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STATE OF VERMONT

Legislative Committee on Administrative Rules (LCAR)

MEMO TO: Senator Christopher Bray, Chair, Senate Committee on Natural Resources and Energy
Senator Brian Champion, Chair, Senate Committee on Education
Representative Peter Conlon, Chair, House Committee on Education
Representative Amy Sheldon, Chair, House Committee on Environment and Energy

FROM: Legislative Committee on Administrative Rules

DATE: February XX, 2024

SUBJECT: Concerns Related to the Investigation and Remediation of Contaminated Properties Rule (IRule)

The Legislative Committee on Administrative Rules (LCAR) reviewed and approved the [Investigation and Remediation of Contaminated Properties Rule](#) (IRule) at LCAR's February 1, 2024, meeting.

At this meeting, LCAR took testimony from Matt Chapman, Director, Waste Management and Prevention Division, Department of Environmental Conservation, on, among other things:

- the [Supplemental Economic Impact Statement for Rule 23-P42 \(Investigation and Remediation of Contaminated Properties Rule\)](#), which was prepared in response to a [letter from Rep. Peter Conlon, Chair, House Committee on Education](#), urging LCAR to object to the IRule on the grounds that "the economic impact analysis fails to recognize a substantial economic impact of the proposed rule, fails to include an evaluation and statement of costs to local school districts required under section 838 of this title, or fails to recognize a substantial economic impact of the rule to such districts," [3 V.S.A. § 842\(b\)\(6\)](#);¹ and
- the need for the State of Vermont to amend the IRule to include indoor air standards for polychlorinated biphenyls (PCBs), *see* Amended IRule,² Appendix A - § 35-APX-A3 (Appendix A), in order to avoid reverting to the, lower, U.S. Environmental Protection

¹ Rep. Conlon subsequently withdrew his request that LCAR object to the IRule based on the further analysis that was provided by the Agency of Natural Resources in the Supplemental Economic Impact Statement for Rule 23-P42 (Investigation and Remediation of Contaminated Properties Rule). *See* [LCAR, Feb. 1, 2024, at 9:10](#).

² Amended IRule refers to the version of the IRule with amendments approved by LCAR on February 1, 2024.

Agency (EPA) regional screening levels (RSLs), which are the default in the absence of an applicable standard in the IRule. *See* Current IRule,³ § 35-401(b); Amended IRule, § 35-401(b).

The school action levels in Appendix A were calculated by the Vermont Department of Health, *see* [PCBs in Indoor Air of Schools, Development of School Action Levels \(updated September 2023\)](#), and have been applicable since February 2, 2022. [Memorandum, Feb. 2, 2022](#) (Adoption of School Action Levels published by the Vermont Department of Health on November 19, 2021, for polychlorinated biphenyls (PCBs) as an interim environmental standard.). However, absent an amendment to the IRule, the school action levels calculated by the Vermont Department of Health would no longer be applicable after February 2, 2024. [3 V.S.A. § 2810](#) (Interim environmental media standards shall not last longer than two years from the date the Vermont Department of Health advisory was adopted.).

By way of comparison, the school action levels for PCBs under Appendix A are 0.03 µg/m³ (prekindergarten), 0.06 µg/m³ (kindergarten to grade 6), and 0.1 µg/m³ (grade 7 to adult), and the EPA's RSL for PCBs is approximately 0.005 µg/m³, [Regional Screening Level \(RSL\) Resident Ambient Air Table \(TR=1E-06, HQ=0.1\) at p. 7 \(polychlorinated biphenyls \(high risk\)\)](#), which means that a school tested under the EPA's RSL is more likely to need remediation than a school tested under the school action levels developed by the Vermont Department of Health, applicable between February 2, 2022, and February 2, 2024, and incorporated into Appendix A.

Given the desire to avoid reverting to the lower EPA RSL for PCBs and the withdrawal of the request of Rep. Conlon that LCAR object to the rule, LCAR determined that approving the Amended IRule was the most prudent approach. However, LCAR is concerned about the cost to and impact on Vermont schools as testing for PCBs moves forward under the Amended IRule, which are issues outside the jurisdiction of LCAR but within the jurisdiction of your committees. Accordingly, LCAR requests that your committees review the Amended IRule and the estimated fiscal impact on schools during the 2024 legislative session.

³ Current IRule refers to the [version of the IRule adopted effective July 6, 2019](#).