



GLOBALFOUNDRIES®

1000 River Road – B966
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February 5th, 2019

Dear Chair Sears and Members of the Judiciary Committee,

GLOBALFOUNDRIES appreciates the opportunity to provide these comments regarding the current version of S.37. We understand the purpose of the Senate Judiciary Committee’s work to protect Vermont citizens from harmful exposure to hazardous chemicals. We are proud of our stewardship record and hope that we can bring our perspective as managers of complex advanced manufacturing processes to help shape legislation that will advance your goals consistent with national and global best practices.

GF notes the following key recommendations with regard to the proposed bill:

- **The definition of “release” should not include permitted releases.** The inclusion of permitted releases essentially negates any statutory scheme to regulate discharges of potentially harmful substances to protect human health and the environment. Dischargers may be held strictly liable even when compliant with permit requirements under, for example, state Clean Water and Clean Air permits. This undermines investment in regulatory compliance and best practices, and it would create unworkable uncertainty for manufacturers and insurers.

In addition, S.37 expands the definition of “Release” from “...allows a toxic substance to enter the air, land, surface water, or groundwater” to “...allows a toxic substance to enter the air, land, surface water, or groundwater **or any other place where the toxic substance may be located**” (p.5). This definition creates additional uncertainty. For example, this could potentially be interpreted to include substances contained in articles that are already regulated under a host of global product regulations.

- **The imposition of strict liability is unnecessary and introduces far too much legal uncertainty for Vermont manufacturers like GF.** This bill would apply strict liability for the release of a toxic substance that causes any harm, from personal injury to property damage, without regard to compliance record, investment in controls and extensive evaluation of the safety and efficacy of the chemicals used in our processes.

GLOBALFOUNDRIES understands our duty to protect against impacts to human health and the environment. Rather than imposing an unworkable regime based on strict liability, we believe the legislature should maintain the legal standards that have evolved over decades of jurisprudence to protect citizens from harm. As the insurance industry



and DFR representatives have already testified, this new liability standard would create tremendous uncertainty and risk for operations like ours, even as we conduct our enterprise in accord with Vermont's already protective standards.

- **The exclusion of certain parties and sectors from joint and several liability creates an inequitable landscape for Vermont's industrial sector:**

Joint and several liability is a risk-sharing mechanism that is intended to ensure a plaintiff can be fully compensated for damages jointly caused by multiple parties, even if one or more of those parties is insolvent or judgment-proof. Blanket exclusion for any parties or industrial sectors undermines the policy rationale for joint and several liability because it would limit the universe of parties that could be held responsible for actions causing the alleged harms at issue. Furthermore, the Committee's stated rationale to exclude liability for the use and application of pesticides, herbicides and other agricultural chemicals as they are regulated, managed and monitored by the Department of Agriculture should also apply to the permitted emissions of the regulated community for chemical releases to air, water, or land. Air, water and land programs are administered by the Agency of Natural Resources and similarly take into consideration protecting the health and safety of Vermonters.

- **Medical monitoring claims should be based on tortious conduct.** Claims for medical monitoring should not be allowed unless a release occurred due to a defendant's negligence, recklessness or willful misconduct. As noted above, allowing claims based on a strict liability standard undermines investment in regulatory compliance and best practices and would create unworkable uncertainty for manufacturers and insurers.

- **Medical monitoring claims should be based on the degree of potential exposure and the corresponding health risk:** This bill sets a much lower bar of proof for a plaintiff to recover medical monitoring damages than common law medical monitoring proof requirements in other states (such as Pennsylvania). We understand the goal to ensure that Vermonters who have suffered from unlawful exposure to a toxic chemical should be helped to monitor against the potential health impacts of that exposure and recommend that regulators, manufacturers and health experts work together to identify the appropriate risk-based standard for when monitoring will be needed.

More specifically, a plaintiff should have to demonstrate that their exposure to a chemical is different than the general public in order to be entitled to medical monitoring. A person should not be entitled to medical monitoring for exposure that every person may have as a result of living in modern society.



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

We have made significant investments in our Vermont facility to create a regulatory compliance regimen that is world class. We not only aim to achieve compliance with our permit parameters and requirements, but strive to exceed these standards, where feasible. We are committed to a "Beyond Compliance" approach, seeking to exceed the requirements of applicable regulations. We implement consistent and rigorous EHS standards, management systems, metrics, external reporting, and compliance assurance programs.

This bill takes a novel and radical approach to liability, it says that a manufacturer who is fully compliant with the law is still fully liable, including several liability, for impacts completely isolated from its own operations. This would create an unacceptable level of uncertainty with respect to insurability and future costs that poses grave concerns for GLOBALFOUNDRIES' manufacturing operations in Vermont.

We remain committed to working with the General Assembly, regulators, and other stakeholders to identify solutions to the problems you seek to address. Please let us know if there is any further information we can provide as you complete your work on this bill.

We appreciate your consideration of our concerns. Please contact me at 1-802-769-4269 or ruma.kohli@globalfoundries.com if I can be of any further assistance.

Thank you,

Ruma Kohli
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