

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT  
DOCKET NO.

THE PLYMOUTH VILLAGE WATER & SEWER DISTRICT, RESOURCE MANAGEMENT,  
INC., CHARLES G. HANSON, and 3M COMPANY

Plaintiffs

v.

ROBERT R. SCOTT, AS COMMISSIONER OF THE NEW HAMPSHIRE DEPARTMENT  
OF ENVIRONMENTAL SERVICES

Defendant

**MOTION FOR TEMPORARY AND PRELIMINARY INJUNCTIVE RELIEF**

Plaintiffs, the Plymouth Village Water & Sewer District, Resource Management, Inc., Charles G. Hanson, and 3M Company, by and through their attorneys, move this Court for temporary and preliminary injunctive relief against the New Hampshire Department of Environmental Services (“NHDES” or the “Agency”) to enjoin enforcement of recently-adopted rules pertaining to permitted levels of PFOA, PFOS, PFNA, and PFHxS, scheduled to become effective on September 30, 2019. In support of this motion, Plaintiffs state as follows:

1. As explained in greater detail in the Complaint, memorandum of law and exhibits filed simultaneously with this motion, Plaintiffs seek to enjoin drinking water and ambient groundwater limits enacted out of NHDES’s flawed rulemaking process. Between December 31, 2018 and July 18, 2019, NHDES engaged in a process that resulted in the adoption and impending implementation and enforcement of the following N.H. Code Admin Rules: Env-Dw 701.03, 705.06, 707.06, 712.23 through 30, 808.01, 808.27 through 30, 811.02, 811.07(c), 811.22(b), 811.25(a) and Table 811-2; Env-Wq 402.05, 402.24, Env-Wq 402.25(a), 402.251;

and, Env-Or 603.03(b), 603.03(c) intro & Table 600-1, (together the “Final Rules”). Plaintiffs’ Complaint Exhibit 1.

2. The Plaintiffs seek a temporary and preliminary order enjoining NHDES from implementing and enforcing the Final Rules on or about September 30, 2019.

3. NHDES adopted the Final Rules in violation of numerous constitutional, statutory and regulatory requirements, including:

a. Failure to comply with New Hampshire’s constitutional and statutory prohibitions against legislative and agency impositions of unfunded mandates on political subdivisions under the New Hampshire Constitution, Part 1, Art. 28-a, and RSA 541-A:25, and NHDES Rule Env-Dw 102.01 exempting cities and towns from other water quality rules on such grounds;

b. Failure to comply with the procedural safeguards incorporated into the Administrative Procedure Act (“APA”), RSA Ch. 541-A by its failure to provide a renewed or extended notice and comment period when it dramatically lowered the maximum contaminant levels (“MCLs”) and Ambient Groundwater Quality Standards (“AGQS”) in its Final Rules without prior notice and opportunity for public comment;

c. Failure to comply with requirements in the New Hampshire Safe Water Drinking Act, RSA 485:3 to undertake a rigorous scientific analysis and full cost benefit analysis of the impact the adoption of the Final Rules would have on affected parties; and

d. Depriving Plaintiffs and other citizens of their liberty and property without consent or legislative authorization, in violation of the New Hampshire Constitution, Part 1, Art. 12 and Art. 15, and the due process clause of the Fourteenth Amendment to the United States Constitution.

4. For these reasons, and as set forth in the accompanying Memorandum of Law and the Complaint, the Plaintiffs respectfully request that the Court issue a temporary and preliminary injunction enjoining NHDES from enforcing the Final Rules until such time as new rules are enacted in compliance with constitutional requirements, and statutory and regulatory requirements including the New Hampshire Administrative Procedures Act and the New Hampshire Safe Drinking Water Act.

5. For good cause pursuant to Super. Ct. R. 48 (c), no injunction bond is required because costs and damages will not be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

6. Counsel for Plaintiff 3M Company has contacted the New Hampshire Department of Justice, as counsel for NHDES, and notified it of Plaintiffs' intent to file this Motion, Memorandum of Law and exhibits, and Complaint. Copies have been emailed to counsel.

7. In compliance with RSA 541-A:23, IV and RSA 541-A:24, counsel for Plaintiffs have provided the State of New Hampshire Office of Legislative Services, Administrative Rules Division, Scott F. Eaton, Administrative Rules Director, with notice of its pleadings and motions by providing copies of its Complaint, its Motion for Preliminary Injunctive Relief, Memorandum of Law in Support of its Motion, and exhibits by emailing and mailing by first class mail these documents to its office at 25 Capitol Street, Rm 219, Concord, NH 03301-6312.

**WHEREFORE**, Plaintiffs respectfully request that the Court:

A. Immediately issue a temporary injunction in the form of the Order submitted herewith;

B. Schedule a hearing within ten (10) days in accordance with Superior Court Rule 48 on this Motion for Temporary and Preliminary Injunctive Relief;

C. Following such hearing, convert the temporary injunction order into a preliminary injunction; and

D. Grant such further relief as the Court finds to be just and equitable.

Respectfully submitted,

**THE PLYMOUTH VILLAGE WATER & SEWER  
DISTRICT, RESOURCE MANAGEMENT, INC.,  
AND CHARLES G. HANSON**

By their Attorneys,

PASTORI/KRANS, PLLC

Dated: September 30, 2019 By: /s/ Terri L. Pastori

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Terri L. Pastori, NH Bar #  
Beth A. Deragon, NH Bar #  
70 Commercial Street, Suite 203  
Concord, NH 03301  
(603) 369-4769

**3M COMPANY**

By their Attorneys,

McLANE MIDDLETON  
PROFESSIONAL ASSOCIATION

Dated: September 30, 2019 By: /s/ Mark C. Rouvalis

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Mark C. Rouvalis, NH Bar # 6565  
Mark.Rouvalis@mclane.com  
Joseph A. Foster, NH Bar # 838  
Joseph.Foster@mclane.com  
Michael J. Quinn, NH Bar # 5584  
Mike.Quinn@mclane.com  
900 Elm Street, P.O. Box 326  
Manchester, New Hampshire 03105-0326  
Telephone: (603) 625-6464

BEVERAGE & DIAMOND

Dated: September 30, 2019 By: /s/ Nessa Horewitch Coppinger  
Nessa Horewitch Coppinger (*to be admitted Pro Hac*  
*Vice*) D.C. Bar #477467  
ncoppinger@bdlaw.com  
1350 I Street, NW, Suite 700  
Washington, DC 20004  
Telephone: (202) 789-6053

**CERTIFICATE OF SERVICE**

I hereby certify that on September 30, 2019, I served the foregoing Motion For Temporary and Preliminary Injunctive Relief, Supporting Memorandum of Law, Complaint and Exhibits by emailing and hand delivering copies to the following counsel of record:

K. Allen Brooks, Senior Assistant Attorney General  
Christopher G. Aslin, Senior Assistant Attorney General  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, NH 03301

/s/ Mark C. Rouvalis  
Mark C. Rouvalis

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**AFFIDAVIT OF MICHAEL J QUINN, ESQ., IN SUPPORT OF  
MOTION FOR TEMPORARY AND PRELIMINARY INJUNCTIVE RELIEF**

I, Michael J. Quinn, hereby depose and state:

1. I am an attorney in good standing in the State of New Hampshire, practicing law with the firm McLane Middleton, Professional Association, 900 Elm Street, Manchester, New Hampshire. This firm represents Plaintiff 3M Company in the above titled action. I make this Affidavit on personal knowledge.

2. As counsel for 3M Company, I am familiar with the facts and documents in this action.

3. This Affidavit is submitted in support 3M Company's Motion for Temporary and Preliminary Injunctive Relief.

4. In 2019, I personally obtained documents and other webpage information or publications from the New Hampshire Department of Environmental Services ("NHDES")

website, at des.nh.gov. The documents or information obtained from the website related to the NHDES' rulemaking for PFOA, PFOS, PFNA and PFHxS.

5. Plaintiffs have attached to their Motion and supporting Memorandum of Law, a number of exhibits that are based on documents, information, or other publications available from the NHDES' website.

6. Such Exhibits are based on documents, information, or publications that are part of the public record concerning the rulemaking and are generally available to the public on behalf of NHDES.

7. I certify that any such Exhibits that Plaintiffs' have submitted to the Court, that represent documents, information, or publications of the NHDES, are true and accurate copies of documents that have been produced or published by the NHDES and are available at its website.

Dated: September 30, 2019

By:

  
Michael J. Quinn, Esq.

Before me at Newington, New Hampshire, on September 30, 2019, personally appeared Michael J. Quinn, who has sworn and signed before me that the above is true and accurate to the best of his knowledge.

  
Notary Public

My Commission Expires May 2, 2023

**LINDSAY A. HICKMAN**  
Notary Public - New Hampshire  
My Commission Expires May 2, 2023

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**AFFIDAVIT OF ROBERT J. KENDALL III, ESQ., IN SUPPORT OF  
MOTION FOR TEMPORARY AND PRELIMINARY INJUNCTIVE RELIEF**

I, Robert J. Kendall III, hereby depose and state:

1. I am an attorney in good standing in the State of New Hampshire, practicing law with the firm McLane Middleton, Professional Association, 900 Elm Street, Manchester, New Hampshire. This firm represents Plaintiff 3M Company in the above titled action. I make this Affidavit on personal knowledge.

2. This Affidavit is submitted in support 3M Company's Motion for Temporary, and Preliminary Injunctive Relief.

3. In 2019, I personally visited the New Hampshire Division of Archives and Records Management ("State Archives"), located at 71 S Fruit Street, Concord, New Hampshire 03301.



4. At the State Archives, I obtained photographic copies of the legislative history of HB1501, of which several exhibits are referenced in Plaintiffs' Memorandum of Law in Support of its Motion for Temporary and Preliminary Injunctive Relief.

5. The Exhibits are true and accurate copies of the legislative history of HB 1501 documents obtained from the State Archives.

6. Specifically, the following Exhibits are true and accurate photographic copies of portions of documents obtained directly from the State Archives:

- a. HB1501
- b. Transcript No. 1 of April 7, 1992 Hearing on HB1501
- c. Transcript No. 2 of April 7, 1992 Hearing on HB1501
- d. Transcript of April 14, 1992 Hearing on HB1501
- e. NH AG Letter to Town of Antrim, August 22, 1990
- f. Daubiewicz Letter to NHDES Comm'r Varney, April 3, 1992

7. Additionally, in 2019, I personally visited the New Hampshire Office of Legislative Services, Division of Administrative Rules ("Rules Division"), located at 25 Capitol Street, Concord, New Hampshire 03301.

8. At the Rules Division, I obtained photographic copies of the rulemaking history of New Hampshire Department of Environmental Services Rule Env-Dw 102.01, and its predecessor rules, and related history of documents. Of these documents, two exhibits are referenced in Plaintiffs' Memorandum of Law in Support of its Motion for Temporary and Preliminary Injunctive Relief.

9. The Exhibits are true and accurate copies of portions of the rulemaking history of Env-Dw 102.01, and its predecessor rules, obtained from the Rules Division.

10. Specifically, the following Exhibits are true and accurate photographic copies of documents obtained directly from the Rules Division:

- a. November 1996 Letter from JLCAR to DES
- b. December 1996 Response from DES to JLCAR

Dated: September 30, 2019

By:

  
Robert J. Kendall III, Esq.

Before me at Manchester, New Hampshire, on September 30, 2019, personally appeared Robert J. Kendall III, who has sworn and signed before me that the above is true and accurate to the best of his knowledge.

  
Notary Public / Justice of the Peace

My Commission Expires \_\_\_\_\_ **DARLENE A. HARGIS**  
**Justice of the Peace - New Hampshire**  
**My Commission Expires October 21, 2020**