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Environment & Energy

# State Polluter-Pays Bills Aim to Make Companies Cover PFAS Harms

By Zach Bright

Deep Dive

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- North Carolina, New Hampshire are considering proposals
  - Industry opposes because of potential costs to business
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Emily Donovan calls fighting chemical pollution her “passion project,” an issue that crept onto her radar through a youth program she directs at her North Carolina church.

“It just struck me odd that half of the students in the program were praying for a parent or family member with a really serious and severe medical problem,” Donovan said. “I don’t remember that growing up.”

In 2017, local news reported that GenX—a chemical that the Chemours Co. used in manufacturing—was flowing from Fayetteville down through North Carolina’s Cape Fear River, polluting it and local drinking water. GenX is one of more than 9,000 per- and polyfluoroalkyl substances, or PFAS, a chemical class linked to human health issues like higher risk of cancer.

Donovan co-founded Clean Cape Fear, a group among advocates pushing for a polluter-pays bill to make companies cover cleanup, monitoring, and filtration costs and limit contamination upstream.

But that bill and similar measures in other states aren’t advancing. Industry groups have pushed back, arguing that polluter-pay bills would bring over-regulation and economic costs.

Advocates for these kinds of bills say their success in Vermont could be a model for other states. A new law signed by the governor in April in the Green Mountain State includes a liability test and gives residents the right to sue chemical companies for medical monitoring costs if they claim they’ve been exposed to PFAS or other chemicals.

## Industry Objections

North Carolina's H.B. 1095 would explicitly empower the state's Department of Environmental Quality to set maximum contaminant levels, limiting any one PFAS compound to 10 parts per trillion in water, with a total of 70 parts per trillion.

If the limits are exceeded, the department could force polluting companies to pay for treatment systems. That means Chemours would cover the \$129 million and \$43 million that Brunswick County and the Cape Fear Public Utility Authority are spending to set up infrastructure to filter PFAS from its water.

The proposal also would direct water utilities to reimburse customers with dollars from Chemours for increased rates caused by contamination. There's bipartisan support—three Republicans and the state House Minority leader, Democrat Robert Reives, are primary sponsors to the bill.

The state Chamber of Commerce, Forestry Association, and Manufacturers Alliance has lobbied against the bill. Representatives for all three said in a "for discussion only" June 2 judiciary hearing that H.B. 1095 would bypass normal rulemaking that should be left to state agencies and would create an uncertain environment for businesses.

The state Chamber of Commerce wrote in its legislation tracker that the bill would "harm North Carolina's business liability climate, and it would open the door for expansive cost increases on manufacturers with no mechanism for superior court review of any enforcement mechanism."

State House Speaker Tim Moore (R) said he is unlikely to advance the bill this year, reportedly calling it a "long session priority." (North Carolina legislative sessions are longer in odd-numbered years and shorter in even-numbered years). Gov. Roy Cooper (D) has indicated he would sign a bill if passed.

Chemours already faces lawsuits from Brunswick County and the Cape Fear Public Utility Authority. Spokesperson Cassie Olszewski said in a statement that the bill "appears directed to one company and to propose administrative processes for which legal and judicial authority already exist."

"To date, we've spent, or committed to spend, more than \$400 million," Olszewski added. "Those significant investments in on-site emissions control technology and remediation at Fayetteville Works include a first-of-its-kind thermal oxidizer, systems to intercept, collect and treat legacy groundwater and surface water discharges from the site, as well as the mile-long underground barrier wall and treatment system now under design and construction."

Thermal oxidizers combust volatile organic compounds, carbon monoxide, and hazardous air pollutants into carbon dioxide and water. The Environmental Protection Agency is evaluating the devices as a possible way to eliminate PFAS.

### **Precedent in Vermont**

Not all state efforts stalled this year. In April, Vermont passed a polluter-pays bill (S. 113) with medical monitoring provisions for victims exposed to PFAS and other toxics pollution linked to Saint-Gobain Performance Plastics.

It became the first state in the country to include exposure to toxic releases as a cause of personal injury cases.

Initially, polluter-pays advocates pushed for a bill to set a strict liability standard, seeking to hold Saint-Gobain—which operated a Bennington, Vt., facility until the early 2000s—and other companies legally responsible even in absence of intent. They also wanted to redefine personal injury to include exposure to a possible source of illness and buttress the state’s ability to sue chemical manufacturers.

Jon Groveman, policy and water program director at the Vermont Natural Resources Council, said the state’s liability system at the time wasn’t sufficient to make polluting companies pay for medical monitoring bills that victims paid before illnesses actually struck.

The Democratic-controlled state legislature twice passed the bill, which Gov. Phil Scott (R) twice vetoed. The chemical industry strongly opposed the bill amid those attempts, saying it needed a fair legal test to determine liability.

Geoffrey W. Crawford, the federal judge who oversaw a class-action lawsuit in *Sullivan v. St.-Gobain Performance Plastics Corp.* on the Bennington pollution, eventually created such a test, Groveman said.

“This was a Vermont federal court judge, and he crafted this test from a Vermont perspective,” Groveman said. “We put it in the bill, and some of the Vermont industry groups backed off.”

With Crawford’s test, advocates dropped their pursuit of a strict liability standard, and the medical monitoring bill won Scott’s signature. Adapting Vermont’s liability test to other states could be the way forward to passing polluter-pays and broaden the scope of personal injury, Groveman said.

### Across the Country

Saint-Gobain consolidated operations in Merrimack, N.H., after closing its Vermont location. Manufacturing processes have been reported to contaminate groundwater with perfluorooctanoic acid (PFOA).

EPA’s guidelines, released June 15, advised that .004 parts per trillion for PFOA is the maximum limit for safe exposure.

In January the New Hampshire House, with bipartisan support, passed a polluter-pays bill (H.B. 478) to require Saint-Gobain to pay for filtration systems for two Merrimack Water District wells contaminated with PFAS. But the bill has been under further study in the state Senate and is unlikely to become law this session.

In New York, the Climate Change Superfund Act (S.9417) would have considered greenhouse gas emissions as pollutants and used the polluter-pays principle to collect \$30 billion over the next decade from fossil fuel companies. But the legislative session ended June 2, and the bill hadn’t been passed.

Downstream managers like wastewater treatment groups are showing support for more transparency to stop problems at the source. The California Association of Sanitation Agencies strongly supported a bill (A.B. 2247) the state Assembly passed in May to collect data on products with PFAS sold in the state. The bill is active and moving through state Senate committees.

Maine's L.D. 1503, passed last year, makes manufacturers report products containing PFAS to the state's top environmental agency.

More transparency and polluter-pays bills like these could shift "how we manage chemicals in our society" toward a precautionary framework, said Sarah Doll, executive director of chemical policy tracker Safer States.

*To see the latest updates on state-level PFAS regulations and legislation, check out Bloomberg Law's PFAS State Activity Tracker [here](#).*

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