



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

April 3, 2018

The Honorable Kevin Avar
Chair, Senate Energy and Natural Resources Committee
State House, Room 100
Concord, NH 03301

RE: HB 1101, An Act Regulating Groundwater Pollution Caused by Polluting Emissions in the Air and setting standards for certain perfluorinated compounds

Dear Chair Avar and Members of the Committee:

Thank you for the opportunity to comment on HB 1101, as passed by the House, which seeks to establish new standards for devices emitting air pollutants which have the potential to harm soil and water via deposition and establishes certain water quality standards. The New Hampshire Department of Environmental Services (NHDES) supports this bill.

As you are aware, HB 485, which was a 2017 bill relative to these same topics, is also in your committee. During the House Finance Committee process last fall, NHDES requested to amend some of the air emissions language in HB485 to narrow the scope of compounds regulated by the bill to poly and perfluorinated alkyl substances (PFAS), as well as to address certain precursor compounds. Due to procedural concerns, that amendment was not able to be considered. This bill will address that. NHDES has also concluded that it would soon be possible to reevaluate or set standards (ambient groundwater quality standards and maximum contaminant levels) for four specific PFAS compounds found in New Hampshire's water at a number of locations in the state. This bill includes language directing NHDES to set or reevaluate these standards.

It is important to understand that currently under statute RSA 125-I, the NHDES Air Resources Division has authority to limit air emissions of certain regulated toxic air pollutants (RTAPs). However, that authority is currently limited to addressing the risks posed by inhalation of these compounds beyond the property boundary of the facility. It does not address the risk posed by deposition of PFAS compounds to the ground that can move into our sources of drinking water, as was discovered in the spring of 2016 in southern NH.

While HB 1101 would give NHDES additional authority to address air deposition on the basis of the potential to contaminate groundwater, it is intended to only address a limited number of PFAS compounds and their scientifically-established precursors. As drafted, HB 1101 would require facilities that emit certain PFAS compounds that have the potential to deposit onto the ground and cause an exceedance of established ambient groundwater quality or surface water standards to install the best available control technology (BACT) in order to minimize the health and environmental impacts of these pollutants. While NHDES realizes that this may impose additional

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equipment and operational costs on affected facilities, we believe that the avoided environmental and economic impacts from the resulting potential groundwater contamination justifies the potential additional air pollution control equipment costs.

It is also important to note that although 12 PFAS compounds and their precursors are applicable under the bill, no compound would be regulated until an appropriate water quality standard is adopted based on a well-established body of science relating to the potential health risk due to ingestion or exposure to contaminated water. Thus, at present, only two PFAS (PFOA and PFOS) would be regulated per this legislation from an air emissions perspective. The other ten compounds would only be regulated once an appropriate water standard is established. NHDES current authority under RSA 125-I (*Air Toxic Control Act*) is believed to be adequately protective of health risk due to inhalation.

The portion of the bill relative to water standards will:

- direct the department to evaluate the existing ambient ground water quality standard (AGQS) for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) to determine if a change is needed as well as to set ambient groundwater quality standards for perfluorononanoic acid (PFNA) and perfluorohexanesulfonic acid (PFHxS);
- establish the criteria for setting maximum contaminant limits for public drinking water and direct the department to set maximum contaminant levels (MCLs) for PFOA, PFOS, PFNA and PFHxS;
- clarify the basis for and require periodic review of all ambient groundwater quality standards; and
- establish a toxicologist position and a human health risk assessor position in the Department of Environmental Services.

NHDES does request two small edits to this portion of the bill as follows:

1. Replace the portion of the sentence on page 3, line 6 from “and the costs to government entities” to “and the costs and benefits to affected parties”
2. On page 4, line 24, strike “for the purpose of monitoring groundwater under RSA 485-C” and replace with “for the purpose of developing appropriate standards to protect groundwater and drinking water quality.”

With these amendments, NHDES supports this bill because it provides all the necessary components to set remediation and drinking water standards, including the use of good science to establish health based criteria, an understanding of the impact and practicality of setting the standard, and the resources and time for needed analysis. It also aligns the process for setting MCLs for public

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drinking water systems with that of other states and the USEPA by amending the NH Safe Drinking Water Act. Finally, it will allow NHDES to consider important research on four perfluorochemicals that have been found in New Hampshire's water. Namely, it allows NHDES to consider toxicological profiles that the Centers for Disease Control and Prevention (CDC) will release by this summer that will establish Minimal Risk Levels for PFOA, PFOS, PFNA and PFHxS.

NHDES also notes certain sections of this bill may duplicate language in HB 485 and SB309. These bills may eventually have to be reconciled. Also, in the event of passage of HB 485, the effective date of this bill should be after that of HB 485 to avoid having two bills amend the same RSA in different ways.

Thank you again for the opportunity to comment on HB 1101. If you have any questions or require further information, please contact Michael Fitzgerald, Assistant Director, Air Resources Division (michael.fitzgerald@des.nh.gov, 271-6390) or Sarah Pillsbury, Administrator, Drinking Water and Groundwater Bureau (sarah.pillsbury@des.nh.gov, 271-1168).

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Scott", with a large, sweeping flourish extending to the right.

Robert R. Scott
Commissioner

