



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

February 26, 2021

The Honorable Kevin Avard
Chairman, Senate Energy & Natural Resources Committee
State House, Room 103
Concord, NH 03301

**RE: SB 146, An Act Adopting Omnibus Legislation Relative to the Environment
Part III – Prohibiting Incineration of PFAS in New Hampshire**

Dear Chairman Avard and Members of the Committee:

Thank you for the opportunity to testify on SB 146, specifically the provisions in Part III of the bill related to prohibiting per- and polyfluoroalkyl substances (PFAS) in certain packaging, and establishing a plastics advisory council. While we support the intent of these provisions of the bill, for the reasons outlined in this letter, the New Hampshire Department of Environmental Services (NHDES) has concerns regarding its ability to implement such provisions.

It is NHDES' understanding that this bill would prohibit the distribution and use of food packaging that contains PFAS and would require the Department to collect information from packaging manufacturers regarding the PFAS content of their products. Additionally, this bill would prohibit packaging materials from being marketed as compostable if such materials contain PFAS or are not certified by the Biodegradable Products Institute (BPI). This bill would also effectively prohibit the composting of any materials (not just packaging items) that contain PFAS. Further, this bill would establish a plastics advisory council, convened by NHDES, to study issues related to the use of plastic packaging and consumer goods.

While NHDES recognizes that Part III of SB 146 attempts to address issues of significant public concern, the Department believes the bill suffers from two fundamental shortcomings: (1) it contains structural issues that are likely to result in unintended consequences, and (2) additional resources would be required to enable NHDES to administer, implement and enforce the proposed requirements, but the bill does not make provisions for such resources.

One structural issue with this bill is that it appears it was drafted with intent to amend New Hampshire's existing Toxics in Packaging law (RSA 149-M:32-40), but the amendments are incomplete. As written, this bill inserts the term PFAS to certain sections of the Toxics in Packaging law, but neglects to change the section of the law that would explicitly prohibit the use of PFAS in packaging. Instead, the bill establishes a separate chapter, RSA 149-R, which contains a prohibition on PFAS in packaging. NHDES believes this creates a confusing disconnect which may not have the desired effect and would ultimately make it more difficult for the Department to administer. Further, it is worth noting that the Toxics in Packaging Clearinghouse (TPCH), an interstate

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The Honorable Kevin Avard
Chairman, Senate Energy & Natural Resources Committee
February 26, 2021
Page 2

consortium of which New Hampshire is a member, just recently released updated model legislation to address use of PFAS in packaging. This model legislation took four years to develop through collaboration between states and industry stakeholders and provides a consistent framework that can be adopted nationally. NHDES believes that the TPCB model might better integrate into New Hampshire's existing Toxics in Packaging law, and may be worth considering for future legislation.

Beyond the structural issues, NHDES is concerned that this bill would place new and expanded responsibilities on the Department for which it is not currently resourced. For example, the bill would establish a plastics advisory council under NHDES' charge that would study issues including the environmental and public health impacts of plastics in the environment, and strategies to increase the recyclability of single-use plastic packaging. Unfortunately, NHDES' pollution prevention and solid waste management programs are not currently structured to engage in this type of work. To do so would require additional staff and technical expertise that the Department does not currently possess. Moreover, many of the matters that would be explored by the plastics advisory council proposed in this bill are global market issues over which New Hampshire, on its own, may have limited ability to influence. In consideration of this, and given the shortage of state resources for robustly engaging in these issues, NHDES believes this kind of effort may be more effective as a regional or federal initiative.

Thank you again for the opportunity to comment on SB 146. Should you have further questions or need additional information, please feel free to contact either Michael Nork, Solid Waste Management Bureau (michael.nork@des.nh.gov, 271-2936) or Michael Wimsatt, Waste Management Division Director (michael.wimsatt@des.nh.gov, 271-1997).

Sincerely,



Robert R. Scott
Commissioner

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