



February 14, 2019

Vermont General Assembly
Senate Committee on Judiciary
115 State Street
Montpelier, VT 05633

RE: S. 37, An Act Relating to Medical Monitoring Damages

Dear Senator Sears, Honorable Members of the Senate Committee on Judiciary:

Thank you for the opportunity to express our concerns related to S. 37. Casella Waste Systems, Inc. (CWS) operates several solid waste and recycling facilities throughout the State of Vermont and employs over 100 people in Vermont alone. CWS applauds the Committee for attempting to protect Vermonters and the environment however we are concerned that the language as written in S. 37 could have negative impacts on the Solid Waste & Recycling Industry therefore CWS opposes S. 37 for the following reasons:

- 1) **Report on Insurance Policy Pricing and Availability** - S. 37 requires the Commissioner of Financial Regulation to evaluate whether insurance policies in the State will be more expensive or less available and whether or not the insurance market will be negatively impacted due to the strict liability provisions. The evaluation is required to be reported to the Senate Committee on Finance on or before January 15, 2020 however, if passed, S. 37 would take effect on July 1, 2019. The evaluation on how the inclusion of strict liability provisions will affect insurance pricing and availability is a critical component of a sound decision-making process and should be conducted and reported on to the Senate Committee on Finance prior to any further consideration of S.37.
- 2) **Definition of "Toxic Substance"** – The definition does not account for permissible exposure limits, which is the legal limit established by OSHA, for exposure of an employee to a substance. It also does not take into account that toxic or chemical substances are only subject to EPRCA, OSHA, CERCLA, hazardous waste regulations, etc. if they are over the minimum threshold or reportable quantities established by the appropriate regulatory agency.
- 3) **Medical Monitoring** - S. 37 creates a medical monitoring program that holds companies financially liable indefinitely for claims related to personal injury or property damage associated with releases or exposure to toxic substances. The broad language in this bill would allow claimants to recover damages without having to link or prove that an injury or disease is likely to occur or develop because of exposure to a toxic substance from their current or former employer.
- 4) The definition of **"Facility"** - CWS implements an extensive environmental health and safety program that is consistent with State and Federal regulations. CWS is committed to providing our employees with a safe workplace and upholding our responsibilities

under existing environmental regulations. Because our facilities receive and manage various types of waste and recyclable materials, we have controls in place to ensure that the types of waste received at our facilities is acceptable and allowed by our permits and our employees are properly trained. CWS is not a manufacturer of toxic substances however the broad definition of “facility” is concerning because it could be interpreted to include solid waste disposal facilities unintended consequences. CWS respectfully requests that the following language be added to the definition of “Facility” that would exempt solid waste and recycling facilities from this legislation:

- (1) **“Facility”** means all contiguous land, structures, other appurtenances, and improvements on the land where toxic substances are manufactured, processed, used, or stored. A facility may consist of several treatment, storage, or disposal operational units. A facility shall not include land, structures, other appurtenances, and improvements on the land owned by a municipality **or any type of solid waste disposal and recycling facility.**

- 5) **Standard Industrial Classification (SIC) Code 20 through 39** – The addition of SIC Codes 20 - 39 may have been an attempt to make S. 37 applicable only to manufacturing facilities, however SIC 37 refers to transportation equipment. The inclusion of SIC code 37 could subject the transportation industry, solid waste collection industry, and any other type of business that utilizes or sells motor vehicles, including parts and accessories, to this legislation.

Respectfully submitted,

Kim Crosby – Environmental Compliance Manager
Casella Waste Systems, Inc.