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Memorandum In Opposition
An Act Relative to PFAS Facility Liability
HB 1389 (Murphy)

The Northern New England Chapter of the National Waste & Recycling Association (NWRA) represents the private sector waste and recycling industry operating throughout New Hampshire. Our members provide essential solid waste collection, recycling, transfer, and disposal services that protect public health and the environment. We support thoughtful, science-based policies addressing PFAS contamination. However, we must respectfully oppose HB 1389 as drafted due to significant statutory changes that materially and unintentionally expand liability under RSA 147-B.

HB 1389 proposes to amend New Hampshire's hazardous waste cleanup statute (RSA 147-B) to establish PFAS-specific obligations for any person who "owns or operates a PFAS facility" where PFAS releases reach 500 parts per trillion (ppt) or greater in groundwater or surface water.

While the bill reenacts several PFAS-related definitions, it omits the current statutory definition of "PFAS facility." This omission is significant.

Under existing law, RSA 147-B:2 defines:

"PFAS facility" means any site, area, or location where PFAS is or has been used in a manufacturing process. "Manufacturing process" is further defined as "a process that turns raw materials into a finished product."

This definition is deliberate and important. By tying PFAS facility status to manufacturing activity, current law appropriately limits PFAS-specific liability to sites where PFAS was actively used as part of an industrial production process. It reflects a legislative policy decision already made by this body — that PFAS-specific strict liability should attach to entities that manufactured or intentionally used PFAS in production, not to facilities that merely received materials containing PFAS.

HB 1389 removes that definition while continuing to impose strict liability on owners and operators of a "PFAS facility." Without expressly restoring the current manufacturing-based definition, the term could be interpreted far more broadly — potentially encompassing any location where PFAS has "come to be located."

We respectfully request that the Committee restore the existing definition of "PFAS facility" in RSA 147-B:2 in full. The legislature has already addressed and resolved this definitional issue. Removing it now would represent a significant and unintended expansion of liability.

In addition to restoring the definition of "PFAS facility," the language in RSA 147-B:10 that is removed by HB 1389 should also be restored.

The existing statute contains important limitations that prevent the imposition of liability on entities that did not manufacture or intentionally use PFAS but merely handled materials containing trace amounts. These provisions recognize the distinction between active manufacturers and "passive receivers" of material.

Solid waste facilities, transfer stations, and disposal sites do not manufacture PFAS and do not intentionally introduce PFAS into commerce. They manage materials generated by third parties — materials that may contain PFAS because PFAS compounds are ubiquitous in modern consumer products. These facilities are, by definition, passive receivers of materials placed into the waste stream by others.

The current statutory framework appropriately reflects that distinction. Removing these protections would upend the balance already struck in RSA 147-B and impose strict, potentially retroactive liability on entities that neither produced nor intentionally used PFAS.

We urge the Committee to restore the existing language in RSA 147-B:10 to ensure that passive receivers of PFAS-containing materials are not improperly swept into the scope of PFAS-specific strict liability.

The ambiguity created by HB 1389 would not only affect solid waste facilities but also risks impacting public wastewater systems.

Publicly owned treatment works (POTWs) similarly receive materials generated by households, businesses, and industrial users. Like solid waste facilities, they are not manufacturers of PFAS and do not intentionally use PFAS in a manufacturing process. Yet PFAS compounds can be present in influent due to their widespread presence in consumer and commercial products.

If the definition of "PFAS facility" is broadened — or left undefined — public wastewater systems could face expanded strict liability exposure as well. This would shift substantial financial burdens onto municipalities and ratepayers for contamination they did not create.

The legislature has previously crafted RSA 147-B to focus liability on manufacturers and intentional users. HB 1389, as drafted, risks shifting that burden onto downstream infrastructure providers and ultimately the public. This could lead to municipal budgets being put at risk, capital improvement plans disrupted, and ultimately, higher rates for local taxpayers and sewer users.

We believe the omission of the "PFAS facility" definition and the removal of key language in RSA 147-B:10 may have been inadvertent. However, unless corrected, these changes would materially expand strict liability beyond manufacturing sites and could subject passive receivers — including solid waste facilities and public wastewater systems — to sweeping closure, decommissioning, and remediation obligations.

The existing statute already reflects a policy decision made by this body to limit PFAS-specific liability to manufacturing uses. That balance should be preserved.

Absent the above mentioned corrections, we respectfully urge the Committee to find HB 1389 inexpedient to legislate.