I applaud Vermont for being protectors of its citizen and environment but the liability and cost of S37 is too broad and a similar law exists nowhere in the country to measure its impact by. S37 has the potential to destroy many Vermont businesses and ultimately hurt its residents in its current form. As a small business owner I will try and break down my concerns and the inadvertent effects of S37 into 5 different topics.

1. **Cost of Insurance**- Because of the term Strict Liability and fear of the unknown potential risks for their insured, insurance companies in New York tripled their rates. There is no doubt it would make insurance significantly more expensive and harder to get. As a small business owner who has worked diligently to receive class A "best in class" rating I know for a fact I would be unable to absorb that increase. Those businesses that could afford it may pass the increases on to their customers. In section 2a it states a Commission will monitor pricing and availability of insurance until January 2020 and annually thereafter. As most companies renew annually that time frame is not sufficient to see the effects. As we saw in the healthcare industry, the changes made not only took away medical insurance options, free market service based pricing, and competitive rates, many Insurance carriers no longer do business in Vermont. Many insurance companies are family owned and operated in Vermont and could not withstand the potential impact of S37 and uncertainty in the market place. A single claim with no proof required could potentially put a small business under with legal fees and lost time, and many smaller insurance companies could not knowingly insure that high of a potential dollar risk despite a business diligently following best practice. S37 will result in higher premiums and that should scare you as much as it does me. At a time when the State is paying people to move here, trying to increase business, improve infrastructure, and develop technical and trade employment to increase the possibility of young people staying in Vermont, S37 does absolutely nothing to help achieve those goals. It simply will make insurance significantly more expensive and harder to get and results in no businesses or jobs.

2. **Hiring costs-** Because of Strict Liability and the inclusion of medical monitoring with no burden of proof as a business owner I would have to consider changing my hiring practices. Many businesses that have high turnover may need to begin requiring costly pre-employment physicals to rule out preexisting conditions. Some jobs require constant exposure to everyday chemicals. Continued exposure in minimal quantities to those items contained in the 42 page list could ultimately result in a candidate having previous exposure to "potential "risk or a probable link to a latent disease. Employees who jump around from one auto body shop, hair salon, or laboratory to another may unknowingly suffer from cumulative exposure. To prevent the potential risk of hiring an employee who may claim exposure that was actually preexisting, many employers will need to require costly pre-employment healthcare screenings. When does one company's responsibility end and another begin? Is it whomever the individual is employed by upon the filing for exposure, the first employer, split between all, or the employer with the deepest pockets? Under S37 I feel like businesses and industries that have a high turnover rate will be put into a revolving door that could allow employees to pick and choose who they claim is responsible for potential exposure and go after for testing **and that business would be defenseless.**
Other ways S37 could also cost businesses with hiring and firing is speculative claims of exposure may be vindictive in nature or filed by a disgruntled employee without any scientific proof. The rule as written offers no protection or chance of defense for employers. S37 could also result in many industries having a large population of "unemployable" individuals who cannot pass pre-employment exams.

3. **Laws already exist** that require businesses to test for certain substances in certain quantities. Permits that regulate the amount of certain substances tolerable in storm water runoff are common place and testing requirements surrounding these permits is increasing. Where the permit is applied for and the type of the project defines what substance are required to test for, assigns codes for substances, and sets tolerable amounts. The two gallons or pounds referenced in 4A is arbitrary and possibly conflicting to the businesses permitted amounts. Thus making it necessary to regulate permitted releases which is extremely confusing for a business owner who wants to do the right thing. Page 2 states a business can be held liable for exposure whether or not the release was permitted or unpermitted or whether or not they are required to test for that substance. Many toxic substance may be preexisting in ground, air, or water naturally, but if they were not pre

tested for permits how is anyone to know? For example many homes in Vermont test positively for radon but the homeowner never knows until they go to sell and are required to test. Likewise many older state and municipal buildings contained lead and asbestos at one point. There are laws, actions, and remedies in place to correct these potentially harmful substances. Rules, regulations, and processes also already exist for those who feel they were adversely affected by another's actions which are proven to be negligent. These processes and rules work because they are based on fact, scientific test, and a burden of proof not "potential risk. S37 has a serious issue because no facts or burden of proof is required to show a latent disease is likely to develop as a result of the exposure, as stated in 7202 3.

4. I am nervous that there are other risks or unintended impacts of S37. Although it is important to represent all citizens and the environment, the lack of clarity and undefined parameters of the proposed bill will potentially encourage lawsuits, clog the court rooms, and set precedent that is difficult to undo the damage caused to the business community.
   Some terms or definitions within the bill are confusing. For example when referencing exposure does that means in a single event or cumulative over time. If it is cumulative, how does the law assign medical monitoring, exposure liability, and responsibility for damages to a single entity? Whose to say whether repeated exposures or a different singular exposure to some other source of the same chemical are at fault. When inhalation is used as a way of contact how is that to be measured. Is it by proximity to the substance and does it take into account the type of ventilation used in the area? The exposure amounts are specific when they state 2 gallons in section 6685 2A, yet that amount seems to be very random. There is no accounting for concentration and density. Two gallons spilled in or on the shores of Curtis pound is very different than the impact of 2 gallons in Lake Champlain.
   The presumed assumption of S37 is to protect individuals from big business environmental impact. Yet in reality the impact will be felt by many. If a properly trained employee doesn't follow procedure and spills a toxic substance should the employer be held responsible for potential exposure without defense potential? With a wide open slate to claim exposure and demand medical monitoring who will the legal system go after, the employee, manager, owner, subcontractor or vendor? Another case of who has the deepest pockets is in the making and it doesn't account for who is at fault or take into account human error.
   As noted in one recent PFOA case the well contamination was caused by a 50 year old site contaminated by the white foam discharged by a fire hose when a structure on the property burned. Certainly this isn't the fault of the employee spraying the foam, but could it possibly make the EMT's hesitant to expose themselves to such a liability. This could result in difficulty hiring emergency, state, municipal, and personal. The same insurance costs would affect these entities and would potentially increase taxes. Municipalities have had multiple failures in infrastructure resulting in untreated sewage and unprocessed chemicals being released. If someone wanted to pursue an exposure claim against the Municipality would the maintenance team be responsible for parts failures, the employee manning the switch for human error, or the city council for failure to properly maintain the facility.

5. Last and most important is the inclusion of the term **Strict Liability**.
   The definition of Strict Liability is the imposition of liability on a party without a finding of fault and means a business could be held liable simply because harm happened, not whether or not it is proven to be their fault or the result of wrongful conduct as required in proposed 7202 (1). This is the word that scares insurance companies and business owners. The terms inclusion in the bill and its impact on the business of Vermont would be devastating. The fact is that no matter how diligent or law abiding a business is under S37 they have no chance to defend one's self, prove another party is responsible for a claimed exposure, that it is the result of a natural occurrence already present, or the result of flooding or an accident. It becomes redundant and could possibly even be used to override claims filed by citizens trying to protect if challenged. The definition of Strict Liability and how it is applied within the bill is confusing within itself. Section 7202 states that someone is eligible for medical monitoring if all conditions 1-5 are met. Yet condition (2) and (3) seemingly contradict each other. In

(2) a claimant would need to show a probable link between exposure and a latent disease. Who determines what this link is and where it is traced back to? Yet section (3) states a person doesn't need to prove a latent disease is certain or likely.

When a fuel tanker crashed on I89 last year several thousand gallons of fuel spilled as a result of the tragic accident. There is no doubt the owner of the truck should be responsible for cleanup and potential contamination to surrounding land and neighbors. Yet under strict liability and proposed S37 everyone who went by and inhaled the fumes would be entitled to request medical monitoring. A fire at an industrial building, acid rain, the increased number of floods that carry away everything in their path, and even gas station fumes all produce some type of potential exposure to anyone downwind or downstream.

Because it requires no proof, S37 automatically assumes all businesses are the bad guy and is contrary to our legal systems basis which includes terms such as innocent until proven guilty and beyond a reasonable doubt. If you do nothing else, remove the term strict liability from S37. Ironically if you do that you have a bill that governs things so similar to those governed by other laws (negligence, lack of due diligence, wrongful conduct, or intent to deceive), S37 is therefore not needed. It becomes redundant and could possibly even be used to override claims filed by citizens trying to protect if challenged. If you take a good look at the existing laws meant to protect citizens from wrongful exposure to chemicals you will see that S37 is not needed.

There are enough challenges of doing business in Vermont please don't add another.