

Sen. D'Allesandro, Dist 20
May 3, 2018
2018-1930s
05/10

Floor Amendment to HB 1102-FN

1 Amend the title of the bill by replacing it with the following:

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3 AN ACT regulating groundwater pollution caused by polluting emissions in the air; relative
4 to standards for perfluorochemicals in drinking water, ambient groundwater, and
5 surface water; and authorizing the department of corrections to establish additional
6 expenditure class lines with fiscal committee and governor and council approval.
7

8 Amend the bill by replacing all after the enacting clause with the following:

9

10 1 New Subparagraph; Rulemaking; Air Contaminant Impacts on Soil and Water. Amend RSA
11 125-C:4, I by inserting after subparagraph (s) the following new subparagraph:

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

16 2 New Section; Requirements for Air Emissions of Perflourinated Compounds Impacting Soil
17 and Water. Amend RSA 125-C by inserting after section 10-d the following new section:

18 125-C:10-e Requirements for Air Emissions of Perfluorinated Compounds Impacting Soil and
19 Water.

20 I. For the purposes of this section:

21 (a) "Best available control technology" means "best available control technology" as
22 defined in RSA 125-C:10-b, I(a).

23 (b) "Ambient groundwater quality standard" means "ambient groundwater quality
24 standard" as defined in RSA 485-C:2, I.

25 (c) "Surface water quality standard" means "surface water quality standard" established
26 in or pursuant to RSA 485-A.

27 (d) "Perfluorinated Compounds" or "PFCs" means the list of compounds identified in
28 paragraph 1.1 of Environmental Protection Agency Document#: EPA/600/R-08/092 Method 537.
29 "Determination of Selected Perfluorinated Alkyl Acids in Drinking Water by Solid Phase Extraction
30 and Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS)", Version 1.1 (September
31 2009).

32 (e) "Precursor" means any substance that has been shown by sound science to be
33 transformed into a PFC under ambient conditions reasonably expected to occur in New Hampshire.

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II. A device that emits to the air any PFCs or precursors that have caused or contributed to an exceedance of an ambient groundwater quality standard or surface water quality standard as a result of the deposition of any such PFCs or precursors 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 surface water quality 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 surface water quality standard as a result of the deposition of any PFCs or precursors 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 surface water quality 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 air contaminants subject to this section, the department shall determine best available control technology emission limitations for each such device.

VI. This section shall only pertain to PFCs for which at least one study has been conducted

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1 in accordance with generally accepted scientific principles that demonstrates that the PFC of
2 concern is known to cause or may reasonably be anticipated to cause acute, chronic, mutagenic,
3 reproductive, or developmental health effects in humans as a result of exposure to such PFC. The
4 implementation of this section shall only rely upon standards that are based on federal maximum
5 contaminant levels, health advisories, provisional health advisories; standards that are derived
6 from federally published toxicological data; or more restrictive New Hampshire state standards.

7 3 New Subparagraph; Statement of Purpose. Amend RSA 485:1, II by inserting after
8 paragraph (h) the following new subparagraph:

9 (i) Adopt primary drinking water standards by establishing maximum contaminant
10 limits or treatment techniques.

11 4 Drinking Water Rules. Amend RSA 485:3 I(b) to read as follows:

12 (b) *After consideration of the extent to which the contaminant is found in New*
13 *Hampshire, the ability to detect the contaminant in public water systems, the ability to*
14 *remove the contaminant from drinking water, and the costs and benefits to affected*
15 *parties that will result from establishing the standard, a specification for each contaminant of*
16 *either:*

17 (1) A maximum contaminant level that is acceptable in water for human
18 consumption~~[, if it is feasible to ascertain the level of such contaminant in water in public water~~
19 ~~systems]; or~~

20 (2) One or more treatment techniques or methods which lead to a reduction of the
21 level of such contaminant sufficient to protect the public health, if it is not feasible to ascertain the
22 level of such contaminant in water in the public water system; and

23 5 New Subdivision; Perfluorochemicals. Amend 485 by inserting after section 16-d the
24 following new subdivision:

Perfluorochemicals

25 485:16-e Perfluorochemicals. By January 1, 2019, the commissioner shall, in consultation with
26 the commissioner of the department of health and human services and other interested parties,
27 initiate rulemaking in accordance with RSA 541-A to adopt a maximum contaminant limit for
28 perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), perfluorononanoic acid (PFNA),
29 and perfluorohexanesulfonic acid (PFHxS).
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31 6 Ambient Groundwater Quality Standards. Amend RSA 485-C:6 to read as follows:

32 485-C:6 Ambient Groundwater Quality Standards.

33 I. The commissioner shall establish and adopt ambient groundwater quality standards for
34 regulated contaminants which adversely affect human health or the environment. Ambient
35 groundwater standards shall apply to all regulated contaminants which result from human
36 operations or activities, but do not apply to naturally occurring contaminants. *Where state*
37 *maximum contaminant levels have been adopted under RSA 485:3, I(b), ambient*

1 *groundwater quality standards shall be equivalent to such standards.* Where federal
2 maximum contaminant level or health advisories have been promulgated under the Federal Safe
3 Drinking Water Act or rules relevant to such act, ambient groundwater quality standards shall be
4 ~~[equivalent to]~~ *no less stringent than* such standards. *The commissioner may adopt*
5 *standards more stringent than federal maximum contaminant levels or health advisories*
6 *if, accounting for an adequate margin of safety to protect human health at all life stages,*
7 *including but not limited to pre-natal development, the commissioner determines federal*
8 *standards are insufficient for protection of human health.* Where such standards are
9 *established* based upon *health advisories that address* cancer risks, the ambient groundwater
10 quality standards shall be equivalent to that exposure which causes a lifetime exposure risk of one
11 cancer in 1,000,000 exposed population. Where no federal *or state* maximum contaminant level or
12 health advisory has been issued, the commissioner may adopt ambient groundwater quality
13 standards on a basis which provides for an adequate margin of safety to protect human health and
14 safety.

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

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

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

23 V. *By January 1, 2019, the commissioner shall, in consultation with the*
24 *commissioner of the department of health and human services and interested parties,*
25 *initiate rulemaking to adopt ambient groundwater quality standards for*
26 *perfluorononanoic acid (PFNA) and perfluorohexanesulfonic acid (PFHxS).*

27 VI. *By January 1, 2019, the commissioner shall, in consultation with the*
28 *commissioner of the department of health and human services and interested parties,*
29 *conduct a review to determine whether current research warrants revising the existing*
30 *ambient groundwater quality standards for perfluorooctanoic acid (PFOA) and*
31 *perfluorooctanesulfonic acid (PFOS).*

32 7 Department of Environmental Services; Surface Water Quality Standards. The commissioner
33 of environmental services shall develop a plan, including a schedule and cost estimates, to establish
34 surface water quality standards for perfluorooctanesulfonate (PFOS), perfluorooctanoic acid
35 (PFOA), perfluorononanoic acid (PFNA), and perfluorohexanesulfonic acid (PFHxS) in class A and
36 class B waters for all designated uses. The commissioner shall submit the plan upon its completion,
37 but no later than January 1, 2020, to the house resources, recreation, and development committee

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1 and the senate energy and natural resources committee.

2 8 Department of Environmental Services; Positions Established; Appropriation. There is
3 established within the department of environmental services one classified toxicologist position and
4 one classified human health risk assessor for the purposes of developing appropriate standards to
5 protect groundwater and drinking water quality under RSA 485-C. The sum necessary to pay the
6 salary, benefits, and other costs related to the positions established in this section is hereby
7 appropriated to the department of environmental services for the biennium ending June 30, 2019.
8 This appropriation shall be in addition to any other appropriations made to the department in the
9 biennium. The governor is authorized to draw a warrant for said sum out of any money in treasury
10 not otherwise appropriated.

11 9 New Paragraph; Transfer Language; Department of Corrections. Amend RSA 9:16-a by
12 inserting after paragraph IV the following new paragraph:

13 V. Notwithstanding any provision of law to the contrary, the commissioner of the
14 department of corrections is authorized to transfer funds within and among all accounting units
15 within the department to create accounting units and expenditure classes as required and as the
16 commissioner deems necessary and appropriate to address present or projected budget deficits, or to
17 responds to changes in federal law, regulations, or programs, and otherwise as necessary for the
18 efficient management of the department; provided if a transfer does not include new accounting
19 units or expenditure classes, only transfers over \$75,000 shall require prior approval of the fiscal
20 committee of the general court and governor and council.

21 10 Effective Date.

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

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

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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. Clarifies the basis for and requires periodic review of ambient groundwater quality standards.

IV. Directs the department to evaluate the ambient ground water quality standards for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) and set ambient groundwater quality standards for perfluorononanoic acid (PFNA), and perfluorohexanesulfonic acid (PFHxS).

V. Establishes the criteria for setting maximum contaminant limits for public drinking water and directs the department to set maximum contaminant limits for perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), perfluorononanoic acid (PFNA), and perfluorohexanesulfonic acid (PFHxS).

VI. Directs the department to, in consultation with stakeholders, develop a plan, including a schedule and cost estimates, to establish surface water quality standards for perfluorooctanesulfonate (PFOS), perfluorooctanoic acid (PFOA), perfluorononanoic acid (PFNA), and perfluorohexanesulfonic acid (PFHxS)

VII. Establishes a toxicologist position and a human health risk assessor position in the department of environmental services and makes an appropriation to fund the positions.

VIII. Authorizes the department of corrections to establish additional expenditure class lines with legislative fiscal committee and governor and council approval.