



November 9, 2018

Commissioner Robert Scott
Department of Environmental Services
29 Hazen Drive
Concord, NH 03301

RE: Standards for PFAS

Dear Commissioner Scott and Members of the DES Water Quality Standard Setting Team,

I want to thank you for the approach the Department has taken thus far to engage and seek input from stakeholders in the process of setting public drinking water and groundwater standards for PFAS. As you know, NHMA and several of our affiliate members were very supportive of the Department's efforts during the past legislative session to allow these standards to be set via the Department's rulemaking authority rather than established by legislation. While acknowledging the continued politics and emotions surrounding the issue of emerging contaminants in drinking water and groundwater, we are confident that in establishing a standard, the Department will adequately consider the statutory criteria in SB 309 regarding the ability to detect and remove the contaminant(s) along with the costs and health benefits in doing so.

Information provided at the stakeholder technical work session on October 19, 2018 indicated that the new statute "does not say that the benefits must outweigh the costs". NHMA agrees with that statement, but want to express our concerns regarding cost considerations, particularly in light of Part I, Article 28-a of the New Hampshire Constitution dealing with unfunded mandates enacted via legislation. Additionally, RSA 541-A:25 addresses unfunded mandates in administrative rules stating that a department to which rulemaking authority has been granted "*shall not mandate or assign any new, expanded, or modified programs or responsibilities to any political subdivision in such a way as to necessitate further expenditures by the political subdivision unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.*" The statute goes on to indicate that such programs include water, sewer and solid waste programs.

Our concern is that an exceptionally low standard may create an unfunded mandate which will then result in the standard becoming a "voluntary standard" for municipalities to meet unless the funding necessary to comply with that standard is appropriated locally or provided by the state. This would be similar to the standard proposed in administrative rule Env-Dw 717 dealing with groundwater monitoring and treatment wherein the Department's rulemaking notice stated that since the proposed rule imposes additional costs not directly attributable to federal requirements...

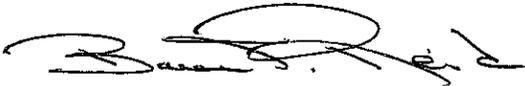
NHDES will not require a political subdivision that owns a groundwater system to do the investigative monitoring if the political subdivision does not vote to fund investigative monitoring, unless the State pays the costs of such monitoring. This section of the rules avoids a violation of the unfunded mandate provision of Part I, Article 28-a of the N.H. Constitution.

An exceptionally low standard for PFAS that becomes a voluntary standard to avoid an unfunded mandate could have significant unintended consequences: some wealthier municipalities may be able and willing to fund the increased costs to meet the lower standard. However, in the absence of state funding, other municipalities may not be financially able to do so without significant increases in property taxes or reductions in other municipal services such as fire and police. Such a situation could negatively impact those regions of the state already facing relatively high property taxes and/or economic challenges.

Finally, we understand that the ability to quantify the health benefits of a particular PFAS standard will be a challenge for the Department. In that analysis, we hope the Department will not use overly conservative assumptions to set a standard that results in significant costs to implement but provides marginal, if any, benefit to public health.

Our municipal members, along with the members of our affiliate organizations involved with water, wastewater, and solid waste programs, are professional environmental stewards who work every day to protect both public health and the environment. We look forward to assisting the Department, to the extent that we can, in providing information to help analyze the costs associated with the proposed standard.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Barbara T. Reid". The signature is fluid and cursive, with a large loop at the top.

Barbara T. Reid
NHMA Government Finance Advisor