



Sarah Pillsbury
Groundwater Bureau
New Hampshire Department of Environmental Services
P. O. Box 95
Concord, NH 03302

delivered by email: sarah.pillsbury@des.nh.gov

April 12, 2019

Dear Ms. Pillsbury,

Thank you for the opportunity to provide technical input regarding the work of the Department of Environmental Services (DES) on establishing MCLs for four PFAS chemicals, as required by law (SB 309 of 2018).

These comments are submitted by groups representing those on the front lines of water quality protection in New Hampshire. The members of our organizations are the professional operators and engineers who maintain the water quality of the state. Our missions and goals align closely with those of DES and the broad public interest: to protect water resources throughout the State. Our members strive to always provide our communities with the highest levels of services and protections possible within the constraints of technical feasibility and budgets. But some have already seen significant technical and cost impacts, because of the uncertainty around the PFAS issue.

We believe that the process of setting MCLs to date has failed to address critical information regarding the costs and benefits – or the lack of such information. The following concerns need to be considered as DES continues its work on developing MCLs for PFAS in drinking water. Legislative criteria regarding setting MCLs for PFAS requires DES to:

- *“initiate rulemaking to adopt maximum contaminant levels”*

There is no deadline for *completing* the setting of MCLs. We believe that rushing this process by inadequately addressing some key requirements of the MCL-setting process is unnecessary. We understand that there is pressure to set these standards sooner rather than later. However, unless DES takes the time to adequately address all comments submitted to date and completes the complicated tasks of generating cost data and a formal calculation of benefits of the proposed MCLs, the proposed regulations will be indefensible and subject to legal challenge.

- *“After consideration of the... costs and benefits to affected parties that will result from establishing the standard”*

While DES has done excellent, extensive work over the past few years to gain an understanding of PFAS contamination and its extent and implications around the state, **DES has not adequately addressed the cost and benefits associated with the proposed standards.**

The highest-risk sites have been identified and are being addressed. DES actions, which have relied on the EPA public health advisory screening levels of 70 ppt for PFOA + PFOS, have set the stage for the setting of MCLs. Thus, the focus in the current MCL-setting process has been on the range of 70 ppt to perhaps 20 ppt (Vermont’s number for 5 PFAS). That range of consideration is narrow. But the potential feasibility and cost implications of where the MCLs end up are considerable. While there seems to be an assumption that MCLs must be at 70 ppt or below, the rationale for that assumption has not been articulated. EPA public health advisories are not MCLs and other jurisdictions have set higher drinking water levels; for example, Canada just finalized 200 ppt for PFOA and 600 ppt for PFOS as screening levels in drinking water for health protection.

To summarize, while three of the criteria set forth in SB 309 for the MCL-setting process have been adequately addressed (*occurrence in drinking water, the ability to detect the contaminant, and the ability to remove the contaminant from drinking water to achieve compliance with the MCLs*) **the critically important “costs and benefits to parties affected by establishing the standards” have not been adequately addressed.**

Given our concerns, we strongly recommend that DES not propose final MCLs for PFOA, PFOS, PFHxS, and PFNA until the following steps are completed, in accordance with statutory requirements:

- Complete the cost analyses required, engaging external experts as needed.
- Complete the benefits analyses required, engaging external experts as needed.
- Provide reports on the cost and benefits analyses to stakeholders for review and comment.

Once the required analyses of costs and benefits have been completed, that information should be integrated into revised, proposed MCLs. Those new proposed MCLs along with the justification based on the cost and benefit information, should then be reported to stakeholders and the public for review and public comment.

Why is this important? From the municipal perspective, we have seen already, and can foresee, that where the MCLs are set for PFAS chemicals has a significant potential for impacting municipal systems, including wastewater treatment, biosolids management, solid waste management, and local landfill monitoring. If municipal systems must make upgrades or require source reductions by local businesses to meet the new MCLs/AGQS, the costs involved will not only be financial burdens on municipalities, but may well affect local businesses, potentially negatively impacting the business climate in the state. There needs to be compelling evidence – from a thorough benefit analysis – to justify such costs.

Finally, MCLs set at levels that result in significant costs to municipalities, need to address the question of where funding for compliance will come from. Our concerns regarding violation of the unfunded mandate provisions of Part I, Article 28-a of the New Hampshire Constitution and RSA 541-A:25 are valid. The costs to municipalities depend entirely on whether those MCLs are set in the current 70 ppt screening level range, at lower levels, or at levels such as those adopted for drinking water in Canada (200 ppt for PFOA and 600 ppt for PFOS).

While raising concerns about the lack of cost/benefit analysis in the MCL setting process so far, we want to commend DES management and staff for their extensive work over the past several years in grappling with a very challenging emerging contaminant issue, under considerable public and legislative pressure, with limited resources. DES has done fine work in addressing the most significant risks of elevated levels of PFAS in drinking waters caused by large releases of PFAS from firefighting-related activities and major industrial uses of PFAS. However, even as those efforts continue to reduce the most significant risk situation, we need to grapple with the reality of lower levels of PFAS in myriad places around the state. These diffuse PFAS do not present the same level of risk and should not be addressed with the same mode of intervention.

A long-term management plan for PFAS in the environment needs to be developed and should include extensive municipal involvement, since municipalities will be front and center in addressing the myriad lower levels of PFAS that are inevitably found in wastewater, septage, biosolids, solid waste, and around closed municipal landfills. The state should partner with municipalities when setting these standards to strike the right balance between the standard and funding for compliance.

Thank you for this opportunity to comment.

Sincerely,



Barbara T. Reid, Government Finance Advisor
New Hampshire Municipal Association (NHMA)



Ned Beecher, Executive Director
North East Biosolids and Residuals Association (NEBRA)



Jennifer Palmiotto, Executive Director
Granite State Rural Water Association