HB 485-FN - AS AMENDED BY THE HOUSE

9Mar2017... 0322h
3Jan2018... 2512h

2017 SESSION

17-0286
08/04

HOUSE BILL ***485***

AN ACT relative to standards for emerging contaminants in drinking water.

SPONSORS: Rep. Messmer, Rock. 24; Rep. Bean, Rock. 21; Rep. Malloy, Rock. 23; Rep. T. Le, Rock. 31; Rep. Cushing, Rock. 21; Rep. Berrien, Rock. 18; Rep. P. Gordon, Rock. 29; Rep. H. Marsh, Rock. 22; Sen. Bradley, Dist 3; Sen. Feltes, Dist 15; Sen. Fuller Clark, Dist 21; Sen. Innis, Dist 24; Sen. Soucy, Dist 18

COMMITTEE: Resources, Recreation and Development

AMENDED ANALYSIS

This bill:

I. Allows the department of environmental services to make rules regarding air pollution and the deposit of such pollutants on soils and water.

II. Regulates devices emitting or having the potential to emit air pollutants that may harm soil and water through the deposit of such pollutants.

III. Requires the commissioner of the department of environmental services to adopt ambient groundwater quality standards using certain scientific information.

IV. Establishes a toxicologist position and a human health risk assessor position in the department of environmental services.

- -

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 485-FN - AS AMENDED BY THE HOUSE

9Mar2017... 0322h
3Jan2018... 2512h

17-0286
08/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

AN ACT relative to standards for emerging contaminants in drinking water.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Subparagraph; Rulemaking; Air Pollution Impacts on Soil and Water. Amend RSA 125-C:4, I by inserting after subparagraph (s) the following new subparagraph:

(t) The determination of air contaminants subject to regulation, applicability thresholds, determination of best available control technology, and procedures to determine potential impacts of the deposit of such contaminants from the air on soils and water resources to implement RSA 125-C:10-e.

2 New Section; Requirements for Air Pollutant Emitters Impacting Soil and Water. Amend RSA 125-C by inserting after section 10-d the following new section:

125-C:10-e Requirements for Air Contaminant Emitters Impacting Soil and Water.

I. For the purposes of this section:

(a) "Best available control technology" means “best available control technology” as defined in RSA 125-C:10-b, I(a); and

(b) “Ambient groundwater quality standard” means “ambient groundwater quality standards” as defined in RSA 485-C:2, I.

II. A device that emits an air contaminant that has caused or contributed to an exceedance of an ambient groundwater quality standard or other applicable standard, as a result of the deposition of the contaminant from the air, shall be subject to the determination and application of best available control technology. Within 6 months of the department determining that the device is subject to such control technology, the owner of the device shall submit to the department an application for a permit. Within 12 months of permit issuance, the applicant shall complete construction and installation of controls consistent with the permit. Operation of the source may continue through the permitting, construction, and installation time period. A source which can demonstrate to the department that its device no longer contributes to an exceedance of an ambient groundwater quality standard or other applicable standard shall be exempt from this section.

III. The construction, installation, or modification of any device that has the potential, based on an applicability threshold adopted by the department, to cause or contribute to an exceedance of an ambient groundwater quality standard or other applicable standard as a result of the deposition of contaminants from the air, shall be prohibited without first applying for and obtaining a permit from the department that establishes emission limitations for such device based on best available control technology.

IV. Part of the initial application for a permit under this section shall include an analysis of best available control technology for controlling emissions. Any permit issued shall contain inspection, testing, and reporting requirements, as applicable, to ensure the conditions of the permit are met.

V. Any determination of best available control technology under this section shall be subject to the following:

(a) In no event shall application of best available control technology result in:

(1) Emission of any air contaminant that would exceed the emissions allowed by any applicable standard under RSA 125-C or RSA 125-I or rules adopted pursuant to either chapter.

(2) Emission of any air contaminant subject to this section in an amount disproportionate to the emissions of such air contaminant from other similar air pollution control devices for that air contaminant at facilities using similar technology.

(3) Emission of any air contaminant subject to this section which causes or contributes to or has the potential to cause or contribute to an exceedance of an ambient groundwater quality standard or other applicable standard, as a result of the deposition of the contaminant from the air.

(b) If the department determines that the facility has more than one device that emits such air contaminants, the department shall determine best available control technology emission limitations for each such device.

VI. This section shall only pertain to contaminants for which at least one study has been conducted in accordance with generally accepted scientific principles that demonstrates that the contaminant of concern is known to cause or may reasonably be anticipated to cause acute, chronic, mutagenic, reproductive, or developmental health effects in humans as a result of exposure to such contaminant. The implementation of this section shall only rely upon standards that are based on federal maximum contaminant levels, health advisories, provisional health advisories; standards that are derived from federally published toxicological data; or more restrictive New Hampshire state standards.

3 Ambient Groundwater Quality Standards. Amend RSA 485-C:6 to read as follows:

485-C:6 Ambient Groundwater Quality Standards.

I. The commissioner shall establish and adopt ambient groundwater quality standards for regulated contaminants which adversely affect human health or the environment. Ambient groundwater standards shall apply to all regulated contaminants which result from human operations or activities, but do not apply to naturally occurring contaminants. Where federal maximum contaminant level or health advisories have been promulgated under the Federal Safe Drinking Water Act or rules relevant to such act, ambient groundwater quality standards shall be [~~equivalent to~~] ***no less stringent than*** such standards. ***The commissioner may adopt standards more stringent than federal maximum contaminant levels or health advisories if, accounting for an adequate margin of safety to protect human health at all life stages,***

including but not limited to pre-natal development, the commissioner determines federal standards are insufficient for protection of human health. Where such standards are based upon cancer risks, the ambient groundwater quality standards shall be equivalent to that exposure which causes a lifetime exposure risk of one cancer in 1,000,000 exposed population. Where no federal maximum contaminant level or health advisory has been issued, the commissioner may adopt ambient groundwater quality standards on a basis which provides for an adequate margin of safety to protect human health and safety.

II. ***Health advisories that are adopted as ambient groundwater quality standards shall be reviewed by the department at least every 5 years to determine if new research warrants revising the current ambient groundwater quality standard. If the department finds a revision is necessary it shall conduct rulemaking to adopt the revised standard.***

III. Ambient groundwater quality standards shall be the water quality basis for issuance of groundwater discharge permits under RSA 485-A: 13.

~~[III]~~ ***IV.*** Except for discharges of domestic wastewater regulated under RSA 485-A:13 and RSA 485-A:29, no person shall violate ambient groundwater quality standards.

4 Department of Environmental Services; Positions Established. There is established within the department of environmental services one classified toxicologist position and one classified human health risk assessor for the purposes of this bill. The governor is authorized to draw a warrant out of any money in the treasury not otherwise appropriated to pay for salary, benefits, and other costs directly related to the 2 positions for the biennium ending June 30, 2019.

5 Effective Date.

I. Sections 1 and 2 of this act shall take effect 60 days after passage.

II. Section 3 of this act shall take effect 180 days after passage.

III. The remainder of this act shall take effect upon its passage.

LBAO
17-0286
Amended 4/13/18

HB 485- FISCAL NOTE

AS AMENDED BY THE HOUSE (AMENDMENT #2018-2512h)

AN ACT relative to standards for emerging contaminants in drinking water.

FISCAL IMPACT: [X] State [X] County [X] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**
Appropriation	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Revenue	$0	$0	$0	$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

LOCAL:

Revenue	$0	$0	$0	$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

The Department of Environmental Services indicates this bill would require a limited, but unknown number of additional facilities to apply for state air permits, and pay associated fees required pursuant to RSA 125-C, for compounds that may be emitted to air and deposited on the ground thereby causing contaminated groundwater. The Department assumes the costs associated with this permitting activity would be covered by the fees. The Department would need to adopt new rules regarding air emissions of compounds impacting soil and water. No additional resources are anticipated to be necessary for this effort.

The bill would also require the Department to review all ambient groundwater quality standards (AGQS) at least every five years to determine if new research warrants revision of the standards. The bill also authorizes two new positions to perform this work and provides appropriation authority to fund the positions. The Department assumes a Toxicologist IV and an Environmentalist IV would be hired at the beginning of FY 2019. The Department estimated the cost for these positions including equipment, office furnishings and other operating costs would be $244,000 in FY 2019, $229,000 in FY 2020, $231,000 in FY 2021 and $241,000 in FY 2022.

The New Hampshire Municipal Association indicates this bill authorizes the Commissioner of

the Department of Environmental Services to adopt ambient groundwater standards that are more stringent than federal maximum contaminant levels or health advisories. More stringent state adopted standards would result in additional costs to municipalities for compliance with those standards. However, without knowing what those standards would be, the cost to comply is indeterminable. Additionally, any state standard that is more stringent than the federal standards and which costs municipalities additional money will likely violate the provisions of RSA 541-A:25 dealing with unfunded state mandates. The authority granted clearly creates a "modified" responsibility on municipalities that will necessitate additional costs in violation of this statute.

The Department of Health and Human Services states the bill directs the Department of Environmental Services to develop rules regarding air pollution and soil and water deposits, as well as ambient groundwater quality standards. As amended, the legislation does not pose a fiscal impact to the Department of Health and Human Services.

The New Hampshire Association of Counties states this bill will have no impact on county expenditures or revenue.

AGENCIES CONTACTED:

Department of Environmental Services, Department of Health and Human Services, New Hampshire Municipal Association, and New Hampshire Association of Counties