



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

February 26, 2021

The Honorable Kevin Avard
Chairman, Energy and Natural Resources Committee
Legislative Office Building, Room 103
Concord, New Hampshire 03301

Re: SB 146, Part III, Paragraph 1 - Prohibiting incineration of PFAS in New Hampshire

Dear Chairman Avard and Members of the Committee:

Thank you for the opportunity to provide testimony on SB 146, Part III, paragraph 1 (p.5, lines 4-25). This bill would specifically require:

- 1) A ban on incineration of Class B firefighting foam pending the determination by the department that no out-of-state facility will accept this waste and can ensure the air emissions and associated residuals and their disposal shall not pose a threat to public health or the environment, and
- 2) Whenever PFAS-containing waste, leachate, or sludge is being incinerated in New Hampshire, the air emissions and associated residuals shall be evaluated by the department of environmental services to ensure disposal shall not pose a threat to public health or the environment;

The proposed legislation presents multiple issues of concern to the Department of Environmental Services (NHDES); thus, the department opposes this bill and offers the following supporting information for the Committee's consideration.

Foremost, as written, the bill potentially conflicts with the existing requirements in RSA 125-C:10-e which have already been established to ensure that best available control technology is applied to air emission sources in a manner that takes into account environmental and public health concerns. The bill also expands the definition of Per- and polyfluoroalkyl substances (PFAS) in a much broader manner than the existing statute, does not provide sufficient criteria for the department to ensure that "disposal does not pose a threat to public health or the environment...", and requires the department to evaluate public health and environmental impacts for the complex universe of potentially thousands of PFAS compounds regardless of available science or standards.

By way of background, in 2017-18, following the disclosure of PFAS contaminated drinking water supplies in Merrimack, NH and the department's subsequent determination that airborne emissions of certain PFAS compounds from industrial operations had resulted in an area of widespread contamination of

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • Fax: 271-2867 TDD Access: Relay NH 1-800-735-2964

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drinking water supplies in southern NH, NHDES staff worked closely with then House Majority Leader Hinch and several other legislators to promote the passage of what would ultimately be signed into law as SB 309. This widely supported legislation added to RSA Chapter 125-C *Air Pollution Control* a new section RSA 125-C:10-e *Requirements for Air Emissions of Perfluorinated Compounds Impacting Soil and Water*, effective September 8, 2018.

RSA 125-C:10-e applies to existing and new or modified devices that emit to the air any “PFCs or precursors” (subset of PFAS, a term the definition of which, in RSA 125, is the subject of current legislation¹) that have caused or contributed to an exceedance of an ambient groundwater quality standard (AGQS) or surface water quality standard (SWQS) as a result of the deposition of any such PFCs or precursors from the air. RSA 125-C:10-e requires NHDES to determine which devices are subject to the statute and the owner of the device to apply for a permit to construct and install best available control technology (BACT).

RSA 125-C:10-e has a two-part requirement for sources that are subject to the regulation. First, BACT must be established pursuant to RSA 125-C:10-b, I(a). Second, the application of BACT cannot cause or contribute to or have the potential to cause or contribute to an exceedance of an AGQS or SWQS as a result of the deposition of the contaminant from the air. The statute also requires that BACT shall not result in emissions of any air contaminant that would exceed the emissions allowed by any applicable standard under RSA 125-C, *Air Pollution Control* or RSA 125-I, *Air Toxic Control Act* or rules adopted pursuant to either chapter.

This bill could potentially interfere or pose conflicts with the application of RSA 125-C:10-e to an existing facility permit that is currently subject to appeal with the Air Resources Council and could create uncertainty in litigation related to the permit. NHDES feels that the existing statute is appropriate to control air emissions of PFAS from sources in NH and avoids the ambiguity, superfluous regulation, and potential conflicts posed by this legislation.

NHDES also believes that SB 146 proposes an overly broad and potentially conflicting definition of “incineration”, and does not provide adequate guidance for the vague requirement that the department determine that “...disposal shall not pose a threat to public health or the environment...”. The interpretation of the undefined term “PFAS-containing waste, leachate, or sludge” could also potentially include municipal waste (which may include discarded clothing, furniture, carpets and food containers with water and/or grease resistant coatings containing PFAS) and leachate and sludge from municipal wastewater treatment operations (such as the Manchester sewage sludge incinerator) that could pose potentially significant additional costs with relatively minor environmental benefit.

Additionally, NHDES is unaware of any existing or proposed facilities in NH that could accept and adequately incinerate Class B firefighting foam containing PFAS. NHDES also recommends that the committee seek the advice of counsel relative to the potential constitutional commerce clause issues raised by requiring the department to determine that “no out-of-state facility will accept this waste” prior to any proposed incineration.

¹ [HB 271](#)

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Finally, given the prevalence of PFAS in the current waste stream and our environment, NHDES has concerns about prohibiting one of the very few potential methods of actually destroying these substances and removing them from the environment.

Thank you again for the opportunity to comment on SB 146, Part III. If you have any questions or require further information, please contact either Michael Fitzgerald, Assistant Director, Air Resources Division (Michael.Fitzgerald@des.nh.gov, (603) 271-6390) or Catherine Beahm, State Implementation Plan Manager, Air Resources Division (Catherine.beahm@des.nh.gov, (603) 271-6793).

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Scott", with a long horizontal flourish extending to the right.

Robert R. Scott
Commissioner

ec: Sponsors of SB 146, Part III:
Senators Watters, Soucy, Sherman, Rosenwald, Carson, Gannon, Perkins Kwoka, Cavanaugh,
Bradley; Representatives Spang, Rung