processes and operation of the site.

18 § 6632. TRADE SECRETS

19 The Secretary shall adopt rules to ensure that trade secrets designated by a
20 generator in all or a portion of the review and plans, and the report required by
21 this subchapter, which are exempt from public inspection and copying under

1 1 V.S.A. § 317(c)(9), shall be used by the Secretary, the Department, and any
2 authorized representative of the Department only in connection with the
3 responsibilities of the Department pursuant to this subchapter, and otherwise
4 shall be kept confidential.

5 § 6633. INTERAGENCY COMMITTEE ON CHEMICAL MANAGEMENT

6 (a) Creation. There is created the Interagency Committee on Chemical
7 Management in the State to:

8 (1) evaluate chemical inventories in the State on an annual basis;

9 (2) identify potential risks to human health and the environment from
10 chemical inventories in the State; and

11 (3) propose measures or mechanisms to address the identified risks from
12 chemical inventories in the State.

13 (b) Membership. The Interagency Committee on Chemical Management
14 shall be composed of the following five members:

15 (1) the Secretary of Agriculture, Food and Markets or designee;

16 (2) the Secretary of Natural Resources or designee;

17 (3) the Commissioner of Health or designee;

18 (4) the Commissioner of Labor or designee; and

19 (5) the Commissioner of Public Safety or designee.

20 (c) Powers and duties. The Interagency Committee on Chemical
21 Management shall:

1 (1) Convene a citizen advisory panel to provide input and expertise to
2 the Committee. The citizen advisory panel shall consist of persons with
3 expertise in;

4 (A) toxicology;

5 (B) environmental law;

6 (C) pollution prevention;

7 (D) environmental health;

8 (E) public health;

9 (F) risk analysis;

10 (G) maternal and child health care;

11 (H) occupational health;

12 (I) industrial hygiene; and

13 (J) public policy.

14 (2) Consult with the citizen advisory panel to develop a recommendation
15 of how to establish a centralized or unified electronic reporting system to
16 facilitate compliance by businesses and other entities in the State with the
17 chemical reporting and other regulatory requirements in the State.

18 (3) Develop reporting forms and guidance for businesses to help
19 streamline reporting and ensure compliance with chemical and toxic substance
20 reporting requirements.

1 (4) Monitor actions taken by the U.S. Environmental Protection Agency
2 (EPA) to regulate chemicals under the Toxic Substances Control Act,
3 15 U.S.C. chapter 53, and notify relevant State agencies of any EPA action
4 relevant to the jurisdiction of the agency.

5 (5) Annually review chemical inventories in the State in relation to
6 emerging scientific evidence in order to identify chemicals of high concern not
7 regulated by the State.

8 (d) Assistance. The Interagency Committee on Chemical Management
9 shall have the administrative, technical, and legal assistance of the Agency of
10 Natural Resources; the Agency of Agriculture, Food and Markets; the
11 Department of Health; the Department of Public Safety; and the Department of
12 Labor.

13 (e) Report. On or before January 15, and annually thereafter, the
14 Interagency Committee on Chemical Management shall report to the Senate
15 Committees on Natural Resources and Energy, on Health and Welfare, and on
16 Economic Development, Housing and General Affairs, and the House
17 Committees on Natural Resources, Fish and Wildlife, on Health Care, and on
18 Commerce and Economic Development, regarding the actions of the
19 Committee. The provisions of 2 V.S.A. § 20(d) regarding expiration of
20 required reports shall not apply to the report to be made under this section.

21 The report shall:

1 (1) In the first report, recommend:

2 (A) how the State should establish a centralized or unified electronic
3 reporting system to facilitate compliance by businesses and other entities in the
4 State with the chemical reporting and other regulatory requirements in the
5 State;

6 (B) a State agency to establish and administer the reporting system;

7 (C) estimate the staff and funding necessary to administer the
8 reporting system; and

9 (D) estimate a time line for establishment of the reporting system.

10 (2) Summarize the activities of the Interagency Committee on Chemical
11 Management.

12 (3) Estimate or summarize the known chemical inventories in the State.

13 (4) Summarize any change under federal statute or rule affecting the
14 regulation of chemicals in the State.

15 (5) Identify new or emerging chemicals of high concern and
16 recommended legislative or regulatory actions to address the risks posed by
17 new or emerging chemicals of high concern.

18 (6) recommend legislative or regulatory action to reduce health risks
19 from exposure to chemicals of high concern and reduce risks of harm to the
20 natural environment.

1 (f) Meetings.

2 (1) The Secretary of Natural Resources shall call the first meeting of the
3 Interagency Committee on Chemical Management to occur on or before July 1,
4 2017.

5 (2) The Committee shall select a chair from among its members at the
6 first meeting.

7 (3) A majority of the Interagency Committee on Chemical Management
8 of the membership shall constitute a quorum.

9 (g) Authority of agencies. The establishment of the Interagency
10 Committee on Chemical Management shall not limit the independent authority
11 of a State agency to regulate chemical use or management under existing State
12 or applicable federal law.

13 Sec. 2. STAFF INTERAGENCY COMMITTEE ON CHEMICAL
14 MANAGEMENT

15 In addition to any other funds appropriated to the Agency of Natural
16 Resources in fiscal year 2018, there is appropriated to the Agency \$100,000.00
17 in fiscal year 2018 for the purpose of hiring an employee to staff the
18 Interagency Committee on Chemical Management established under 10 V.S.A.
19 § 6633.

1 Sec. 3. RULEMAKING; TOXIC USE REDUCTION AND HAZARDOUS
2 WASTE REDUCTION PROGRAM

3 The Secretary of Natural Resources shall adopt the rules required under
4 10 V.S.A. § 6625 on or before July 1, 2019.

5 * * * Citizen Suit Right of Action * * *

6 Sec. 4. 10 V.S.A. § 6610b is added to read:

7 § 6610b. CITIZEN RIGHT OF ACTION

8 (a) Suit authorized. Except as provided in subsection (b) of this section, a
9 person may commence a civil action for equitable or declaratory relief on the
10 person's own behalf against any one of the following persons:

11 (1) Any person who is alleged to be in violation of any permit, standard,
12 regulation, condition, requirement, prohibition, or order issued or required
13 under this chapter.

14 (2) Any person who has contributed or who is contributing to the past or
15 present handling, storage, treatment, transportation, or disposal of a solid waste
16 or hazardous waste that may present an imminent and substantial
17 endangerment to health or the environment, including any past or present
18 generator, past or present transporter, or past or present owner or operator of a
19 facility.

1 (3) The Secretary when there is an alleged failure of the Agency to
2 perform any act or duty under this chapter that is not discretionary for the
3 Secretary or the Agency.

4 (b) Prerequisite to commencement of action. A person shall not commence
5 an action under subsection (a) of this section prior to 60 days after the plaintiff
6 has given notice of the violation to:

7 (1) the Secretary;

8 (2) any person alleged to be in violation of a permit, standard,
9 regulation, condition, requirement, prohibition, or order issued or required
10 under this chapter; and

11 (3) where applicable, any person alleged to have contributed or to be
12 contributing to the past or present handling, storage, treatment, transportation,
13 or disposal of any solid or hazardous waste.

14 (c) Action prohibited. A person shall not commence an action under
15 subsection (a) of this section under any of the following circumstances:

16 (1) If the Secretary or the Attorney General has commenced and is
17 diligently prosecuting a civil or criminal action to require compliance with a
18 permit, standard, regulation, condition, requirement, prohibition, or order
19 issued or required under this chapter.

20 (2) If the alleged violator is actually engaging in a removal action under
21 this chapter.

1 (3) If the alleged violator has incurred costs to initiate a remedial action
2 under this chapter and is diligently proceeding with the remedial action.

3 (4) The Secretary has obtained an administrative order, including an
4 assurance of discontinuance, under section 201 of this title pursuant to which a
5 responsible party is diligently conducting a removal action, remedial
6 investigation, or remedial action.

7 (5) With respect to the siting of a hazardous waste facility, nor to
8 restrain or enjoin the issuance of a permit for such facility.

9 (d) Venue. A person shall bring an action under subsection (a) of this
10 section in the Environmental Division of the Superior Court.

11 (e) Intervention. In any action under subsection (a) of this section:

12 (1) Any person may intervene as a matter of right when the person
13 seeking intervention claims an interest relating to the subject of the action and
14 he or she is so situated that the disposition of the action may, as a practical
15 matter, impair or impede his or her ability to protect that interest, unless the
16 Secretary shows that the applicant's interest is adequately represented by
17 existing parties.

18 (2) The Secretary or the Attorney General may intervene as a matter of
19 right as a party to represent its interests.

20 (f) Notice of action. A person bringing an action under subsection (a) of
21 this section shall provide the notice required under subsection (b) of this

1 section in writing. The notice shall be served on the alleged violator in person
2 or by certified mail, return receipt requested. The notice to the Secretary shall
3 be served by certified mail, return receipt requested. The notice shall include a
4 brief description of the alleged violation and identification of the statute, rule,
5 permit, assurance, or order that is the subject of the violation.

6 (g) Attorney’s fees; costs. The Environmental Division of the Superior
7 Court may award costs, including reasonable attorney’s fees and fees for
8 expert witnesses, to a person bringing an action under subsection (a) of this
9 section when the court determines that the award is appropriate.

10 (h) Rights preserved. Nothing in this section shall be construed to impair
11 or diminish any common law or statutory right or remedy that may be available
12 to any person. Rights and remedies created by this section shall be in addition
13 to any other right or remedy, including the authority of the State to bring an
14 enforcement action separate from an action brought under this section. No
15 determination made by a court in an action maintained under this section, to
16 which the State has not been a party, shall be binding upon the State in any
17 enforcement action.

1 Sec. 5. 10 V.S.A. § 8022 is added to read:

2 § 8022. CITIZEN RIGHT OF ACTION

3 A person commencing a right of action under section 6610b of this title
4 shall have all the rights and shall meet all of the applicable requirements of the
5 Secretary under this chapter.

6 * * * Strict Liability; Toxic Substance Release * * *

7 Sec. 6. 10 V.S.A. chapter 159, subchapter 6 is added to read:

8 Subchapter 6. Strict Liability for Toxic Exposure

9 § 6685. DEFINITIONS

10 As used in this subchapter:

11 (1) “Harm” means any personal injury or property damage.

12 (2) “Release” means any intentional or unintentional, permitted or
13 unpermitted, act or omission that allows a toxic substance to enter the air, land,
14 surface water, groundwater, or any other place where the toxic substance may
15 be located.

16 (3) “Toxic substance” means any substance identified as toxic or
17 hazardous under state or federal law, or mixture thereof, or any other substance
18 that has been shown at any time to cause increased risk of disease.

19 § 6686. LIABILITY FOR EXPOSURE TO TOXIC SUBSTANCES

20 (a) Any person who releases a toxic substance shall be held strictly, jointly,
21 and severally liable for any harm resulting from the release.

1 (4) “Toxic substance” means any substance identified as toxic or
2 hazardous under State or federal law, or mixture thereof, or any other
3 substance that has been shown at any time to cause increased risk of disease.

4 § 7202. MEDICAL MONITORING DAMAGES FOR EXPOSURE TO
5 TOXIC SUBSTANCES

6 (a) Any person may recover medical monitoring damages from exposure to
7 a toxic substance resulting from another’s tortious conduct with or without a
8 present injury or disease.

9 (b) To recover medical monitoring damages, a person must prove by a
10 preponderance of the evidence that:

11 (1) The person was exposed to a toxic substance.

12 (2) There is a probable link between exposure to the toxic substance and
13 a disease or diseases.

14 (3) The person’s exposure is the result of another’s tortious conduct,
15 including negligence, battery, strict liability, trespass, and nuisance.

16 (4) The person’s exposure to the toxic substance increases the risk of
17 developing a disease. A person does not need to prove that the disease is
18 certain or likely to develop as a result of the exposure.

19 (5) Diagnostic testing is reasonably necessary. Testing is reasonably
20 necessary if a physician would prescribe such testing for the purpose of
21 detecting or monitoring the disease.

1 owns or controls the groundwater source shall test the groundwater source for
2 the parameters set forth in subsection (d) of this section.

3 (c) Testing as condition of sale. In any transaction for the sale or exchange
4 of real property for which the potable water supply for the property is a private
5 well, the seller of the property, as a condition of a contract for sale, shall have
6 the well tested for the parameters set forth in subsection (d) of this section.

7 (d) Parameters of testing. A water sample collected under this section shall
8 be analyzed for, at a minimum: arsenic, lead, uranium, gross alpha radiation,
9 total coliform bacteria, total nitrate and nitrite, fluoride, manganese, and any
10 other parameters required by the Agency by rule. The Agency by rule may
11 require testing for a parameter by region or specific geographic area of
12 concern.

13 (e) Submission of test results. Within 10 days of receiving the results of a
14 complete test required under this section, the seller shall submit the results, on
15 a form provided by the Agency, to the Agency, the Department of Health, and
16 the buyer.

17 (f) Rulemaking. The Secretary, after consultation with the Department of
18 Health, the Wastewater and Potable Water Supply Technical Advisory
19 Committee, the Vermont Realtors, the Vermont Association of Professional
20 Home Inspectors, private laboratories, and other interested parties, shall adopt
21 by rule requirements regarding:

1 (1) when, prior to use of a new groundwater source, the test required
2 under subsection (b) of this section shall be conducted;

3 (2) who shall be authorized to sample the source for the test required
4 under subsections (b) and (c) of this section, provided that the rule shall
5 include the person who owns or controls the groundwater source and licensed
6 well drillers among those authorized to conduct the test;

7 (3) how a water sample shall be collected in order to comply with the
8 requirements of the analyses to be performed; and

9 (4) any other requirements necessary to implement this section.

10 Sec. 9. AGENCY OF NATURAL RESOURCES; GROUNDWATER

11 SOURCE TESTING

12 The Secretary of Natural Resources shall commence rulemaking under
13 10 V.S.A. § 1982 on or before July 1, 2017. The Secretary shall adopt rules
14 under 10 V.S.A. § 1982 on or before January 1, 2018.

15 Sec. 10. 18 V.S.A. § 501b is amended to read:

16 § 501b. CERTIFICATION OF LABORATORIES

17 (a) The ~~commissioner~~ Commissioner may certify a laboratory that meets
18 the standards currently in effect of the National Environmental Laboratory
19 Accreditation Conference and is accredited by an approved National
20 Environmental Laboratory Accreditation Program accrediting authority or its
21 equivalent to perform the testing and monitoring:

1 potable water supply, as that term is defined in 10 V.S.A. § 1972(6), shall
2 submit the results of groundwater analyses to the ~~department of health~~
3 Department of Health and the ~~agency of natural resources~~ Agency of Natural
4 Resources in a format required by the ~~department of health~~ Department of
5 Health.

6 Sec. 11. 27 V.S.A. § 616 is amended to read:

7 § 616. GROUNDWATER SOURCE TESTING; ~~DISCLOSURE OF~~
8 ~~INFORMATIONAL MATERIAL~~

9 (a) ~~Disclosure of potable water supply informational material. For a~~
10 ~~contract for the conveyance of real property with a potable water supply, as~~
11 ~~that term is defined in 10 V.S.A. § 1972(6), that is not served by a public water~~
12 ~~system, as that term is defined in 10 V.S.A. § 1671(5), executed on or after~~
13 ~~January 1, 2013, the seller shall, within 72 hours of the execution, provide the~~
14 ~~buyer with informational materials developed by the department of health~~
15 ~~regarding:~~

16 (1) ~~the potential health effects of the consumption of contaminated~~
17 ~~groundwater; and~~

18 (2) ~~the availability of test kits provided by the department of health.~~

19 Definition. As used in this section, potable water supply shall have the same
20 meaning as set forth in 10 V.S.A. § 1972.

1 degradation, or metabolism. “Chemical” shall not mean crystalline silica in
2 any form, as derived from ordinary sand or as present as a naturally occurring
3 component of any other mineral raw material, including granite, gravel,
4 limestone, marble, slate, soapstone, and talc.

5 (3) “Chemical of high concern ~~to children~~” means a chemical listed
6 under section 1773 or designated by the Department as a chemical of high
7 concern by rule under section 1776 of this title.

8 (4) “Child” or “children” means an individual or individuals under
9 12 years of age, or under an age specified by statute.

10 (5) “Children’s cosmetics” means cosmetics that are made for, marketed
11 for use by, or marketed to children. “Children’s cosmetics” includes cosmetics
12 that meet any of the following conditions:

13 (A) are represented in its packaging, display, or advertising as
14 appropriate for use by children;

15 (B) are sold in conjunction with, attached to, or packaged together
16 with other products that are packaged, displayed, or advertised as appropriate
17 for use by children; or

18 (C) are sold in any of the following:

19 (i) a retail store, catalogue, or online website, in which a person
20 exclusively offers for sale consumer products that are packaged, displayed, or
21 advertised as appropriate for use by children; or

1 (ii) a discrete portion of a retail store, catalogue, or online website,
2 in which a person offers for sale products that are packaged, displayed, or
3 advertised as appropriate for use by children.

4 (6) “Children’s jewelry” means jewelry that is made for, marketed for
5 use by, or marketed to children and shall include jewelry that meets any of the
6 following conditions:

7 (A) is represented in its packaging, display, or advertising as
8 appropriate for use by children;

9 (B) is sold in conjunction with, attached to, or packaged together
10 with other products that are packaged, displayed, or advertised as appropriate
11 for use by children;

12 (C) is sized for children and not intended for use by adults; or

13 (D) is sold in any of the following:

14 (i) a vending machine;

15 (ii) a retail store, catalogue, or online website, in which a person
16 exclusively offers for sale products that are packaged, displayed, or advertised
17 as appropriate for use by children; or

18 (iii) a discrete portion of a retail store, catalogue, or online
19 website, in which a person offers for sale products that are packaged,
20 displayed, or advertised as appropriate for use by children.

1 (7)(A) “Children’s product” means any consumer product, marketed for
2 use by, marketed to, sold, offered for sale, or distributed to children in the State
3 of Vermont, including:

4 (i)(A) toys;

5 (ii)(B) children’s cosmetics;

6 (iii)(C) children’s jewelry;

7 (iv)(D) a product designed or intended by the manufacturer to help
8 a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of
9 a child, or to be worn as clothing by children; or

10 (v)(E) child car seats.

11 (B) ~~“Children’s product” shall not mean or include the following:~~

12 (i) ~~batteries;~~

13 (ii) ~~snow sporting equipment, including skis, poles, boots, snow~~
14 ~~boards, sleds, and bindings;~~

15 (iii) ~~inaccessible components of a consumer product that during~~
16 ~~reasonably foreseeable use and abuse of the consumer product would not come~~
17 ~~into direct contact with a child’s skin or mouth; and~~

18 (iv) ~~used consumer products that are sold in second hand product~~
19 ~~markets.~~

1 (8) “Consumer product” means any product that is regularly used or
2 purchased to be used for personal, family, or household purposes. “Consumer
3 product” shall not mean:

4 (A) a product primarily used or purchased for industrial or business
5 use that does not enter the consumer product market or is not otherwise sold at
6 retail;

7 (B) a food or beverage or an additive to a food or beverage;

8 (C) a tobacco product;

9 (D) a pesticide regulated by the U.S. Environmental Protection
10 Agency;

11 (E) a drug, or biologic regulated by the U.S. Food and Drug
12 Administration (FDA), or the packaging of a drug, or biologic that is regulated
13 by the FDA, including over the counter drugs, prescription drugs, dietary
14 supplements, medical devices, or products that are both a cosmetic and a drug
15 regulated by the FDA;

16 (F) ammunition or components thereof, firearms, air rifles, or hunting
17 or fishing equipment or components thereof;

18 (G) an aircraft, motor vehicle, wheelchair, or vessel;

19 (H) consumer electronic products, including personal computers,
20 audio and video equipment, calculators, wireless telephones, game consoles,
21 and hand-held devices incorporating a video screen used to access interactive

1 software intended for leisure and entertainment and their associated
2 peripherals;

3 (I) interactive software, intended for leisure and entertainment, such
4 as computer games, and their storage media, such as compact discs; or

5 (J) the packaging in which a product is sold, offered for sale, or
6 distributed;

7 (K) inaccessible components of a consumer product that during
8 reasonably foreseeable use and abuse of the consumer product would not come
9 into direct contact with a person’s skin or mouth;

10 (L) batteries;

11 (M) snow sporting equipment, including skis, poles, boots, snow
12 boards, sleds, and bindings; and

13 (N) used consumer products that are sold in second-hand product
14 markets.

15 (9) “Contaminant” means a trace amount of a chemical or chemicals
16 that is incidental to manufacturing and serves no intended function in the
17 ~~children’s~~ consumer product or component of the ~~children’s~~ consumer product,
18 including an unintended by-product of chemical reactions during the
19 manufacture of the ~~children’s~~ consumer product, a trace impurity in feed-stock,
20 an incompletely reacted chemical mixture, and a degradation product.

1 (10) “Cosmetics” means articles intended to be rubbed, poured,
2 sprinkled, or sprayed on, introduced into, or otherwise applied to the human
3 body or any part thereof for cleansing, beautifying, promoting attractiveness,
4 or altering appearance, and articles intended for use as a component of such an
5 article. “Cosmetics” shall not mean soap, dietary supplements, or food and
6 drugs approved by the U.S. Food and Drug Administration.

7 (11) “Intentionally added” means the addition of a chemical in a product
8 that serves an intended function in the product component.

9 (12) “Manufacturer” means:

10 (A) any person who manufactures a ~~children’s~~ children’s consumer product or
11 whose name is affixed to a children’s product or its packaging or advertising,
12 and the ~~children’s~~ children’s consumer product is sold or offered for sale in Vermont; or

13 (B) any person who sells a ~~children’s~~ children’s consumer product to a retailer
14 in Vermont when the person who manufactures the ~~children’s~~ children’s consumer
15 product or whose name is affixed to the ~~children’s~~ children’s consumer product or its
16 packaging or advertising does not have a presence in the United States other
17 than the sale or offer for sale of the manufacturer’s products.

18 (13) “Motor vehicle” means all vehicles propelled or drawn by power
19 other than muscular power, including snowmobiles, motorcycles, all-terrain
20 vehicles, farm tractors, vehicles running only upon stationary rails or tracks,

1 motorized highway building equipment, road-making appliances, or tracked
2 vehicles or electric personal assistive mobility devices.

3 (14) “Persistent bioaccumulative toxic” means a chemical or chemical
4 group that, based on credible scientific information, meets each of the
5 following criteria:

6 (A) the chemical can persist in the environment as demonstrated by
7 the fact that:

8 (i) the half-life of the chemical in water is greater than or equal to
9 60 days;

10 (ii) the half-life of the chemical in soil is greater than or equal to
11 60 days; or

12 (iii) the half-life of the chemical in sediments is greater than or
13 equal to 60 days; and

14 (B) the chemical has a high potential to bioaccumulate based on
15 credible scientific information that the bioconcentration factor or
16 bioaccumulation factor in aquatic species for the chemical is greater than 1,000
17 or, in the absence of such data, that the log-octanol water partition coefficient
18 (log Kow) is greater than five; and

19 (C) the chemical has the potential to be toxic to ~~children~~ a person as
20 demonstrated by the fact that:

1 (i) the chemical or chemical group is a carcinogen, a
2 developmental or reproductive toxicant, or a neurotoxicant;

3 (ii) the chemical or chemical group has a reference dose or
4 equivalent toxicity measure that is less than 0.003 mg/kg/day; or

5 (iii) the chemical or chemical group has a chronic no observed
6 effect concentration (NOEC) or equivalent toxicity measure that is less than
7 0.1 mg/L or an acute NOEC or equivalent toxicity measure that is less than
8 1.0 mg/L.

9 (15) “Practical quantification limit (PQL)” means the lowest
10 concentration that can be reliably measured within specified limits of
11 precision, accuracy, representativeness, completeness, and comparability
12 during routine laboratory operating conditions.

13 (16) “Toy” means a consumer product designed or intended by the
14 manufacturer to be used by a child at play.

15 (17) “Vessel” means every description of watercraft used or capable of
16 being used as a means of transportation on water.

17 § 1773. CHEMICALS OF HIGH CONCERN TO CHILDREN

18 (a) List of chemicals of high concern to children. The following chemicals
19 are designated as chemicals of high concern to children for the purposes of the
20 requirements of this chapter:

21 (1) Formaldehyde.

- 1 (2) Aniline.
- 2 (3) N-Nitrosodimethylamine.
- 3 (4) Benzene.
- 4 (5) Vinyl chloride.
- 5 (6) Acetaldehyde.
- 6 (7) Methylene chloride.
- 7 (8) Carbon disulfide.
- 8 (9) Methyl ethyl ketone.
- 9 (10) 1,1,2,2-Tetrachloroethane.
- 10 (11) Tetrabromobisphenol A.
- 11 (12) Bisphenol A.
- 12 (13) Diethyl phthalate.
- 13 (14) Dibutyl phthalate.
- 14 (15) Di-n-hexyl phthalate.
- 15 (16) Phthalic anhydride.
- 16 (17) Butyl benzyl phthalate (BBP).
- 17 (18) N-Nitrosodiphenylamine.
- 18 (19) Hexachlorobutadiene.
- 19 (20) Propyl paraben.
- 20 (21) Butyl paraben.
- 21 (22) 2-Aminotoluene.

- 1 (23) 2,4-Diaminotoluene.
- 2 (24) Methyl paraben.
- 3 (25) p-Hydroxybenzoic acid.
- 4 (26) Ethylbenzene.
- 5 (27) Styrene.
- 6 (28) 4-Nonylphenol; 4-NP and its isomer mixtures, including CAS
- 7 84852-15-3 and CAS 25154-52-3.
- 8 (29) para-Chloroaniline.
- 9 (30) Acrylonitrile.
- 10 (31) Ethylene glycol.
- 11 (32) Toluene.
- 12 (33) Phenol.
- 13 (34) 2-Methoxyethanol.
- 14 (35) Ethylene glycol monoethyl ester.
- 15 (36) Tris(2-chloroethyl) phosphate.
- 16 (37) Di-2-ethylhexyl phthalate.
- 17 (38) Di-n-octyl phthalate (DnOP).
- 18 (39) Hexachlorobenzene.
- 19 (40) 3,3'-Dimethylbenzidine and Dyes Metabolized to
- 20 3,3'-Dimethylbenzidine.
- 21 (41) Ethyl paraben.

- 1 (42) 1,4-Dioxane.
- 2 (43) Perchloroethylene.
- 3 (44) Benzophenone-2 (Bp-2); 2,2',4,4'-Tetrahydroxybenzophenone.
- 4 (45) 4-tert-Octylphenol; 4(1,1,3,3-Tetramethylbutyl) phenol.
- 5 (46) Estragole.
- 6 (47) 2-Ethylhexanoic acid.
- 7 (48) Octamethylcyclotetrasiloxane.
- 8 (49) Benzene, Pentachloro.
- 9 (50) C.I. Solvent yellow 14.
- 10 (51) N-Methylpyrrolidone.
- 11 (52) 2,2',3,3',4,4',5,5',6,6'-~~Decabromodiph-enyl~~ Decabromodiphenyl
- 12 ether; BDE-209.
- 13 (53) Perfluorooctanyl sulphonic acid and its salts; PFOS.
- 14 (54) Phenol, 4-octyl.
- 15 (55) 2-Ethyl-hexyl-4-methoxycinnamate.
- 16 (56) Mercury and mercury compounds, including methyl mercury
- 17 (22967-92-6).
- 18 (57) Molybdenum and molybdenum compounds.
- 19 (58) Antimony and Antimony compounds.
- 20 (59) Arsenic and Arsenic compounds, including arsenic trioxide
- 21 (1327-53-3) and dimethyl arsenic (75-60-5).

- 1 (60) Cadmium and cadmium compounds.
- 2 (61) Cobalt and cobalt compounds.
- 3 (62) Tris(1,3-dichloro-2-propyl)phosphate.
- 4 (63) Butylated hydroxyanisole; BHA.
- 5 (64) Hexabromocyclododecane.
- 6 (65) Diisodecyl phthalate (DIDP).
- 7 (66) Diisononyl phthalate (DINP).
- 8 (67) any other chemical designated by the Commissioner as a chemical
9 of high concern ~~to children~~ by rule under section 1776 of this title.

10 (b) Commissioner’s review of list of chemicals. Beginning on July 1,
11 2017, and biennially thereafter, the Commissioner of Health shall review the
12 list of chemicals of high concern ~~to children~~ to determine if additional
13 chemicals should be added to the list under subsection 1776(b) of this title. In
14 reviewing the list of chemicals of high concern ~~to children~~, the Commissioner
15 of Health may consider designations made by other states, the federal
16 government, other countries, or other governmental agencies.

17 (c) Publication of list. The Commissioner shall post the list of chemicals of
18 high concern ~~to children~~ on the Department of Health website by chemical
19 name and Chemical Abstracts Service number.

1 (d) Addition or removal from list. Under 3 V.S.A. § 806, any person may
2 request that the Commissioner add or remove a chemical from the list of
3 chemicals of high concern ~~to children~~.

4 (e) PQL value. A PQL value established under this chapter for individual
5 chemicals shall depend on the analytical method used for each chemical. The
6 PQL value shall be based on scientifically defensible, standard analytical
7 methods as advised by guidance published by the Department.

8 § 1774. CHEMICALS OF HIGH CONCERN ~~TO CHILDREN~~ WORKING
9 GROUP

10 (a) Creation. ~~A~~ The Chemicals of High Concern ~~to Children~~ Working
11 Group (Working Group) is created within the Department of Health for the
12 purpose of providing the Commissioner of Health advice and
13 recommendations regarding implementation of the requirements of this
14 chapter.

15 (b) Membership.

16 (1) The Working Group shall be composed of the following members
17 who, except for ex officio members, shall be appointed by the Governor after
18 consultation with the Commissioner of Health:

19 (A) the Commissioner of Health or designee, who shall be the Chair
20 of the Working Group;

21 (B) the Commissioner of Environmental Conservation or designee;

1 (C) the State toxicologist or designee;

2 (D) a representative of a public interest group in the State with
3 experience in advocating for the regulation of toxic substances;

4 (E) a representative of an organization within the State with expertise
5 in issues related to ~~the~~ public health of, including sensitive populations such as
6 children or pregnant women;

7 (F) one representative of businesses in the State that use chemicals in
8 a manufacturing or production process or use chemicals that are used in a
9 ~~children's~~ consumer product manufactured in the State;

10 (G) a scientist with expertise regarding the toxicity of chemicals; and

11 (H) a representative of the ~~children's~~ consumer products industry
12 with expertise in existing state and national policies impacting ~~children's~~
13 consumer products.

14 (2)(A) In addition to the members of the Working Group appointed
15 under subdivision (1) of this subsection (b), the Governor may appoint up to
16 three additional adjunct members.

17 (B) An adjunct member appointed under this subdivision (2) shall
18 have expertise or knowledge of the chemical or ~~children's~~ consumer product
19 under review or shall have expertise or knowledge in the potential health
20 effects of the chemical at issue.

1 (C) Adjunct members appointed under this subdivision (2) shall have
2 the same authority and powers as a member of the Working Group appointed
3 under subdivision (1) of this subsection (b).

4 (3) The members of the Working Group appointed under subdivision (1)
5 of this subsection (b) shall serve staggered three-year terms. The Governor
6 may remove members of the Working Group who fail to attend three
7 consecutive meetings and may appoint replacements. The Governor may
8 reappoint members to serve more than one term.

9 (c) Powers and duties. The Working Group shall:

10 (1) upon the request of the Chair of the Working Group, review
11 proposed chemicals for listing as a chemical of high concern ~~to children~~ under
12 section 1773 of this title; and

13 (2) recommend to the Commissioner of Health whether rules should be
14 adopted under section 1776 of this title to regulate the sale or distribution of a
15 ~~children's~~ consumer product containing a chemical of high concern ~~to children~~.

16 (d) Commissioner of Health recommendation; assistance.

17 (1) Beginning on July 1, 2017, and biennially thereafter, the
18 Commissioner of Health shall recommend at least two chemicals of high
19 concern ~~to children~~ in ~~children's~~ consumer products for review by the Working
20 Group. The Commissioner's recommendations shall be based on the ~~degree of~~

1 human health risks, exposure pathways, and impact on sensitive populations
2 presented by a chemical of high concern ~~to children~~.

3 (2) The Working Group shall have the administrative, technical, and
4 legal assistance of the Department of Health and the Agency of Natural
5 Resources.

6 (e) Meetings.

7 (1) The Chair of the Working Group may convene the Working Group
8 at any time, but no less frequently than at least once every other year.

9 (2) A majority of the members of the Working Group, including adjunct
10 members when appointed, shall constitute a quorum, and all action shall be
11 taken upon a majority vote of the members present and voting.

12 (f) Reimbursement. Members of the Working Group, including adjunct
13 members, whose participation is not supported through their employment or
14 association shall receive per diem compensation pursuant to 32 V.S.A. § 1010
15 and reimbursement of travel expenses. A per diem authorized by this section
16 shall be paid from the budget of the Department of Health.

17 § 1775. DISCLOSURE OF INFORMATION ON CHEMICALS OF HIGH
18 CONCERN

19 (a) Notice of chemical of high concern ~~to children~~. A manufacturer of a
20 ~~children's~~ consumer product or a trade association representing a manufacturer
21 of ~~children's~~ consumer products shall submit to the Department the notice

1 described in subsection (b) of this section for each chemical of high concern to
2 ~~children~~ in a ~~children's~~ consumer product if a chemical of high concern to
3 ~~children~~ is:

4 (1) intentionally added to a ~~children's~~ consumer product at a level above
5 the PQL produced by the manufacturer; or

6 (2) present in a ~~children's~~ consumer product produced by the
7 manufacturer as a contaminant at a concentration of 100 parts per million or
8 greater.

9 (b) Format for notice. The Commissioner shall specify the format for
10 submission of the notice required by subsection (a) of this section, provided
11 that the required format shall be generally consistent with the format for
12 submission of notice in other states with requirements substantially similar to
13 the requirements of this section. Any notice submitted under subsection (a)
14 shall contain the following information:

15 (1) the name of the chemical used or produced and its chemical abstracts
16 service registry number;

17 (2) the name of the product containing the chemical, a description of the
18 product or product component containing the chemical, and whether the
19 product is a children's product;

20 (3) the universal product code for the product containing the chemical;

1 (4) the amount of the chemical contained in each unit of the product or
2 product component, reported by weight or parts per million as authorized by
3 the Commissioner;

4 (4)(5) the name and address of the manufacturer of the ~~children's~~
5 consumer product and the name, address, and telephone number of a contact
6 person for the manufacturer;

7 (5)(6) any other information the manufacturer deems relevant to the
8 appropriate use of the product; and

9 (6)(7) any other information required by the Commissioner under rules
10 adopted pursuant to 3 V.S.A. chapter 25.

11 (c) Reciprocal data-sharing. In order for the Department to obtain the
12 information required in the notice described in subsection (b) of this section,
13 the Department may enter into reciprocal data-sharing agreements with other
14 states in which a manufacturer of ~~children's~~ consumer products is also required
15 to disclose information related to chemicals of high concern ~~to children~~ in
16 ~~children's~~ consumer products. The Department shall not disclose trade secret
17 information, confidential business information, or other information designated
18 as confidential by law under a reciprocal data-sharing agreement.

19 (d) Waiver of format. Upon application of a manufacturer on a form
20 provided by the Department, the Commissioner may waive the requirement
21 under subsection (b) of this section that a manufacturer provide notice in a

1 format specified by the Commissioner. The waiver may be granted,
2 provided that:

3 (1) the manufacturer submitted the information required in a notice
4 under this section to:

5 (A) a state with which the Department has entered a reciprocal
6 data-sharing agreement; or

7 (B) a trade association, the Interstate Chemicals Clearinghouse, a
8 federal governmental agency, or other independent third party;

9 (2) the information required to be reported in a notice under this section
10 is provided to the Department in an alternate format, including reference to
11 information publicly available in other states or by independent third
12 parties; and

13 (3) the information required to be reported in a notice under this section
14 is available on or accessible from the Department of Health website.

15 (e) Chemical control program. A manufacturer shall be exempt from the
16 requirements of notice under this section for any chemical of high concern to
17 ~~children~~ that is present in a ~~children's~~ consumer product or component of a
18 ~~children's~~ consumer product only as a contaminant if, during manufacture of
19 the ~~children's~~ consumer product, the manufacturer was implementing a
20 manufacturing control program and exercised due diligence to minimize the
21 presence of the contaminant in the ~~children's~~ consumer product.

1 (f) Notice of removal of chemical. A manufacturer who submitted the
2 notice required by subsection (a) of this section may at any time submit to the
3 Department notice that a chemical of high concern ~~to children~~ has been
4 removed from the manufacturer's ~~children's~~ consumer product or that the
5 manufacturer no longer sells, offers for sale, or distributes in the State the
6 ~~children's~~ consumer product containing the chemical of high concern ~~to~~
7 ~~children~~. Upon verification of a manufacturer's notice under this subsection,
8 the Commissioner shall promptly remove from the Department website any
9 reference to the relevant ~~children's~~ consumer product of the manufacturer.

10 (g) Certificate of compliance. A manufacturer required to submit notice
11 under this section to the Commissioner may rely on a certificate of compliance
12 from suppliers for determining reporting obligations. A certificate of
13 compliance provided by a supplier under this subsection shall be solely for the
14 purpose of compliance with the requirements of this chapter.

15 (h) Products for sale out of state. A manufacturer shall not be required to
16 submit notice under this section for a ~~children's~~ consumer product
17 manufactured, stored in, or transported through Vermont solely for use or sale
18 outside the State of Vermont.

19 (i) Publication of information; disclaimer. The Commissioner shall post on
20 the Department of Health website information submitted under this section by
21 a manufacturer. When the Commissioner posts on the Department of Health

1 website information submitted under this section by a manufacturer, the
2 Commissioner shall provide the following notice:

3 “The reports on this website are based on data provided to the Department.
4 The presence of a chemical in a ~~children’s~~ consumer product does not
5 necessarily mean that the product is harmful to human health or that there is
6 any violation of existing safety standards or laws. The reporting triggers are
7 not health-based values.”

8 (j) Fee. A manufacturer shall pay a fee of \$200.00 for each notice required
9 under subsection (a) of this section. If, under subsection (d) of this section, the
10 Commissioner waives the required format for reporting, the fee shall not be
11 waived. Fees collected under this subsection shall be deposited in the
12 Chemicals of High Concern Fund for the purposes of that Fund.

13 (k) Application of section. The requirements of this section shall apply
14 unless a manufacturer is exempt or unless notice according to the requirements
15 of this section is specifically preempted by federal law. In the event of conflict
16 between the requirements of this section and federal law, federal law shall
17 control.

18 (l) Submission of notice; dates. Unless the Commissioner adopts by rule a
19 phased-in reporting requirement under section 1776 of this title, a
20 manufacturer shall submit the notice required under subsection (a) of this
21 section by:

1 (1) January 1, 2017; and

2 (2) August 31, 2018, and biennially thereafter.

3 § 1776. RULEMAKING; ADDITIONAL CHEMICALS OF CONCERN ~~TO~~
4 ~~CHILDREN~~; PROHIBITION OF SALE

5 (a) Rulemaking authority. The Commissioner shall, after consultation with
6 the Secretary of Natural Resources, adopt rules as necessary for the purposes
7 of implementing, administering, or enforcing the requirements of this chapter.

8 (b) Additional chemicals of concern ~~to children~~. The Commissioner may
9 by rule add additional chemicals to the list of chemicals of high concern ~~to~~
10 ~~children~~, provided that the Commissioner of Health, on the basis of ~~the weight~~
11 ~~of~~ credible, scientific evidence, has determined that a chemical proposed for
12 addition to the list meets ~~both~~ all of the following criteria in subdivisions (1)
13 and (2) of this subsection:

14 (1) The Commissioner of Health has determined that an authoritative
15 governmental entity or accredited research university has demonstrated that the
16 chemical:

17 (A) harms the normal development of a fetus or child or causes other
18 developmental toxicity;

19 (B) causes cancer, genetic damage, or reproductive harm;

20 (C) disrupts the endocrine system;

1 (D) damages the nervous system, immune system, or organs or
2 causes other systemic toxicity; or

3 (E) is a persistent bioaccumulative toxic.

4 (2) The chemical has been found through:

5 (A) biomonitoring to be present in human blood, umbilical cord
6 blood, breast milk, urine, or other bodily tissues or fluids;

7 (B) sampling and analysis to be present in household dust, indoor air,
8 drinking water, or elsewhere in the home environment; or

9 (C) monitoring to be present in fish, wildlife, or the natural
10 environment.

11 (c) Removal of chemical from list. The Commissioner may by rule remove
12 a chemical from the list of chemicals of high concern ~~to children~~ established
13 under section 1773 of this title or rules adopted under this section if the
14 Commissioner determines that the chemical no longer meets ~~both~~ all of the
15 criteria of subdivisions (b)(1) and (2) of this section.

16 (d) Rule to regulate sale or distribution.

17 (1) The Commissioner, ~~upon the recommendation of~~ after consultation
18 with the Chemicals of High Concern to Children Working Group, may adopt a
19 rule to regulate the sale or distribution of a ~~children's~~ consumer product
20 containing a chemical of high concern ~~to children~~ upon a determination that:

1 (A) ~~children will be exposed~~ there is a potential exposure to humans
2 to a chemical of high concern ~~to children~~ in the ~~children's~~ consumer
3 product; and

4 (B) ~~there is a probability that, due to the degree of exposure or~~
5 ~~frequency of exposure of a child to a chemical of high concern to children in a~~
6 ~~children's product, exposure could cause or contribute to one or more of the~~
7 ~~adverse health impacts listed under subdivision (b)(1) of this section~~ at least
8 one available safer alternative chemical to the chemical of high concern.

9 (2) In determining whether ~~children~~ a person will be exposed to a
10 chemical of high concern in a ~~children's~~ consumer product, the Commissioner
11 shall review available, credible information regarding:

12 (A) the market presence of the ~~children's~~ consumer product in the
13 State;

14 (B) the type or occurrence of exposures to the relevant chemical of
15 high concern ~~to children~~ in the ~~children's~~ consumer product;

16 (C) the household and workplace presence of the ~~children's~~
17 consumer product; or

18 (D) the potential and frequency of exposure of ~~children~~ persons to the
19 chemical of high concern ~~to children~~ in the ~~children's~~ consumer product.

1 (3) A rule adopted under this section may:

2 (A) prohibit the ~~children's~~ consumer product containing the
3 chemical of high concern ~~to children~~ from sale, offer for sale, or distribution in
4 the State; or

5 (B) require that the ~~children's~~ consumer product containing the
6 chemical of high concern ~~to children~~ be labeled prior to sale, offer for sale, or
7 distribution in the State.

8 (4) In any rule adopted under this subsection, the Commissioner shall
9 adopt reasonable time frames for manufacturers, distributors, and retailers to
10 comply with the requirements of the rules. No prohibition on sale or
11 manufacture of a ~~children's~~ consumer product in the State shall take effect
12 sooner than two years after the adoption of a rule adopted under this section
13 unless the Commissioner determines that an earlier effective date is required to
14 protect human health and the new effective date is established by rule.

15 (e) Exemption for chemical management strategy. In adopting a rule under
16 this section, the Commissioner may exempt from regulation a ~~children's~~
17 consumer product containing a chemical of high concern ~~to children~~ if the
18 manufacturer of the ~~children's~~ consumer product is implementing a
19 comprehensive chemical management strategy designed to eliminate harmful
20 substances or chemicals from the manufacturing process.

1 (f) Additional rules.

2 (1) On or before July 1, 2017, the Commissioner of Health shall adopt
3 by rule the process and procedure to be required when the Commissioner of
4 Health adopts a rule under subsection (b), (c), or (d) of this section. The rule
5 shall provide:

6 (A) all relevant criteria for evaluation of the chemical;

7 (B) criteria by which a chemical, due to its presence in the
8 environment or risk of harm, shall be prioritized for addition or removal from
9 the list of chemicals of high concern ~~to children~~ or for regulation under
10 subsection (d) of this section;

11 (C) time frames for labeling or phasing out sale or distribution; and

12 (D) other information or process determined as necessary by the
13 Commissioner for implementation of this chapter.

14 (2) The Commissioner may, by rule, authorize a manufacturer to report
15 ranges of the amount of a chemical in a ~~children's~~ consumer product, rather
16 than the exact amount, provided that if there are multiple chemical values for a
17 given component in a particular product category, the manufacturer shall use
18 the largest value for reporting.

19 (3) Notwithstanding the required reporting dates under section 1774 of
20 this title, the Commissioner may adopt by rule phased-in reporting
21 requirements for chemicals of high concern ~~to children~~ in ~~children's~~ consumer

1 products based on the size of the manufacturer, aggregate sales of ~~children's~~
2 consumer products, or the exposure profile of the chemical of high concern ~~to~~
3 ~~children~~ in the ~~children's~~ consumer product.

4 (g) Additional public participation. In addition to the public participation
5 requirements of 3 V.S.A. chapter 25 and prior to submitting a rule authorized
6 under this section to the Secretary of State under 3 V.S.A. § 838, the
7 Commissioner shall make reasonable efforts to consult with interested parties
8 within the State regarding any proposed prohibition of a chemical of high
9 concern ~~to children~~. The Commissioner may satisfy the consultation
10 requirement of this section through the use of one or more workshops, focused
11 work groups, dockets, meetings, or other forms of communication.

12 § 1776a. PHASE OUT OF CHILDREN'S PRODUCTS CONTAINING A
13 CHEMICAL OF HIGH CONCERN

14 (a) Removal or substitution. On or before the date on which a
15 manufacturer of a children's product submits the third biennial notice required
16 under section 1775 of this title for a chemical that is present in a children's
17 product, the manufacturer shall remove or make a substitution for the chemical
18 or seek a waiver from the Commissioner if the chemical is present in a
19 children's product that is marketed for use by, marketed to, sold, offered for
20 sale, distributed for use by an individual under three years of age and the
21 children's product is:

- 1 (1) mouthable;
2 (2) a children’s cosmetic; or
3 (3) made for, marketed for use by, or marketed to children under three
4 years of age.

5 (b) Extension; small manufacturer. A manufacturer with 25 or fewer
6 employees may apply for a two-year extension of the date specified in
7 subsection (a) of this section to meet the requirements of this section.

8 (c) Exemption. A manufacturer is exempt from meeting the requirements
9 of this section for children’s products described in subsection (a) of this section
10 that contain a high priority chemical of concern for children’s health used in
11 children’s products at levels that are at or below allowable levels for children’s
12 products as established by the Consumer Product Safety Improvement Act of
13 2008, P.L. 110-314, 122 Stat. 3016, and in effect on July 1, 2017.

14 (d) Rulemaking. The Commissioner may adopt rules providing for
15 additional exemptions from the requirements of this section.

16 (e) Presumption of compliance. For purposes of this subsection, any
17 consumer product safety standard adopted under federal law that establishes
18 allowable levels for a chemical of high concern in a children’s product is
19 presumed to establish the maximum allowable level of the chemical that may
20 be used in a children’s product that is sold or offered for sale in this State. The
21 Commissioner may not require a manufacturer in compliance with the federal

1 standard also to comply with the requirements of this section unless the
2 Commissioner establishes in the rulemaking process that a lower maximum
3 allowable level for children’s products of a chemical of high concern than the
4 allowable level set by the federal standard is necessary to protect human health
5 and welfare.

6 § 1777. CHEMICALS OF HIGH CONCERN ~~TO CHILDREN~~ FUND

7 (a) The Chemicals of High Concern ~~to Children~~ Fund is established in the
8 State Treasury, separate and distinct from the General Fund, to be administered
9 by the Commissioner of Health. Interest earned by the Fund shall be credited
10 to the Fund. Monies in the Fund shall be made available to the Department of
11 Health and the Agency of Natural Resources to pay costs incurred in
12 administration of the requirements of this chapter.

13 (b) The Chemicals of High Concern ~~to Children~~ Fund shall consist of:

14 (1) fees and charges collected under section 1775 of this chapter;

15 (2) private gifts, bequests, grants, or donations made to the State from
16 any public or private source for the purposes for which the Fund was
17 established; and

18 (3) such sums as may be appropriated by the General Assembly.

19 § 1778. CONFIDENTIALITY

20 Information submitted to or acquired by the Department or the Chemicals of
21 High Concern ~~to Children~~ Working Group under this chapter may be subject to

1 public inspection or copying or may be published on the Department website,
2 provided that trade secret information and confidential business information
3 shall be exempt from public inspection and copying under 1 V.S.A. § 317(c)(9)
4 and information otherwise designated confidential by law shall be exempt from
5 public inspection and copying under 1 V.S.A. § 317(c)(1). It shall be the
6 burden of the manufacturer to assert that information submitted under this
7 chapter is a trade secret, confidential business information, or is otherwise
8 designated confidential by law. When a manufacturer asserts under this
9 section that the specific identity of a chemical of high concern ~~to children~~ in a
10 ~~children's~~ consumer product is a trade secret, the Commissioner shall, in place
11 of the specific chemical identity, post on the Department's website the generic
12 class or category of the chemical in the ~~children's~~ consumer product and the
13 potential health effect of the specific chemical of high concern ~~to children~~.

14 § 1779. VIOLATIONS; ENFORCEMENT

15 A violation of this chapter shall be considered a violation of the Consumer
16 Protection Act in 9 V.S.A. chapter 63. The Attorney General has the same
17 authority to make rules, conduct civil investigations, enter into assurances of
18 discontinuance, and bring civil actions under 9 V.S.A. chapter 63,
19 subchapter 1. Private parties shall not have a private right of action under this
20 chapter.

1 * * * Dental Floss and Food Contact Substances * * *

2 Sec. 13. 18 V.S.A. § 1514 is added to read:

3 § 1514. PERFLUOROOCTANESULFONIC ACID; DENTAL
4 FLOSS; FOOD CONTACT SUBSTANCES

5 (a) As used in this section:

6 (1) “Dental floss” or “dental tape” means a string-like device made of
7 cotton or other fibers intended to remove plaque and food particles from
8 between the teeth to reduce tooth decay. The fibers of the device may be
9 coated with wax.

10 (2) “Food contact substance” means any substance intended for use as a
11 component of materials used in manufacturing, packing, packaging,
12 transporting, or holding food if such use is not intended to have any technical
13 effect in the food.

14 (3) “Perfluorooctanesulfonic acid” or “PFAS” is a man-made
15 fluorosurfactant used in manufacturing, including perfluorooctanoic acid
16 (PFOA) and perfluorooctane sulfonic acid (PFOS)

17 (b) Beginning July 1, 2018, no person or entity shall manufacture, sell, or
18 distribute in commerce in this State any dental floss or dental tape containing
19 perfluorooctanesulfonic acid.

1 § 6629(f) (toxics use reduction planning program) shall take effect on

2 July 1, 2017.

3 (c) Sec. 12 (chemicals of high concern) shall take effect on

4 September 1, 2018.

5 (d) In Sec. 13:

6 (1) 18 V.S.A. § 1514(b) (dental floss) shall take effect on July 1,

7 2018; and

8 (2) 18 V.S.A. § 1514(c) (food contact substance) shall take effect on

9 July 1, 2019.

10 (e) All other sections shall take effect on July 1, 2017.