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 1618, *AN ACT relative to ambient water quality standards and maximum contaminant levels for perfluorinated chemicals*

Dear Chairman Christensen and Members of the Committee:

Thank you for the opportunity to comment on HB 1618. This bill would require NHDES to initiate rulemaking within 120 days of the bill's passage to adopt revised and new ambient groundwater quality standards, new public drinking water standards (i.e. maximum contaminant levels or MCLs), and new surface water quality standards for six poly- and perfluoroalkyl substances [chemicals] (PFAS) identified under the United States Environmental Protection Agency's (USEPA's) Unregulated Contaminant Monitoring Rule (UCMR): perfluorooctanoic acid (PFOA), perfluoroctanesulfonic (PFOS), perfluorononanoic acid (PFNA), perfluorohexanesulfonic (PFHxS), perfluoroheptanoic acid (PFHpA), and perfluorobutane sulfonic acid (PFBS). It also requires NHDES to review these standards every three years. While we support the intent of this legislation to protect public health, we oppose the current language for a variety of reasons including lack of sufficient science and studies for some of these chemicals, lack of resources (i.e. time and staff) to implement the legislation, and non-conformance with setting public drinking water standards with USEPA and the few other states (CA, NY and NJ) with sufficient resources to set MCLs. We also respectfully suggest that there should be a fiscal note for this bill.

NHDES has the authority and responsibility to set standards for water in order to protect public health. In general, there must be good science available to determine where to set the standard, there needs to be an examination of the consequences of setting the standard, and there needs to be resources to carry out this work and to ensure compliance with the standard. Relative to this bill, NHDES has concerns for all three components. An explanation for each of the standards NHDES would need to set under HB 1618 follows:

Ambient Ground Water Quality Standards (AGQSs): This type of standard is generally used for contaminated site remediation and to set appropriate permit limits for groundwater

discharges. In 2016, NHDES adopted a combined standard of 70ppt for PFOA and PFOS based on a health advisory set by the USEPA. It did so after review of other states' standards. NHDES has continued to review any new science or analysis related to these and the other UCMR3 PFAS chemicals. By summer of 2018, the Centers for Disease Control and Prevention (CDC) will release Toxicological Profiles that will establish Minimal Risk Levels for PFOA and PFOS, as well as PFNA and PFHxS, which has been found in NH's groundwater. This will greatly inform what the AGQS should be for these four chemicals. Presently, neither the occurrence data from the extensive sampling that NHDES has performed for PFAS chemicals or the toxicological information and studies for the other two UCMR3 chemicals would support setting an AGQS for them.

MCLs for Public Drinking Water Systems: MCLs are set for over 100 contaminants that may occur in public drinking water which can negatively affect health. These chemicals are then required to be periodically sampled for and treatment is required, if necessary, to achieve compliance with this standard.

The reluctance by NHDES to set MCLs for PFAS chemicals to date has been that we do not believe it is appropriate to set such standards using different methodology than any other state or the USEPA. Our statute is silent on the considerations that should go into establishing an MCL which include occurrence data, ability to reliably detect the contaminant, ability to remove the chemical from drinking water, and costs to government entities and rate payers that will result from establishing the standard. This silence is due to the fact that NH, like most states, has historically relied on USEPA to establish MCLs which the state then adopts. In the case of these four specific compounds (PFOA, PFOS, PFHxS, and PFNA), NHDES believes that once the CDC Toxicological Profiles have been released, qualified staff would have enough information to make recommendations for well-balanced, health-based public drinking water standards for these compounds. We note that HB 485 would provide NHDES with a toxicologist and a risk assessor, both of which are needed for NHDES to set and review health-based standards.

Finally, NHDES requests adding the attached amendment language to this bill so that MCLs are set in accordance with the balanced and scientifically based methodology used by all other states and USEPA to set public drinking water standards. With such amendments in place, NHDES would be well positioned to determine and propose appropriate MCLs for the four PFAS compounds. It is important to remember that, unlike AGQSs, where the costs are generally paid by people responsible for contamination, it is largely municipal government and rate payers that bear the burden of compliance with MCLs.

Surface Water Quality Standards: Surface water quality standards are used to set permit limits for all discharges to surface water and to make determinations on the health and need for restoration of New Hampshire's wetlands, lakes and rivers. Like MCLs, NHDES relies on EPA to create its standards and would need significant resources to do otherwise. HB 1590 is another bill this session that also requires NHDES to set standards for PFAS chemicals. The NHDES letter of testimony on HB 1590 is attached which provides details in setting surface water standards. In general, significant research would be required to identify if the science and studies exists to set surface water standards and the consequences of this action would need to be fully examined.

In summary, NHDES should be able to set and/or revise drinking water and ambient groundwater standards for four PFAS chemicals by the end of 2018 because we assume that the new CDC toxicological profiles will provide the needed science, that there will be new positions at NHDES to perform analysis of the science and that the statute will have been amended to specify all the other important considerations that are needed to set MCLs in accordance with other states and USEPA. Finally, while NHDES understands the desire for NH surface water standards for PFAS, it will take significant resources and time to create the first NH-derived surface water standard.

Thank you again for the opportunity to comment on this proposed legislation. If you have questions or need additional information, please contact Sarah Pillsbury, Drinking Water and Groundwater Bureau Administrator (Sarah.Pillsbury@des.nh.gov or 271-1168).

Sincerely,

Robert R. Scott
Commissioner

cc: Representatives Messmer, Cushing, McConnell, Grassie, Knirk, Fraser, Bean, Edgar, Chandley and Senator Kahn