



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

January 24, 2022

The Honorable Howard Pearl
Chairman, House Environment & Agriculture Committee
Legislative Office Building, Room 303
Concord, NH 03301

RE: HB 1547-FN, setting maximum contaminant levels for perfluorochemicals in the soil

Dear Chairman Pearl and Members of the Committee:

Thank you for the opportunity to testify on HB 1547-FN. This bill, as introduced, would establish specific numerical “maximum contaminant levels” in soil for four perfluorochemicals. However, it is our understanding that the bill sponsor intends to introduce an amendment (2022-0249h) that would replace entirely the language of the bill. The New Hampshire Department of Environmental Services (NHDES) worked with the sponsor on this proposed amendment, and supports it. This letter of testimony will focus on the content of the proposed amendment.

Section 1 of the proposed amendment directs NHDES to initiate rulemaking by November 1, 2023 specific to the application of RSA 485, RSA 485-C, RSA 147-A, and RSA 147-B to per- and polyfluoroalkyl substances (“PFAS”) contamination, including establishing soil remediation standards for four PFAS chemicals that New Hampshire currently regulates in groundwater and drinking water: PFOA, PFOS, PFNA, and PFHxS. The amendment also authorizes such rulemaking to include a requirement for testing additional PFAS compounds.

NHDES feels that rules implementing applicable statutes specifically tailored to PFAS will be greatly beneficial given the unique nature of PFAS contamination. PFAS requires remediation at levels far lower than those associated with many other contaminants. Knowledge of PFAS also continues to evolve which necessitates a more forward-looking approach than that taken with some other chemicals. In addition, whereas these attributes may call for stringent remediation measures in some cases, NHDES may also want to devise a program that accounts for the needs and costs borne by parties such as municipalities as they struggle with PFAS contamination. Therefore, a targeted approach makes sense. Finally, the currently regulated PFAS compounds represent only part of a larger suite of chemicals. Being able to require testing for those for which NHDES has a serious concern, even if standards have not yet been created, will give NHDES the information it needs to understand the full landscape of contamination. In short, this amendment could better position the State to proactively address this continuing problem.

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With respect to soil remediation, NHDES has been working with its partners to conduct the necessary studies to develop science-based soil remediation standards that will be protective of groundwater and drinking water. Specifically, we have contracted with the U.S. Geological Survey to perform a three-part PFAS soils study that includes a statewide survey of PFAS concentrations in soil, laboratory studies, and field soil studies at selected New Hampshire sites. Once completed, NHDES plans to use the data about the behavior of PFAS chemicals in various NH soil types to inform the development of protective remediation standards. The November 2023 date should provide sufficient time for the study to be completed, and for NHDES to use the information gathered to develop standards.

Section 2 proposes to amend the rulemaking provisions of RSA 485-C, the Groundwater Protection Act, relative to investigation, remediation, and management of contaminated groundwater. These proposed changes are intended to clarify existing authorities relative to establishing soil remediation standards to protect groundwater and human health. The amendment also clarifies and makes more explicit existing authorities to require persons who are liable for or otherwise have caused or contributed to groundwater contamination to provide safe alternate water to impacted well owners.

Sections 3 through 7 propose changes to RSA 147-A, the Hazardous Waste Management Act, and RSA 147-B, the Hazardous Waste Cleanup Fund Act, that will allow NHDES to amend its hazardous waste rules to align the nomenclature it uses to describe waste generators with the existing federal nomenclature. The current inconsistency in terminology has created confusion for our regulated community, particularly for companies that have facilities in more than one state. By making these proposed changes to the statutes, these inconsistencies can be eliminated in future rulemaking. The proposed changes remove the words “small quantity” from the provisions of RSA 147-A and RSA 147-B that relate to NHDES’ Small Quantity Generator Self-Certification program. This program requires hazardous waste generators who generate less than 220 pounds of hazardous waste per month to self-certify their compliance with applicable regulations every three years. It is important to understand that these proposed changes do not change the nature, scope, or applicability of this program in any way, and will not in any way change the responsibilities of any regulated parties.

A comparison of how New Hampshire rules and the federal rules currently use different terms to describe generators that generate different amounts of hazardous waste is shown in the table below:

<i>Quantity Generated per Month</i>	<i>Federal Term</i>	<i>New Hampshire Term</i>
<i><220 pounds (100 kilograms)</i>	<i>Very Small Quantity Generator</i>	<i>Small Quantity Generator</i>
<i>>220 pounds (100 kg) to <2200 pounds (1000 kg)</i>	<i>Small Quantity Generator</i>	<i>Full Quantity Generator</i>
<i>>2200 pounds (1000 kg)</i>	<i>Large Quantity Generator</i>	

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Amending RSA 147-A and RSA 147-B in the proposed manner will allow NHDES to adopt the federal nomenclature, eliminating the inconsistency, simplifying future rulemaking and creating a more user-friendly hazardous waste program for New Hampshire businesses.

In summary, NHDES fully supports the proposed amendment (2022-0249h) to HB 1547-FN and encourages its adoption and passage. Should you have questions or need additional information, please feel free to contact Michael Wimsatt, Waste Management Division Director (michael.wimsatt@des.nh.gov, 271-1997).

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Scott", with a stylized flourish at the end.

Robert R. Scott
Commissioner

ec: Sponsors of HB 1547-FN: Representatives Mooney, Healey, Rung and Notter