



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

January 23, 2018

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

RE: SB 309-F, An Act relative to standards for perfluorinated chemicals in drinking water, ambient groundwater and surface water.

Dear Chair Avard and Members of the Committee:

Thank you for the opportunity to testify on SB 309-FN. Within 180 days of the bill's passage, the NH Department of Environmental Services (NHDES) would be required to:

1. Review the current Ambient Ground Water Standards (AGQs) for perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS) and, if warranted, initiate rulemaking to revise the AGQs within 60 days;
2. Initiate rulemaking to establish new public drinking water standard (i.e. maximum contaminant levels or MCLs) for PFOA and PFOS;
3. Establish new surface water quality standards for PFOA and PFOS; and
4. Consider the appropriateness of all three standards annually.

NHDES appreciates the intent of this bill which is to protect public health and is supportive of related bills (HB 485 and HB 1101). However, we cannot support SB 309 because we do not believe it contains all of the components needed to establish these standards. Namely, the use of the best peer-reviewed science available to establish health based criteria, a full understanding of the impact and practicality of setting the standard, and the resources and time for needed analysis. SB 309 also fails to align the process for setting maximum contaminant limits for public drinking water systems with that of other states and the United States Environmental Protection Agency (USEPA). A further explanation for each type of standard follows:

Ambient Ground Water Quality Standards (AGQs): 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 70 ppt 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 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, all of which have been found in New Hampshire's water. This will greatly

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29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • Fax: 271-2867 TDD Access: Relay NH 1-800-735-2964

inform what the AGQS should be for all of these chemicals. NHDES believes that the review and possible revision of the current standard should wait for this research.

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. It is important to understand 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 cost burden of compliance with MCLs.

NHDES has been reluctant to set MCLs for PFAS chemicals to date as 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 PFOA and PFOS, 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 and an amendment to HB1101 would provide NHDES with a toxicologist and a risk assessor, both of which are needed for NHDES to set and review health-based standards. In addition, HB 1101 would add language to NH's Safe Drinking Water Act so that MCLs are set in accordance with the balanced and scientifically based methodology used by all other states and USEPA. With such language in place, NHDES would be well positioned to determine and propose appropriate MCLs for PFOA and PFOS and future contaminants.

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. This would be the first state based surface water quality standard and would need approval by USEPA. 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 exist to set surface water standards and the consequences of this action would need to be fully examined.

In summary, while NHDES does not support SB 309, we are in support of two related bills: HB 485 and what we believe will be an amendment to HB 1101. These bills together accomplish the same goals for AGQSs and MCLs for PFOA and PFOS as SB 309. Specifically, NHDES will set and/or revise drinking water and ambient groundwater standards for PFOA and PFOS (and PFNA and PFHxS) by the end of 2018. This will allow the new CDC toxicological profiles to be

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reviewed. Also, two new positions at NHDES would be established to perform analysis of the science and the NH Safe Drinking Water Act would be amended to specify the other important considerations that are needed to set MCLs using methodology consistent with other states and USEPA. Finally, while NHDES understands the desire for NH surface water standards for PFOA and PFOS, 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: Senators Innis, Bradley, Avard, Fuller Clark, Gannon, Ward, Carson, Birdsell, Feltes, and Representatives Messmer, Marsh, Emerick, Bean, Murray

