



For a thriving New England

CLF Vermont 15 East State Street, Suite 4  
Montpelier, VT 05602  
P: 802.223.5992  
F: 802.223.0060  
www.clf.org

January 26, 2022

Sen. Dick Sears Jr., Chair  
Sen. Philip Baruth, Vice Chair  
Sen. Jeanette K. White  
Sen. Alice W. Nitka, Clerk  
Sen. Joe Benning

Dear Senators:

I am writing on behalf of Conservation Law Foundations (“CLF”) to strongly urge you to support S.113. This bill would clarify that Vermonters harmed by the release of toxic pollution may pursue the remedy of medical monitoring as part of any lawsuit to recover damages caused by the release of toxic pollution.

Medical monitoring is a remedy a person can pursue when a person is exposed to a known toxic chemical that has created a risk of that person contracting a disease. As this Committee has heard during the previous reviews of this issue, when a person is exposed to a toxic chemical, they may have high levels of exposure without initially developing a disease. However, the exposure increases the *risk* of a person eventually contracting a disease. Accordingly, regular medical attention and monitoring is required to determine if the exposure to toxic chemicals has caused a person to contract a disease. The medical monitoring allows for early intervention to treat the disease and provide the person with the best chance of recovery.

S.113 would clarify in statute that if a person is exposed to a “proven toxic substance” that creates an increased risk of contracting a disease, that person has the right to go before a court and present evidence that the exposure to the toxic chemical created the need for the person to be monitored regularly by a doctor, and the polluter should be responsible for these costs.

This bill has been carefully crafted to closely track the test set forth by Judge Crawford, the Chief Judge for the Federal District Court in Vermont, in a preliminary ruling that allowed plaintiffs in the case regarding the release of PFAS chemicals in Bennington, Vermont to present evidence on the need for medical monitoring. This test adequately addresses the concerns raised by Governor Scott in his veto message related to the medical monitoring bill that previously passed the Legislature (namely, that the medical monitoring test in that bill was not closely aligned enough with tests other courts have used when allowing victims of toxic exposure to seek medical monitoring).

Importantly, S.113 does not alter in any way the liability standard that a plaintiff must meet to recover damages from the release of toxic substances. It merely allows a person to pursue damages if medical monitoring is needed. CLF does not agree with concerns that S.113 would



create issues for insurance companies by simply allowing Vermonters to seek a remedy if warranted to be made whole from harm caused by the release of toxic pollution.

For the above reasons, CLF respectfully urges you to vote in support of S.113. Thank you for your time and attention to this important matter.

Sincerely,

Elena Mihaly, Esq.  
Vice President & Director  
Conservation Law Foundation Vermont  
[emihaly@clf.org](mailto:emihaly@clf.org)  
(802) 622-3012