



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

February 12, 2019

The Honorable Martha Fuller Clark
Chair, Senate Energy and Natural Resources Committee
State House, Room 100
Concord, NH 03301

RE: SB 287-FN, AN ACT requiring the department of environmental services to revise rules relative to perfluorinated chemical contamination in drinking water.

Dear Chair Fuller Clark and Members of the Committee:

Thank you for the opportunity to comment on SB 287-FN which requires the Department of Environmental Services (NHDES) to adopt maximum contaminant levels (MCLs) and ambient groundwater quality standards (AGQs) as follows:

- Perfluorononanoic acid (PFNA): ≤ 13 parts per trillion
- Perfluorooctanesulfonic acid (PFOS): ≤ 13 parts per trillion
- Perfluorooctanoic acid (PFOA): ≤ 14 parts per trillion
- PFNA, PFOS, PFOA, Perfluorohexanesulfonic acid (PFHxS) and Perfluorobutanesulfonic acid (PFBS), combined: ≤ 20 parts per trillion(ppt)

NHDES opposes this bill.

While NHDES shares the level of concern related to these chemicals in impacted communities in the seacoast and southern New Hampshire, we oppose SB 287-FN because we are currently engaged in administrative rulemaking authorized during the 2018 legislative session for four of these chemicals based on a well-established and scientific approach to determining acceptable risk from chemicals in drinking water. This process for setting MCLs, which is now in statute, determines standards that are protective of all life stages using the most current science, while also identifying occurrence and the ability to detect and treat a contaminant as well as estimating the costs and benefits of compliance. Further, it requires that the adoption of standards be accomplished through rulemaking, which ensures the opportunity for a robust public input process. We continue to advocate that establishing, through legislation, a ceiling or floor for any drinking water standard that is not in keeping with the well established, and now statutory, process for setting standards is ill-advised and could lead to future standards that are unconnected to science and risk protection. While this bill is proposing numbers lower than our preliminary proposed rules, a future bill could be used to raise state established standards. Please note that NHDES is committed to continue to evaluate new information, including that received in the public comment process, that may lead to a change in the current proposed rules for these chemicals. In summary, we respectfully do not believe the

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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

selection of specific numerical standards by the legislature is prudent, especially while rulemaking for four of the contaminants is underway.

In the 2018 legislative session, HB 1101 and SB 309 directed NHDES to set MCLs and AGQSs for PFOA, PFOS, PFHxS, and PFNA using a process similar to how the United States Environmental Protection Agency establishes MCLs. The four perfluorochemicals were chosen because they occurred in NH at levels exceeding EPA's and other states' health advisories. Also, there was thought to be sufficient studies to establish health based standards. The legislation also provided funding for a toxicologist and health risk assessor who have the education and background necessary to look at the science and determine appropriately protective standards. NHDES met the legislatively established deadline of January 1, 2019 to file a rulemaking that establishes the standards. NHDES also published a detailed report on how the standards were derived in accordance with the legislation and the established methodology for setting drinking water standards. The table below identifies the initial rulemaking proposal, which is subject to change based upon public comment and NHDES' continuing review of new studies for PFOA, PFOS, PFNA and PFHxS:

Initial Rulemaking Proposal: MCL and AGQS	PFOA and PFOS				
	PFOA	PFOS	Combined	PFNA	PFHxS
Part Per Trillion = ppt	38 ppt	70ppt	70ppt	23	85

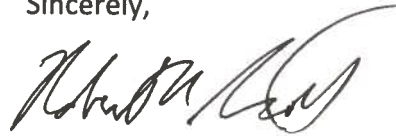
In addition to looking at the individual standards, the concept of combining contaminants, as proposed by HB 287-FN, was researched and not utilized due to lack of supporting science. Throughout the rulemaking process, NHDES remains committed to continuing its research of newly released studies, in order to ensure that the standards proposed initially are sufficiently protective. While NHDES believes it is quite possible that the proposed standards may change due to new studies or comments received during the public comment period, we cannot support legislatively adopting another state's standards, which we have reviewed and believe are no longer justified, given more current information. While different health risk professionals may derive differing numbers, we believe NH's proposed standards are based on the scientific literature and that they are protective of all life stages. We urge you to take the time to review the report on the derivation of NHDES' proposed standards to understand the many factors that must be selected and how each selection was made to protect consumers of drinking water in NH.

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Finally, it is important to understand that we looked at all the components that the statute requires to be considered when setting standards, including the occurrence of a contaminant, the ability to detect and treat it, and the costs and benefits of compliance. After completing that analysis, none of these considerations were ultimately factored into the standards proposed. They are purely health-based numbers.

Thank you again for the opportunity to comment on SB 287-FN. If you have any questions or require further information, please contact Sarah Pillsbury, Administrator, Drinking Water and Groundwater Bureau (sarah.pillsbury@des.nh.gov, 271-1168), or Mike Wimsatt, Director of the Waste Management Division, (michael.wimsatt@des.nh.gov, 271-1997).

Sincerely,



Robert R. Scott
Commissioner

cc: Senator Sherman
Senator Fuller Clark
Senator Cavanaugh
Senator Feltes
Senator Hennessey
Senator Chandler
Representative Cushing
Representative Le, Rock
Representative Malloy
Representative Bushway
Representative Murphy