



The State of New Hampshire  
**Department of Environmental Services**

Clark B. Freise, Assistant Commissioner



May 2, 2017

The Honorable Kevin Avard  
Chair, Senate Energy and Natural Resources Committee  
State House, Room 103  
Concord, NH 03301

**RE: Amendment to HB463-FN (2017-1572s), An Act Regulating Groundwater Pollution Caused by Polluting Emissions in the Air and relative to standards for emerging contaminants in drinking water**

Dear Chair Avard and Members of the Committee:

Thank you for the opportunity to comment on proposed amendment 2017-1572s to HB 463. This amendment would require the New Hampshire Department of Environmental Services (NHDES), in consultation with the Department of Health and Human Services, to establish through rulemaking, a maximum contaminant level (MCL) for perfluorooctanesulfonate (PFOS) and perfluorooctanoic acid (PFOA) in drinking water served by public water systems, as well as an ambient groundwater quality standard (AGQS) for these contaminants. It requires that these standards be no less protective than standards or advisories set by the U.S. Environmental Protection Agency (EPA). Further, it would require the agencies to consider lower standards set in other states and to adopt the lowest MCL and the lowest AGQS "reasonably supported by science." It also calls for an annual review of the science related to these contaminants and revision of the standards if warranted. NHDES has concerns with the amendment because it directs the agency to establish MCLs in an unprecedented way, omitting key criteria from consideration, and restricts the agency's ability to utilize the professional judgment of its health risk assessment experts in determining health-based standards.

This amendment affects the establishment of both MCLs and AGQs for two perfluorochemical contaminants. MCLs and AGQs are two distinct regulatory standards, and it is important to understand the differences between them when analyzing the impact of this amendment. Pursuant to RSA 485-C, NHDES establishes AGQs considering only potential health impacts, based largely upon health advisories issued by the U.S. Environmental Protection Agency (USEPA). The health advisories consider health effects research, and include assumptions to determine a concentration in drinking water that will be protective of human health. AGQs are enforceable by NHDES for requiring investigation and cleanup of contaminated groundwater. Further, while existence of an AGQS for a contaminant does not impose a testing requirement on public water systems, AGQs are enforceable when a contaminant is found to exceed the AGQS in a public drinking water system.

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MCLs are enforceable drinking water standards that impose regular testing requirements on public water systems. Unlike AGQs, MCLs are not based solely on potential health effects of the contaminant, but are established after careful consideration of a balance of health protection, technical feasibility, laboratory analytical feasibility, and financial feasibility. Water systems must comply with a host of regulations that protect public health. These include other water quality concerns which may pose a higher risk relative to public health protection, water system security, and distribution reliability. Requirements for water systems need to be considered in the full context of all aspects of their operations and maximizing the protection of public health. For these reasons, holistic consideration of all of these criteria is important in order to avoid establishing standards that public water systems may be unable to comply with due to technical or financial infeasibility.

The proposed amendment would require NHDES to adopt MCLs within 60 days, omitting consideration of all except the health-based criteria. For the reasons outlined above, NHDES opposes this provision of the amendment. Under its existing statutory authorities, NHDES can propose adoption of an MCL at any time through rulemaking. However, NHDES believes that should occur only after a careful review of all of the relevant criteria has been completed.

During the spring of 2016, soon after the start of an expansive investigation of PFOA contamination in drinking water in southern New Hampshire, NHDES undertook a rulemaking effort to establish a protective AGQS for PFOA and PFOS. In doing so, our health risk assessors reviewed standards (higher and lower) set by other states, as well as USEPA's new 70 parts per trillion (ppt) health advisory for combined PFOA and PFOS. Risk assessment is a complex science, which requires the practitioner to choose exposure assumptions, and to evaluate and weight studies with differing outcomes. It is important and necessary to allow risk assessors to use their best professional judgement in completing their work. In their review of existing standards or advisories, our risk assessors use criteria such as whether studies have been peer reviewed, whether results have been duplicated, and whether advisories are protective of all life stages. Using their best professional judgement, they determined that USEPA's work represented the best documented, peer-reviewed analysis, and recommended that New Hampshire adopt the 70 ppt standard as its AGQS.

NHDES can support the provision of the amendment that requires a review of the current health effects science in order to determine whether it should revise the AGQS for PFOA and PFOS. We do, however, believe that the sentence beginning on line 1, page 2 of the amendment should be amended as follows:

*"The commissioner shall adopt ~~the lowest~~ standards reasonably supported by science **that are protective of human health at all life stages**, provided no ambient groundwater quality standard shall exceed that contained in any lifetime health advisory promulgated by the United States Environmental Protection Agency."*

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In summary, NHDES does not support the provision of the amendment that requires the agency to establish an MCL for PFOA and PFOS, using only health-based criteria. We do support a review of the established AGQS, subject to certain revisions to the text, as outlined above. We would be happy to work with the sponsors on any revisions.

Thank you again for the opportunity to comment on the proposed amendment to HB463. If you have any questions or require further information, please contact Mike Wimsatt, Waste Management Division Director ([michael.wimsatt@des.nh.gov](mailto:michael.wimsatt@des.nh.gov), 271-1997) or Sarah Pillsbury, Administrator, Drinking Water and Groundwater Bureau ([sarah.pillsbury@des.nh.gov](mailto:sarah.pillsbury@des.nh.gov), 271-1168).

Sincerely,  
  
Clark B. Freise  
Assistant Commissioner

*cc: Sponsors of HB463: Representatives Byron, Lascelles, Azarian, S. Smith, Backus, Senator Soucy*

*Amendment sponsors: Senators Feltes, Fuller-Clark, and Innis*