



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

March 27, 2018

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

RE: SB 309, AN ACT relative to standards for perfluorochemicals in drinking water, ambient groundwater, and surface water.

Dear Chairman Christensen and Members of the Committee:

Thank you for the opportunity to comment on SB 309. This bill would require the New Hampshire Department of Environmental Services (NHDES) to review the current ambient groundwater quality standards (AGQS) for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) and set an AGQS for perfluorononanoic acid (PFNA) and perfluorohexanesulfonic acid (PFHxS) by January 1, 2019. It also requires NHDES to set drinking water maximum contaminant levels (MCLs) for all four of these chemicals by January 1, 2019 and to set surface water standards for them by January 1, 2020. While NHDES has supported setting these standards in accordance with nationwide practices, provided there is sound science to base them on and there are the resources to do so, we are concerned that this bill, unlike HB 1101, does not include all these important considerations. Unless these considerations are addressed, NHDES cannot support this bill.

Specific recommendations that the committee may want to consider include:

- 1) NHDES has been reluctant to set MCLs for perfluorochemicals to date as we do not believe it is appropriate to set such standards using a 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 affected entities that will result from establishing the standard. We recommend that the language from HB 1101 on how MCLs should be established be added to this bill 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, PFOS, PFNA and PFHxS as well as future contaminants.

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- 2) SB 309 would require NHDES to establish surface water quality standards for PFOA, PFOS, PFNA, and PFHxS. These compounds have been detected in NH waters, and it would be helpful to have surface water standards for them. However, there is significant complexity to a state independently setting surface water standards. The process includes determining the appropriate protective value(s), which requires specialized experience in federal Clean Water Act and aquatic life risk analysis; obtaining necessary federal approvals for incorporation into USEPA permits; and analyzing the impact to affected activities such as wastewater disposal. NHDES has never set a surface water standard. Attached is a set of frequently asked questions that provide additional information on this topic. Also, we believe it was the intent of the sponsor to provide January 1, 2020 as the date to initiate rulemaking and not the date for the standard to be adopted.
- 3) Finally, unlike HB 1101, this bill does not specify the resources that must be available to NHDES to perform the tasks the bill requires. Specifically, NHDES will need to hire a toxicologist and health risk assessor to develop and review the drinking water and groundwater standards. In addition, funding for a contract consultant would be needed to establish the surface water standards. As discussed above, this work requires specialized knowledge and experience, and NHDES does not have this capability in-house.

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 and Feltes
Representatives Messmer, Marsh, Emerick, Bean, Murray