

No. 154. An act relating to potable water supplies from surface waters.

(H.595)

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Surface Water Sources; Potable Water Supply * * *

Sec. 1. 10 V.S.A. § 1978(a) is amended to read:

(a) The Secretary shall adopt rules, in accordance with 3 V.S.A. chapter 25, necessary for the administration of this chapter. These rules shall include the following:

* * *

(15) Provisions authorizing the use by a residential dwelling of surface water as a source of a potable water supply permitted under this chapter.

Sec. 2. 10 V.S.A. § 1981 is added to read:

§ 1981. SURFACE WATER SOURCE; POTABLE WATER SUPPLY

The Secretary shall approve the use of a surface water as the source of a potable water supply under this chapter if the following conditions are satisfied:

(1) the building or structure using the surface water as a source is a single-family residence occupied by the owner of record;

(2) only one single-family residence shall be served by a potable water supply using a surface water as a source;

(3) a single-family residence with a potable water supply using a surface water as a source shall not be used as the site of a home occupation that

employs persons other than family members and is visited by the public in a manner or duration that would presume the need for use of a potable water supply;

(4) a professional engineer shall design the potable water supply using a surface water as a source, including a treatment system for the surface water;

(5) only surface waters that meet criteria adopted by the Secretary by rule are eligible as the source of a potable water supply permitted under this chapter; and

(6) the applicant or permit holder shall comply with other criteria and requirements adopted by the Secretary by rule for potable water supplies using a surface water as a source.

Sec. 3. SURFACE WATER SOURCE; RULEMAKING

The Secretary shall adopt rules to implement 10 V.S.A. § 1981 on or before July 1, 2017.

* * *Groundwater Testing; Technical Advisory Committee* * *

Sec. 4. TECHNICAL ADVISORY COMMITTEE; RECOMMENDATIONS ON GROUNDWATER TESTING

(a) The Secretary of Natural Resources shall seek the recommendations of the Technical Advisory Committee on Wastewater Systems and Potable Water Supplies regarding whether and how to test for contamination in groundwater sources used by potable water supplies permitted under 10 V.S.A. chapter 64.

The recommendations shall address:

(1) whether the State should require testing of groundwater sources used by potable water supplies permitted under 10 V.S.A. chapter 64;

(2) if testing is recommended:

(A) in what situations or upon what occurrences should testing be required;

(B) from what component of a potable water supply the sample should be taken, including whether a sample from the wellhead of the potable water supply is sufficient;

(C) who should be authorized to take the sample; and

(D) what parameters or contaminants should be tested for in groundwater;

(3) any additional issues or requirements that the Technical Advisory Committee deems relevant to the testing of groundwater sources used by potable water supplies permitted under 10 V.S.A. chapter 64.

(b) The Secretary of Natural Resources shall submit the recommendations of the Technical Advisory Committee to the House Committee on Fish, Wildlife and Water Resources and the Senate Committee on Natural Resources and Energy on or before January 15, 2017.

* * * Environmental Contingency Fund * * *

Sec. 5. 10 V.S.A. § 1283(b) is amended to read:

(b) Disbursements under this subsection may be made for emergency purposes or to respond to other than emergency situations; provided, however,

that disbursements in response to an individual situation which is not an emergency situation shall not exceed \$100,000.00 for costs attributable to each of the subdivisions of this subsection, unless the Secretary has received the approval of the General Assembly, or the Joint Fiscal Committee, in case the General Assembly is not in session. Furthermore, the balance in the Fund shall not be drawn below the amount of \$100,000.00, except in emergency situations. If the balance of the Fund becomes insufficient to allow a proper response to one or more emergencies that have occurred, the Secretary shall appear before the Emergency Board, as soon as possible, and shall request that necessary funds be provided. Within these limitations, disbursements from the Fund may be made:

* * *

(7) to pay costs of management oversight provided by the State for investigation and cleanup efforts conducted by voluntary responsible parties ~~where those responsible parties have contributed monies to the Fund pursuant to a written agreement under subsection (f) of this section;~~

* * *

(9) to pay costs of required capital contributions and operation and maintenance when the remedial or response action was taken pursuant to 42 U.S.C. § 9601 et seq.;

(10) to pay the costs of oversight or conducting assessment of a natural resource damaged by the release of a hazardous material and being assessed for damages pursuant to section 6615d of this title; or

(11) to pay the costs of oversight or conducting restoration or rehabilitation to a natural resource damaged by the release of a hazardous material and being restored or rehabilitated pursuant to section 6615d of this title.

* * * ANR Information Requests; Hazardous Material Releases * * *

Sec. 6. 10 V.S.A. § 6615c is added to read:

§ 6615c. INFORMATION REQUESTS

(a)(1) When the Secretary has reasonable grounds to believe that the Secretary has identified a person who may be subject to liability for a release or threat of release under section 6615 of this title, the Secretary may require the person to furnish information related to:

(A) The type, nature, and quantity of any commercial chemical product or hazardous material that has been or is being used, generated, treated, stored, or disposed of at a facility or transported to a facility.

(B) The nature or extent of a release or threatened release of a hazardous material from a facility.

(C) Financial information related to the ability of a person to pay for or to perform the cleanup or information surrounding the corporate structure, if any, of such person who may be subject to liability for a release or threat of

release under section 6615 of this title, provided that the person has notified the Secretary that he or she does not have the ability to pay, refuses to perform, or fails to respond to a deadline established under section 6615b of this title to commit to performing a corrective action.

(2) A person served with an information request shall respond within 30 days of receipt of the request or by the date specified by the Secretary in the request, provided that the Secretary may require a person to respond within 10 days of receipt of a request when there is an imminent threat to the environment or other emergency that requires an expedited response.

(3) When the Secretary submits a request for information under this section, the Secretary shall inform the person who received the request for information about the person's right to object or not comply with the request for information. The information shall include the potential actions that the Secretary may pursue if the person objects to or does not comply with the request for information.

(b)(1) A person who has received a request under subsection (a) of this section shall, at the discretion of the Secretary, either:

(A) grant the Secretary access, at reasonable times, to any facility, establishment, place, property, or location to inspect and copy all documents or records responsive to the request; or

(B) copy and furnish to the Secretary all information responsive to the request at the option and expense of the person or provide a written

explanation that the information has already been provided to the Secretary and a reference to the permit, enforcement action, or other matter under which the Secretary obtained the requested information.

(2) A person responding to a request under subsection (a) of this section may assert any privilege under statute, rule, or common law that is recognized in the State of Vermont to limit access to such information, including the attorney-client privilege. A person responding to a request for information under this section shall not assert privileges related to business confidentiality, including trade secrets, in order to withhold requested information. Any information that is privileged shall be provided to the Secretary with the privileged material redacted. The Secretary may require that a person asserting a privilege under this section provide an index of all privileged information.

(c) The Secretary may require any person who has or may have knowledge of any information listed in subdivision (a)(1) of this section to appear at the offices of the Secretary and may take testimony and require the production of records that relate to a release or threatened release of a hazardous material.

(d) Any request for information under this section shall be served personally or by certified mail.

(e) A response to a request under this section shall be personally certified by the person responding to the request that, under penalty of perjury and to the best of the person's knowledge:

(1) the response is accurate and truthful; and

(2) the person has not omitted responsive information or will provide the responsive information according to a production schedule approved by the Secretary.

(f) Information identified as qualifying for the trade secret exemption under 1 V.S.A. § 317(c)(9) and other financial information submitted under this section shall be confidential and shall not be subject to inspection and copying under the Public Records Act. A person subject to an information request under this section shall be responsible for proving that submitted information qualifies for the trade secret exemption under 1 V.S.A. § 317(c)(9). The following information is not trade secret information or financial information for the purposes of this subsection:

(1) the trade name, common name, or generic class or category of the hazardous material;

(2) the physical properties of the hazardous material, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees Celsius;

(3) the hazards to health and the environment posed by the hazardous material, including physical hazards and potential acute and chronic health hazards;

(4) the potential routes of human exposure to the hazardous material at the facility;

(5) the location of disposal of any waste stream at the facility;

(6) any monitoring data or analysis of monitoring data pertaining to disposal activities;

(7) any hydrogeologic or geologic data; or

(8) any groundwater monitoring data.

(g) As used in this section, “information” means any written or recorded information, including all documents, records, photographs, recordings, e-mail, correspondence, or other machine readable material.

Sec. 7. 10 V.S.A. § 8005(b) is amended to read:

(b) Access orders and information requests.

(1) A Superior Court judge shall issue an access order when access has been refused and the investigator, by affidavit, describes the property to be examined and identifies:

(A) a provision of a permit that authorizes the inspection; or

(B) the property as being scheduled for inspection in accordance with a neutral inspection program adopted by the Secretary or the Natural Resources Board; or

(C) facts providing reasonable grounds to believe that a violation exists and that an examination of the specifically described property will be of material aid in determining the existence of the violation.

(2) A Superior Court shall issue an order requiring compliance with an information request submitted pursuant to section 6615c of this title when:

(A) the person served with the request fails to respond to the request in the time frame identified by the Secretary;

(B) the Secretary submits, by affidavit, facts providing reasonable grounds that a release or threatened release has taken place; and

(C) the information will be of material aid in responding to the release or threatened release.

(3) Issuance of an access order shall not negate the Secretary's authority to initiate criminal proceedings in the same matter by referring the matter to the Office of the Attorney General or a State's Attorney.

* * * Natural Resource Damages * * *

Sec. 8. 10 V.S.A. § 6615d is added to read:

§ 6615d. NATURAL RESOURCE DAMAGES; LIABILITY;

RULEMAKING

(a) Definitions. As used in this section:

(1) "Acquisition of or acquiring the equivalent or replacement" means the substitution for an injured resource with a resource that provides the same or substantially similar services, when the substitution:

(A) is in addition to a substitution made or anticipated as part of a response action; and

(b) exceeds the level of response action determined appropriate for the site under section 6615b of this title.

(2) “Baseline condition” means the condition or conditions that would have existed at the area of assessed damages had the release of hazardous material at or from the facility in question not occurred.

(3) “Damages” means the amount of money sought by the Secretary for the injury, destruction, or loss of a natural resource.

(4) “Destruction” means the total and irreversible loss of natural resources.

(5) “Injury” means a measurable adverse long-term or short-term change in the chemical or physical quality or viability of a natural resource resulting either directly or indirectly from exposure to a release of hazardous material or exposure to a product of reactions from a release of hazardous materials.

(6) “Loss” means a measurable adverse reduction of a chemical or physical quality or viability of a natural resource.

(7) “Natural resource damage assessment” means the process of collecting, compiling, and analyzing information, statistics, or data through prescribed methodologies to determine the damages for injuries to a natural resource.

(8) “Natural resources” means fish, wildlife, biota, air, surface water, groundwater, wetlands, drinking water supplies, or State-held public lands.

(9) “Restoring,” “restoration,” “rehabilitating,” or “rehabilitation” means actions undertaken to return an injured natural resource to its baseline condition, as measured in terms of the injured resource’s physical, chemical, or

biological properties or the services it had previously provided, when such actions are in addition to a response action under section 6615 of this title.

(10) "Services" means the physical and biological functions performed by the natural resource, including the human uses of those functions.

(b) Authorization. The Secretary may assess damages against any person found to be liable under section 6615 of this title for a release of hazardous material for injury to, destruction of, or loss of a natural resource from the release. The measure of damages that may be assessed for natural resource damages shall include the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the injured, damaged, or destroyed natural resources or the services the natural resources provided and any reasonable costs of the Secretary in conducting a natural resource damage assessment. The Secretary also may seek compensation for the interim injury to or loss of a natural resource pending recovery of services to the baseline condition of the natural resource.

(c) Rulemaking; methodology. The Secretary shall adopt rules to implement the requirements of this section, including a methodology by which the Secretary shall assess and value natural resource damages. The rules shall include:

(1) requirements or acceptable standards for the preassessment of natural resource damages, including requirements for:

(A) notification of the Secretary, natural resource trustees, or other necessary persons of potential damages to natural resources under investigation for the coordination of the assessments, investigations, and planning;

(B) authorized emergency response to natural resource damages when immediate action to avoid destruction of a natural resource is necessary or a situation in which there is a similar need for emergency action, and where the potentially liable party under section 6615 of this title fails to take emergency response actions requested by the Secretary; and

(C) sampling or screening of the potentially injured natural resource;

(2) requirements for a natural resource damages assessment plan to ensure that the natural resource damage assessment is performed in a planned and systematic manner, including:

(A) the categories of reasonable and necessary costs that may be incurred as part of the assessment plan;

(B) the methodologies for identifying and screening restoration alternatives and their costs;

(C) the types of reasonably reliable assessment procedures available to the Secretary, when the available procedures are authorized, and the requirements of the available procedures;

(D) how injury or loss shall be determined and how injury or loss is quantified; and

(E) how damages are measured in terms of the cost of:

(i) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline condition; or

(ii) the replacement or acquisition of equivalent natural resources or services;

(3) requirements for post-natural resource damages assessment, including:

(A) the documentation that the Secretary shall produce to complete the assessment;

(B) how the Secretary shall seek recovery; and

(C) when and whether the Secretary shall require a restoration plan; and

(4) other requirements deemed necessary by the Secretary for implementation of the rules.

(d) Exceptions. The Secretary shall not seek to recover natural resource damages under this section when:

(1) the person liable for the release demonstrates that the nature and degree of the destruction, injury, or loss to the natural resources were identified in an application for, renewal of, review of, or other environmental assessment of a permit, certification, license, or other required authorization;

(2) the Secretary authorized the nature and degree of the destruction, injury, or loss to the natural resource in an issued permit, certification, license, or other authorization; and

(3) the person liable for the release was operating within the terms of its permit, certification, license, or other authorization.

(e) Limitations. The natural resource damages authorized under this section and the requirements for assessment under the rules authorized by this section shall not limit the authority of the Secretary of Natural Resources to seek or recover natural resource damages under other State law, federal law, or common law.

(f) Limit on double recovery. The Secretary or other natural resource trustee shall not recover natural resource damages under this section for the costs of damage assessment or restoration, rehabilitation, or acquisition of equivalent resources or services recovered by the Secretary or the other trustee under other authority of this chapter or other law for the same release of hazardous material and the same natural resource.

(g) Actions for natural resource damages. No action may be commenced for natural resource damages under this chapter, unless that action is commenced within six years after the date of the discovery of the loss and its connection with the release of hazardous material in question.

(h) Limit on preenactment damages. There shall be no recovery under this section for natural resource damages that occurred wholly before the adoption of rules under subsection (c) of this section.

(i) Use of funds. Damages recovered as natural resource damages shall be deposited in the Environmental Contingency Fund established pursuant to section 1283 of this title.

Sec. 9. NATURAL RESOURCE DAMAGES; COMMENCEMENT;

ADOPTION

(a) The Secretary of Natural Resources shall consult with interested parties and parties with expertise in natural resource damage assessment and valuation in the adoption of rules under 10 V.S.A. § 6615d. The Secretary shall convene a working group as part of this consultation. The Secretary shall convene the working group on or before July 1, 2016.

(b) On or before February 1, 2017, the Secretary of Natural Resources shall submit to the Senate and House Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources a copy of the draft rules for natural resource damages required under 10 V.S.A. § 6615d for review and any recommended amendments to 10 V.S.A. § 6615d for review.

(c) The Secretary of Natural Resources shall commence rulemaking under 10 V.S.A. § 6615d on or before July 1, 2017. The Secretary shall adopt rules under 10 V.S.A. § 6615d on or before March 1, 2018.

(d) The Secretary of Natural Resources shall not seek natural resource damages under 10 V.S.A. § 6615d until the rules required under 10 V.S.A. § 6615d(c) have taken effect.

* * * Working Group on Toxic Chemicals * * *

Sec. 10. AGENCY OF NATURAL RESOURCES' WORKING GROUP ON
TOXIC CHEMICAL USE IN THE STATE

(a) Formation. On or before July 1, 2016, the Secretary of Natural Resources shall establish a working group of interested parties and parties with expertise in the field of toxic chemical use and regulation to develop recommendations for how to improve the ability of the State to:

(1) prevent citizens and communities in the State from being exposed to toxic chemicals, hazardous materials, or hazardous wastes;

(2) identify and regulate the use of toxic chemicals or hazardous materials that currently are unregulated by the State; and

(3) inform communities and citizens in the State of potential exposure to toxic chemicals, including contamination of groundwater, public drinking water systems, and private potable water supplies.

(b) Duties. The Working Group shall:

(1) Identify the existing State or federal programs that establish reporting or management requirements regarding the use or generation of a toxic substance, hazardous waste, or hazardous material. The Working Group shall identify how those programs identify the toxic substance, hazardous

waste, or hazardous material for regulation and briefly describe the management of the waste or substance.

(2) Evaluate the State or federal programs identified in subdivision (1) of this subsection to determine:

(A) the program's effectiveness in preventing releases of toxic substances, hazardous wastes, or hazardous materials;

(B) whether gaps or duplication exists between the programs that should be addressed to reduce threats to human health and the environment; and

(C) whether the programs are adequately funded and staffed to meet their statutory and regulatory purpose.

(3) Identify State or federal programs that require a response to the release of a toxic substance, hazardous waste, or hazardous material and assess their effectiveness in responding to releases in a manner that minimizes impacts to human health and the environment.

(4) Identify programs in place in other states that address the threat to human health and the environment from emerging contaminants and assess their effectiveness in accomplishing those objectives.

(5) Evaluate the State of Vermont's existing sources of publicly available information about toxic chemicals, including emerging contaminants, hazardous waste, and hazardous materials in Vermont.

(6) Evaluate whether civil remedies under Vermont law are sufficient to ensure that private individuals are adequately protected from releases of hazardous materials, hazardous wastes, and toxic chemicals and that persons responsible for such releases pay for any harm caused.

(7) Evaluate the obligations on the Environmental Contingency Fund established under 10 V.S.A. § 1283 and funding alternatives that would ensure the long-term solvency of the Fund.

(c) The Working Group shall submit a report to the Senate and House Committees on Natural Resources and Energy and to the House Committee on Fish, Wildlife and Water Resources with its findings and recommendations on or before January 15, 2017.

* * * Chemicals of High Concern to Children * * *

Sec. 11. 18 V.S.A. § 1775 is amended to read:

§ 1775. DISCLOSURE OF INFORMATION ON CHEMICALS OF HIGH CONCERN

(a) Notice of chemical of high concern to children. ~~Unless the Commissioner adopts by rule a phased-in reporting requirement under section 1776 of this title, beginning on July 1, 2016, and biennially thereafter, a~~ A manufacturer of a children's product or a trade association representing a manufacturer of children's products shall submit to the Department the notice described in subsection (b) of this section for each chemical of high concern to children in a children's product if a chemical of high concern to children is:

* * *

(1) Submission of notice; dates. Unless the Commissioner adopts by rule a phased-in reporting requirement under section 1776 of this title, a manufacturer shall submit the notice required under subsection (a) of this section by:

(1) January 1, 2017; and

(2) August 31, 2018, and biennially thereafter.

* * * Basin Planning; Natural Resources Conservation Council * * *

Sec. 12. 10 V.S.A. § 1253(d) is amended to read:

(d)(1) Through the process of basin planning, the Secretary shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by the Board before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The Secretary shall prepare and maintain an overall surface water management plan to assure that the State water quality standards are met in all State waters. The surface water management plan shall include a schedule for updating the basin plans. The Secretary, in consultation with regional planning commissions and ~~natural resource conservation districts~~ the Natural Resources Conservation Council, shall revise all 15 basin plans and update the basin plans on a five-year rotating basis. On or before January 15 of each year, the Secretary shall report to the House Committees on Agriculture and Forest Products, on Natural Resources and Energy, and on

Fish, Wildlife and Water Resources, and to the Senate Committees on Agriculture and on Natural Resources and Energy regarding the progress made and difficulties encountered in revising basin plans. The report shall include a summary of basin planning activities in the previous calendar year, a schedule for the production of basin plans in the subsequent calendar year, and a summary of actions to be taken over the subsequent three years. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(2) In developing a basin plan under this subsection, the Secretary shall:

* * *

(G) develop, in consultation with the ~~applicable~~ regional planning commission, an analysis and formal recommendation on conformance with the goals and objectives of applicable regional plans;

* * *

(3) The Secretary shall, contingent upon the availability of funding, contract with a regional planning commission or the Natural Resources Conservation Council to assist in or to produce a basin plan under the schedule set forth in subdivision (1) of this subsection. When contracting with a regional planning commission or the Natural Resources Conservation Council to assist in or produce a basin plan, the Secretary may require the regional planning commission or the Natural Resources Conservation Council to:

(A) conduct any of the activities required under subdivision (2) of this subsection;

(B) provide technical assistance and data collection activities to inform municipal officials and the State in making water quality investment decisions;

(C) coordinate municipal planning and adoption or implementation of municipal development regulations to better meet State water quality policies and investment priorities; or

(D) assist the Secretary in implementing a project evaluation process to prioritize water quality improvement projects within the region to assure cost effective use of State and federal funds.

* * * State Grants; Water Quality Certification * * *

Sec. 13. SECRETARY OF ADMINISTRATION; WATER QUALITY
STANDARDS CERTIFICATION FOR STATE-FUNDED
GRANTS; REPORT

(a) As used in this section:

(1) "Applicant" shall include all entities, including businesses in which the applicant has a greater than 10 percent interest, or land owned or controlled by the applicant.

(2) “Good standing” means the applicant:

(A) is not a named party in any administrative order, consent decree, or judicial order relating to Vermont water quality standards issued by the State or any of its agencies or departments; and

(B) is in compliance with all federal and State water quality laws and regulations.

(b)(1) The Secretary of Administration shall amend the Standard State Provisions for Contracts and Grants, referred to as Attachment C to Administrative Bulletin 5, to require an applicant for a State-funded grant to certify, under penalty of perjury, that the applicant is in good standing with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets.

(2) The requirement under this subsection shall allow for an attachment or include space for an applicant who cannot certify under subdivision (1) of this subsection to explain the circumstances surrounding the applicant’s inability to certify under subdivision (1) of this subsection.

(3) At any time prior to the award of a State-funded grant or during implementation of a State-funded grant, an applicant shall notify the State agency or department administering the State-funded grant if the applicant is no longer in good standing with the Agency of Natural Resources or the Agency of Agriculture, Food and Markets.

(c) A State agency or department may consider an applicant's certification or explanation under subsection (b) of this section in determining whether or not to award a State-funded grant to the applicant.

(d)(1) If a State-funded grant applicant knowingly provides a false certification or explanation under subsection (b) of this section or fails to notify the State agency or department administering the State-funded grant if the applicant is no longer in good standing with the Agency of Natural Resources or the Agency of Agriculture, Food and Markets as required in subdivision (b)(3) of this section, the State or its agencies or departments may:

(A) seek to recover the grant award; and

(B) deny any future grant award to the applicant, based on the false certification or explanation or failure to notify, for up to five years.

(2) In recovering a grant award under this section, the State or its agencies or departments shall be entitled to costs and expenses, including attorney's fees.

(e) This section shall not apply to federally funded grants, contracts, or tax credits or federal or State loan programs.

(f) On or before January 15, 2021, the Secretary of Administration shall submit a report to the House Committees on Fish, Wildlife and Water Resources and on Commerce and Economic Development and the Senate Committees on Natural Resources and Energy and on Economic Development, Housing and General Affairs regarding methods to require all economic

development assistance applications to include a certification that the applicant is not in violation of the requirements of programs enforced by the Agency of Natural Resources under 10 V.S.A. § 8003(a). The report shall also include information regarding any enforcement action taken by the State or its agencies or departments under subsection (d) of this section.

* * * Effective Dates * * *

Sec. 14. EFFECTIVE DATES

(a) This act shall take effect on passage, except that:

(1) Sec. 13 (State grants; water quality certification) shall take effect on July 1, 2016; and

(2) Sec. 2 (permitting of surface water sources) shall take effect on July 1, 2017.

Date Governor signed bill: June 1, 2016