



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



**Robert R. Scott, Commissioner**

January 11, 2018

The Honorable Chris Christensen,  
Chair, House Resources, Recreation and Development Committee  
Legislative Office Building, Room 305  
Concord, NH 03301

**RE: HB 1590, AN ACT relative to standards for perfluorinated chemicals in surface water**

Dear Chair Christensen and Members of the Committee:

Thank you for the opportunity to comment on HB 1590. This bill would require the New Hampshire Department of Environmental Services (NHDES) to initiate rulemaking within 120 days to adopt surface water quality standards for four [perfluorinated] poly- and perfluoroalkyl substances [chemicals] (PFAS). NHDES agrees that such standards would be desirable because unregulated discharges of PFAS to surface water are occurring in New Hampshire near some landfills, stormwater associated with contaminated sites, and at most municipal wastewater treatment facilities. However, resource constraints would make it impossible to carry out the requirement within the required timeframe proposed in the bill and without additional resources.

NHDES presently has numeric surface water quality criteria for a multitude of conditions and contaminants, from dissolved oxygen to toxic chemicals. These numeric criteria, as described in Env-Wq 1700, are one aspect of the surface water quality standards. The other two components are designated uses (e.g., protection of aquatic life, swimming, fishing), and antidegradation. This bill would require NHDES to set new surface water quality criteria for PFAS. This represents a significant challenge in a number of ways. First, there currently exists no EPA guidance for establishing PFAS criteria in surface waters. NHDES has never adopted a toxic standard that was not thoroughly vetted through the EPA Clean Water Act Section 304(a) guidance process.

Second, the bill specifically calls on NHDES to “consider the standards of other states, including the science considered by states which have adopted surface water contaminant standards.” Given the rapid advancement of science on the issue of PFAS contamination, NHDES should use all the scientific research that is currently available. Some states, such as Michigan, developed their standards 10 years ago, without the advantage of new research. In addition, it is not clear that underlying water quality

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conditions in other states are similar to those in New Hampshire. This is especially important relative to standards for aquatic life use because basic water chemistry (pH, alkalinity, hardness, etc.) may strongly influence the bioavailability and toxic effects of a contaminant. Additionally, the sensitive organisms in one part of the country may be quite different than those in the northeast.

Next, NHDES does not have the resources to develop new criteria. As noted above, NHDES has never created a toxic criterion from scratch. An example of the complexity of such an endeavor is the most recent 304(a) guidance for cadmium which includes documented effects on 101 freshwater species and 94 saltwater species. In order to create surface water quality standards for PFAS, the department would require funds to hire a contractor who is experienced in EPA methodologies for developing aquatic life and human health surface water quality criteria. The contractor would review existing literature, including criteria and assumptions used in other states, and then develop a report with defensible aquatic life and human health surface water criteria and supporting documentation that are consistent with EPA methodologies and regulations. It may also be beneficial to conduct local studies to corroborate work from elsewhere. The cost of such an effort is likely to be in excess of \$100,000. Further, even if funds were made available, a competitive procurement process and the necessary work could not be completed within 120 days.

The timeframe in the bill is also too rapid for adequate public input. It has been the practice of NHDES to vet all proposed rulemaking of this type through the Water Quality Standards Advisory Committee (WQSAC), which is made up of experts in water quality and includes a diverse group of stakeholders. Typically, an informal discussion phase precedes formal rulemaking. We have found that the WQSAC is extremely useful in both ensuring the quality of science as well as considering the ramifications of proposed changes. It is important to understand the ramifications of a new standard. The cost to municipalities and other stakeholders could be large, in the event that treatment technologies, industrial pretreatment programs, or remediation efforts may be required.

Finally, given the need for resources to develop surface water quality standards and the potential financial impact on both the state and municipalities, NHDES believes that this bill should include a fiscal note.

Thank you again for the opportunity to comment on this proposed legislation. If you have questions or need additional information, please contact me, at 271-3449 or

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[robert.scott@des.nh.gov](mailto:robert.scott@des.nh.gov), or Ted Diers, Watershed Management Bureau Administrator  
at [ted.diers@des.nh.gov](mailto:ted.diers@des.nh.gov) or 271-3289.

Sincerely,

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

Robert R. Scott  
Commissioner

cc: Representatives Messmer, Cushing, Edgar, McConnell, Smith, Le and  
Senator Fuller-Clark

