



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

January 18, 2022

The Honorable Andrew Renzullo
Chairman, House Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, NH 03301

RE: HB 1167 – AN ACT establishing a maximum contaminant level for perfluorinated chemicals in surface water.

Dear Chairman Renzullo and Members of the Committee:

Thank you for the opportunity to comment on HB 1167. This bill establishes maximum contaminant levels (MCLs) for six perfluorinated chemicals (PFAS) in surface waters.

This bill would commit the four existing PFAS MCLs to statute for surface waters, add Perfluorobutyrate (PFBA): seven parts per trillion and Perfluorobutanesulfonic acid (PFBS): 1000 parts per trillion, and create a combined criteria. The Department of Environmental Services (Department) is opposed to the bill for the following reasons:

- 1) **PFBA:** Draft toxicological data for PFBA from the United States Environmental Protection Agency (USEPA) can be used to calculate a drinking water toxicological value that is well over 1000 parts-per-trillion. The basis of the proposed MCL of seven parts-per-trillion is not supported by scientific evidence at this time.
- 2) **PFBS:** The proposed MCL for PFBS of 1000 parts-per-trillion is roughly in line with what the Department has estimated a drinking water toxicological value would be. However, PFBS has not been found in drinking water in New Hampshire at these levels to date. Where PFBS is found at levels exceeding 1000 parts-per-trillion in groundwater that is not currently being used as drinking water, one or more of the existing standards for PFOA, PFOS, PFNA and PFHxS are already being exceeded. Additionally, the proposed MCL of 1000 parts-per-trillion for PFBS is undermined by the provision of the bill that establishes an MCL of 20 parts-per-trillion for PFOA, PFOS, PFNA, PFHxS, PFBA and PFBS all combined. This would make the *de facto* standard of PFBS to be 20 parts-per-trillion.
- 3) **PFOA, PFOS, PFNA, PFHxS, PFBA and PFBS all combined:** At this time, the Department is not recommending a class-based approach for the regulation of these compounds. Comprehensive review of scientific literature indicated that differences in the most sensitive health effects, individual toxicokinetics, and a lack of relative potency factors for PFAS do not

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support the assumption of identical (i.e., 1-to-1) risks from exposure. Additionally, variation in the combinations of functional groups and carbon chain length appear to produce differences in biological activity (e.g. receptor and protein affinity) and the half-lives of individual PFAS. The Department is aware that this is an active area of research and is, therefore, continuing to monitor publications on methods for this approach. Should a robust and scientifically-defensible approach to group regulation be developed, the Department will consider its application in future development of drinking water standards for PFAS.

- 4) NHDES is about to release a set of draft surface water quality standard changes that encompass the four PFAS MCLs that are approved in statute, so this bill is redundant and further complicates future updates in that the statute will need to change in multiple RSAs every time the MCL changes. MCL development should be led by the drinking water programs for drinking water. That is their origin. Annual reporting is not needed. States are required to reexamine surface water quality standards every three years. Any future changes to MCLs should be made based on latest science and will be adopted as MCLs and then into the rules changes to Env-Wq 1700.

Finally, as noted in the fiscal note for HB 1618-FN, there may be costs associated with implementation of these standards. MCLs, as surface water quality standards, apply 20 miles upstream of a drinking water supply. We do not have PFAS data for most of the waters that would be affected by this bill. In addition, there are over 30 municipal wastewater treatment plants and over 30 industrial discharge permittees located in the area 20 miles upstream of drinking water supplies. The cost for sampling and potential treatment are undeterminable at this point. We suggest that a better approach would be to simply instruct NHDES to adopt MCLs that apply to surface waters used for drinking water as they are developed for drinking water purposes.

Thank you again for the opportunity to comment on HB 1167. Should you have questions, or need additional information, please feel free to contact either Ted Diers, Watershed Management Bureau Administrator, at 603-271-3289 or ted.diers@des.nh.gov, or Rene Pelletier, Water Division Director at (603) 271-2951 or rene.pelletier@des.nh.gov.

Sincerely,



Robert R. Scott
Commissioner

ec: Sponsors of HB 1167 Representatives Boyd, Myler, and Woodcock