



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

January 25, 2022

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

RE: HB 1440 – AN ACT relative to surface water quality standards for perfluorinated chemicals.

Dear Chairman Renzullo and Members of the Committee:

Thank you for the opportunity to comment on HB 1440. This bill requires the New Hampshire Department of Environmental Services (NHDES) to create rules and adopt surface water quality standards for a number of perfluorinated chemicals. The Department is opposed to this bill.

Because of concerns relative to the quality of surface waters, the legislature amended RSA 485-A:8 which required NHDES to develop a plan to establish surface water quality standards for four per- and polyfluoroalkyl substances (PFAS). The resultant document “Plan to Generate PFAS Surface Water Quality Standards – 2020” led to the current effort to take an important step in the adoption of PFAS standards. Based on that plan and Clean Water Act (CWA) triennial review requirements, NHDES is now preparing rules which incorporate the maximum contaminant levels (MCLs) that were developed for drinking water (Perfluorooctanoic acid (PFOA), 12 parts per trillion; Perfluorooctanesulfonic acid (PFOS), 15 parts per trillion; Perfluorohexanesulfonic acid (PFHxS), 18 parts per trillion; Perfluorononanoic acid (PFNA), 11 parts per trillion). These MCLs will be incorporated into administrative rule Env-Wq 1700 and are anticipated to be enacted by the fall of 2022. As such, Part 1, II-b. of this bill will be adequately covered by administrative rules such that statutory language is unnecessary.

Our primary concern with the bill relates to the new section RSA 485-A:8, II-b which would require the agency to initiate rulemaking to create water quality standards for those same four PFAS chemicals that will “ensure water concentrations will support the safety of fish and shellfish for human consumption as well as water that is safe for human consumption.” The bill discusses the issue of bioaccumulation factors (BAFs) related to the section above. There appears to be a misunderstanding about the current status of the science of bioaccumulation factors as they relate to surface waters and fish consumption. To be very clear, BAFs are NOT yet fully understood for these parameters. While there are certainly BAFs directly related to humans eating fish, there are no BAFs developed to translate the amount of PFAS in the surface water to a safe level to consume in fish. In the NHDES 2020 PFAS Plan, the cost to develop those BAFs was estimated at \$75,000 to \$741,000 depending on whether existing literature values are available or if State specific BAFs are needed. Given the types of fish that are eaten, the chemical and physical

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conditions of the water (e.g. the pH and dissolved oxygen), and other factors, the BAFs can be highly variable between parts of the country and world, further complicating their creation and applicability.

The New Hampshire water surface water quality standards for toxic chemicals are all based on EPA guidance. The so-called Clean Water Act section "304(a) guidance" is a highly vetted set of scientific analyses and recommendations that are developed by EPA. These recommendations are peer-reviewed and open for public comment prior to adoption and are used to both assist the states and to create a level of national consistency. Presently, there is no EPA 304(a) guidance for PFAS compounds and NHDES has never created a surface water criterion for toxics. EPA is planning to release human health PFOA and PFOS criteria for public comment in 2023. As noted above, the Clean Water Act requires triennial review of water quality standards and approval of any changes before those standards can be used for any CWA purposes. Given the timeline to go through the full State rulemaking as well as EPA review and approval, surface water quality standards are always in a state of perpetual review and rulemaking. Turning that into an annual review, as the bill proposes, generates a new and unnecessary burden, especially since the time needed to analyze new scientific data on an annual basis would be considerable. Given the high potential cost to the department for the development of BAFs and the annual reporting requirement, we recommend that this bill have a fiscal note.

Finally, the timeframes in the bill are unworkable given current staffing levels. It would not be possible to develop robust, scientifically sound BAFs and initiate rulemaking by September 1, 2022.

Thank you again for the opportunity to comment on HB 1440. 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 1440: Representatives Cushing, Grassie, Rung, Bouldin, Meuse, Tucker and Paige.