
Committee Report

REGULAR CALENDAR

March 20, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on Science, Technology and Energy to which was referred HB 614-FN,

AN ACT increasing penalties for air pollution. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Kat McGhee

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

| | |
|-------------------|--|
| Committee: | Science, Technology and Energy |
| Bill Number: | HB 614-FN |
| Title: | increasing penalties for air pollution. |
| Date: | March 20, 2019 |
| Consent Calendar: | REGULAR |
| Recommendation: | OUGHT TO PASS WITH AMENDMENT 2019-0791h |

STATEMENT OF INTENT

This bill would amend various parts of statute to give the Department of Environmental Services (DES) the ability to impose enhanced fines on air and water polluters in keeping with current rates of inflation. Updating these penalty provisions seems highly appropriate in light of increasing pollution related health concerns due to violations in, among other places, the Town of Merrimack. There has not been an increase in fines in over 20 years. Some of the attendant language in the statute was updated with the help of the Attorney General's Office, and is contained in the amendment, to give DES a greater ability to intervene with meaningful penalties if a polluter is unresponsive or unwilling to take swift action where the public health is a risk.

Vote 16-3.

Rep. Kat McGhee
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Science, Technology and Energy

HB 614-FN, increasing penalties for air pollution. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Kat McGhee for the **Majority** of Science, Technology and Energy. This bill would amend various parts of statute to give the Department of Environmental Services (DES) the ability to impose enhanced fines on air and water polluters in keeping with current rates of inflation. Updating these penalty provisions seems highly appropriate in light of increasing pollution related health concerns due to violations in, among other places, the Town of Merrimack. There has not been an increase in fines in over 20 years. Some of the attendant language in the statute was updated with the help of the Attorney General's Office, and is contained in the amendment, to give DES a greater ability to intervene with meaningful penalties if a polluter is unresponsive or unwilling to take swift action where the public health is a risk. **Vote 16-3.**

Original: House Clerk

Cc: Committee Bill File

Stapler, Carol

From: Backus, Bob
Sent: Saturday, March 09, 2019 1:00 PM
To: McGhee, Kat
Cc: Joel Anderson; Stapler, Carol
Subject: RE: Committee Report - HB614 FN

Thanks Kat: A couple of edits:

Start the first sentence with: "This bill would amend.....

And add "enhanced: after the "impose" and "fines".

Add a new second sentence. "Updating these penalty provisions seems highly appropriate in light of increasing pollution related health concerns due to violations in, among other placers, the Town of Merrimack."

change state attorney to "the Attorney General's Office"...

Thanks.

From: McGhee, Kat
Sent: Friday, March 08, 2019 2:49 PM
To: Stapler, Carol; Backus, Bob
Cc: McGhee, Kat
Subject: Committee Report - HB614 FN

HB 614 FN

3/6/19

Kat McGhee for the majority on Science, Technology & Energy.
OTPA 16-3-1 Amendment 0791h

~~2019~~
~~3/6/19~~

This bill would amend RSA 125-C:15, I-b-IV to give NH DES the ability to impose fines on ~~enhance~~ air and water polluters in keeping with current rates of inflation. Updating these penalty provisions seems highly appropriate in light of increasing pollution related health concerns due to violations in, among other places, the Town of Merrimack. There has not been an increase in fines in over 20 years. Some of the attendant language in the statute was updated with the help of the Attorney General's Office to give DES a greater ability to intervene with meaningful penalties if a polluter is unresponsive or unwilling to take swift action where the public health is a risk.

HB 614 FN

~~*~~

3/6/19

Kat McGhee for the majority on Science, Technology & Energy.
OTPA 16-3-1 Amendment 0791h

This bill would amend RSA 125-C:15, I-b-IV to give NH DES the ability to impose ~~enhanced~~ fines on air and water polluters in keeping with current rates of inflation. Updating these penalty provisions seems appropriate in light of recent ~~water health concerns in, among other places, the Town of Merrimack.~~ There has not been an increase in fines in over 20 years. Some of the attendant language in the statute was updated with the help of the Attorney General's Office to give DES a greater ability to intervene with meaningful penalties if a polluter is unresponsive or unwilling to take swift action where the public health is at risk.

enhanced

*increasing pollution
related health concerns
due to violations in
among other places,
the Town of Merrimack.*

*Edited
Pete Clavin*

Amendment to HB 614-FN

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

2

3 AN ACT increasing penalties and fines for air pollution and water pollution.

4

5 Amend the bill by replacing all after section 1 with the following:

6

7 2 Acid Rain Control Act. Amend RSA 125-D:4 to read as follows:

8 125-D:4 Administrative Fines. The commissioner of the department of environmental services,
9 after notice and hearing pursuant to RSA 541-A, may impose an administrative fine not to exceed
10 [~~\$2,000~~] **\$4,000** for each offense upon any person who violates any provision of this chapter, any
11 rule adopted pursuant to this chapter, or any permit or order issued pursuant to this chapter; or
12 upon any person who makes or certifies a material false statement relative to any document or
13 information which is required to be submitted to the department pursuant to this chapter or any
14 rule adopted pursuant to this chapter. Rehearings and appeals from a decision of the commissioner
15 under this section shall be in accordance with RSA 541. Any administrative fine imposed under
16 this section shall not preclude the imposition of further penalties under this chapter. The proceeds
17 of administrative fines imposed pursuant to this section shall be deposited in the general fund.

18 I. Notice and hearing prior to the imposition of an administrative fine shall be in
19 accordance with RSA 541-A and procedural rules adopted by the commissioner pursuant to RSA
20 541-A:16.

21 II. The commissioner shall determine fines in accordance with RSA 125-C:15, I-b(b) *and*
22 (d).

23 III. The commissioner may assess an additional fine for repeat violations.

24 3 Air Toxic Control Act. Amend the introductory paragraph of RSA 125-I:3-a to read as follows:

25 The commissioner of the department of environmental services, after notice and hearing
26 pursuant to RSA 541-A, may impose an administrative fine not to exceed [~~\$2,000~~] **\$4,000** for each
27 offense upon any person who violates any provision of this chapter, any rule adopted pursuant to
28 this chapter, or any permit or order issued pursuant to this chapter; or upon any person who makes
29 or certifies a material false statement relative to any document or information which is required to
30 be submitted to the department pursuant to this chapter or any rule adopted pursuant to this
31 chapter. Rehearings and appeals from a decision of the commissioner under this section shall be in
32 accordance with RSA 541. Any administrative fine imposed under this section shall not preclude

1 the imposition of further penalties under this chapter. The proceeds of administrative fines
2 imposed pursuant to this section shall be deposited in the general fund.

3 4 Asbestos Management and Control; Administrative Penalties and Fines. Amend RSA 141-
4 E:16, I(a) to read as follows:

5 141-E:16 Administrative Fines.

6 I.(a) The commissioner, after notice and hearing pursuant to RSA 541-A, may impose an
7 administrative fine not to exceed [~~\$2,000~~] **\$4,000** for each offense upon any person who violates any
8 provision of RSA 141-E:3 or any rule adopted by the commissioner under this chapter; or upon any
9 person who makes or certifies a material false statement relative to any document or information
10 which is required to be submitted to the department pursuant to this chapter or any rule adopted
11 pursuant to this chapter. Rehearings and appeals from a decision of the commissioner under this
12 paragraph shall be in accordance with RSA 541. Any administrative fine imposed under this
13 paragraph shall not preclude the imposition of further penalties under this chapter. The proceeds
14 of administrative fines levied pursuant to this paragraph shall be deposited by the commissioner in
15 the fund established by RSA 141-E:12, II.

16 5 Oil Spills; Penalties. Amend RSA 146-A:14, II-a to read as follows:

17 II-a. Any person who discharges or spills oil into or onto the surface water or groundwater
18 of the state or in a land area where the oil will ultimately seep into such waters or any person who
19 violates any provision of this chapter or any rule adopted under the provisions of this chapter shall
20 be subject to a civil penalty not to exceed [~~\$10,000~~] **\$20,000** for each violation. Each day of a
21 continuing violation shall count as a separate violation. Civil penalties for violation of any rule
22 adopted under the provisions of this chapter shall not accrue until the department provides
23 notification of such violation. The attorney general may bring an action for injunctive relief,
24 including a mandatory injunction.

25 6 Oil Discharge or Spillage in Surface Water or Groundwater. Amend the introductory
26 paragraph of RSA 146-A:15, I to read as follows:

27 I. The commissioner of the department of environmental services, after notice and hearing
28 pursuant to RSA 541-A, may impose an administrative fine not to exceed [~~\$2,000~~] **\$4,000** for each
29 offense upon any person who violates any provision of this chapter including any rule adopted
30 under the provisions of this chapter *or any order or permit issued under this chapter. Each*
31 *day of the violation shall constitute a separate offense.* Rehearings and appeals from a
32 decision of the commissioner under this paragraph shall be in accordance with RSA 541. Any
33 administrative fine imposed under this section shall not preclude the imposition of further penalties
34 under this chapter. The commissioner shall adopt rules, under RSA 541-A, relative to:

35 7 New Hampshire Safe Drinking Water Act; Penalties. Amend RSA 485:58, IV-VII to read as
36 follows:

37 IV. Any person who violates any provision of this chapter or any rule adopted or any term

1 or condition of an approval, exemption, variance or order issued under this chapter shall be liable to
2 the state, upon suit brought by the attorney general, for a civil forfeiture in an amount not to
3 exceed [~~\$25,000~~] \$50,000 for each day of such violation.

4 V. The commissioner of environmental services, after notice and hearing pursuant to RSA
5 541-A, may impose an administrative fine not to exceed [~~\$2,000~~] \$4,000 for each offense upon any
6 person who violates any provision of this chapter including any rule adopted under the provisions of
7 this chapter *or any order or permit issued under this chapter. Each day of violation shall*
8 *constitute a separate offense.* Rehearings and appeals from a decision of the commissioner under
9 this paragraph shall be in accordance with RSA 541. Any administrative fine imposed under this
10 section shall not preclude the imposition of further penalties under this chapter. The proceeds of
11 administrative fines levied pursuant to this paragraph shall be deposited by the department in the
12 general fund. The commissioner shall adopt rules, under RSA 541-A, relative to:

13 (a) A schedule of administrative fines which may be imposed under this paragraph for
14 violations of this chapter as provided above.

15 (b) Procedures for notice and hearing prior to the imposition of an administrative fine.

16 VI. Any act or failure to act in violation of RSA 485:8, II; 31; 42; 43; 46; or 48; or any rule
17 adopted under RSA 485:2; 3; 4; 40; 41; 44; or 47 may be enjoined.

18 VII. Notwithstanding RSA 651:2, any person may, in addition to any sentence of
19 imprisonment, probation or conditional discharge, be fined not more than [~~\$25,000~~] \$50,000 if found
20 guilty of any violation of paragraph II or III of this section. The court may also order the person to
21 pay the costs of remediation. Each day of violation shall constitute a separate offense.

22 8 Groundwater Protection Act; Penalties and Fines. Amend RSA 485-C:18-19 to read as
23 follows:

24 485-C:18 Administrative Fines. The commissioner, after notice and hearing pursuant to RSA
25 541-A, may impose an administrative fine not to exceed [~~\$2,000~~] \$4,000 for each offense upon any
26 person who violates any provision of this chapter or any rule, permit or order adopted or issued
27 under this chapter. *Each day of violation shall constitute a separate offense.* Rehearings and
28 appeals from a decision of the commissioner under this section shall be in accordance with RSA 541.
29 Any administrative fine imposed under this section shall not preclude the imposition of further
30 penalties under this chapter. The commissioner shall adopt rules, under RSA 541-A, relative to:

31 I. A schedule of administrative fines which may be imposed under this section for violation
32 of this chapter.

33 II. Procedures for notice and hearing prior to the imposition of an administrative fine.

34 485-C:19 Penalties and Other Relief.

35 I. Any person who knowingly violates this chapter, or any rule, permit, or order adopted or
36 issued under this chapter; or who knowingly or recklessly makes any material false statement in
37 any document required to be filed or maintained pursuant to this chapter; or who knowingly or

1 recklessly renders inaccurate, falsifies, or tampers with any monitoring device or method required
2 under this chapter; or who knowingly fails, neglects, or refuses to obey any lawful order of the
3 department, shall be guilty of a misdemeanor if a natural person, and a felony if any other person.
4 Such person shall also be subject to a civil penalty not to exceed [~~\$25,000~~] **\$50,000** for each violation
5 or for each day of a continuing violation.

6 II. Any person who violates this chapter or a rule, permit, or order adopted or issued under
7 this chapter, shall be subject to a civil penalty not to exceed [~~\$10,000~~] **\$20,000** for each violation or
8 for each day of a continuing violation. Such violation may also be enjoined by the superior court
9 upon application of the attorney general.

10 9 Water Management; Penalties and Compliance. Amend RSA 488:7-8 to read as follows:

11 488:7 Compliance.

12 I. Registration and withdrawal of water under RSA 488:3 shall be deemed to grant
13 permission to the department to enter onto the registered property to review compliance with the
14 provisions of the registration.

15 II. Upon obtaining credible information that any person is not registered in accordance with
16 RSA 488:3, I and is withdrawing, discharging, or transferring a cumulative amount of more than
17 20,000 gallons of water per day, averaged over any 7-day period, or more than 600,000 gallons of
18 water over any 30-day period, at a single real property or place of business, the department may
19 obtain an administrative inspection warrant in accordance with RSA 595-B to determine compliance
20 with the registration requirements.

21 *III. The commissioner may issue an order to any person who violates this chapter,*
22 *or any rule or permit authorized under this chapter, and require such actions as may be*
23 *necessary. Any order issued by the department pursuant to this chapter may be recorded*
24 *in the registry of deeds for the county in which the subject facility or property is situated.*
25 *A recorded order shall run with the land; provided, that an appropriate description of the*
26 *land involved including the accurate name of the owner thereof is included in the order.*
27 *No fee shall be charged for recording an order; however, a fee may be charged for*
28 *discharging an order.*

29 *IV. If the department finds that an emergency exists requiring immediate action to*
30 *protect the public safety, it may issue an order stating that an emergency exists and*
31 *requiring that such action be taken as necessary to meet the emergency. Any person to*
32 *whom such an order is directed shall comply immediately, but may appeal to the water*
33 *council established under RSA 21-O:7.*

34 488:8 Administrative Fines.

35 I. The commissioner, after notice and hearing pursuant to RSA 541-A, may impose an
36 administrative fine not to exceed [~~\$2,000~~] **\$4,000** for each offense upon any person who knowingly:

37 (a) Violates any provision of this chapter or any rule or order adopted or issued under

1 it.

2 (b) Makes any material false statement in any document required to be filed or
3 maintained.

4 (c) Renders inaccurate, falsifies, or tampers with any monitoring device or method.

5 II. Rehearings and appeals from a decision of the commissioner under this section shall be
6 in accordance with RSA 541.

7 III. Any administrative fine imposed under this section shall not preclude the imposition of
8 further penalties under this chapter. The commissioner may assess additional fines upon any
9 person who has received written notification from the department regarding violations of the
10 provisions of this chapter or rules adopted pursuant to this chapter, if the violations have not been
11 mitigated within 30 days of receipt of notification.

12 *IV. Each day of violation shall constitute a separate offense.*

13 10 Effective Date. This act shall take effect January 1, 2020.

2019-0791h

AMENDED ANALYSIS

This bill increases penalties and fines for air pollution and water pollution.

REGULAR CALENDAR

March 20, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Science, Technology and Energy to which was referred HB 614-FN,

AN ACT increasing penalties for air pollution. Having considered the same, and being unable to agree with the Majority, report with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Michael Harrington

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

| | |
|-------------------|---|
| Committee: | Science, Technology and Energy |
| Bill Number: | HB 614-FN |
| Title: | increasing penalties for air pollution. |
| Date: | March 20, 2019 |
| Consent Calendar: | REGULAR |
| Recommendation: | INEXPEDIENT TO LEGISLATE |

STATEMENT OF INTENT

This bill does two things. It doubles the amount of fines for certain pollution violations and it allows the fines to be charged on a daily basis, resulting in each day of violation being subject to the new doubled fine. The majority states the fines have not been updated for inflation which is true, but doubling the fines combined with charging the fines for each day of violation clearly exceeds the inflation rate. The federal Clean Air Act states that the fine should be charged on a daily basis and changing NH law to match this makes sense, and this is what the Department of Environmental Services (DES) requested. Doubling the fines, however, was not requested by DES and is not necessary to enforce our pollution laws.

Rep. Michael Harrington
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Science, Technology and Energy

HB 614-FN, increasing penalties for air pollution. **INEXPEDIENT TO LEGISLATE.**

Rep. Michael Harrington for the **Minority** of Science, Technology and Energy. This bill does two things. It doubles the amount of fines for certain pollution violations and it allows the fines to be charged on a daily basis, resulting in each day of violation being subject to the new doubled fine. The majority states the fines have not been updated for inflation which is true, but doubling the fines combined with charging the fines for each day of violation clearly exceeds the inflation rate. The federal Clean Air Act states that the fine should be charged on a daily basis and changing NII law to match this makes sense, and this is what the Department of Environmental Services (DES) requested. Doubling the fines, however, was not requested by DES and is not necessary to enforce our pollution laws.

Original: House Clerk

Cc: Committee Bill File

Stapler, Carol

From: Michael Harrington <harringt1@metrocast.net>
Sent: Tuesday, March 12, 2019 9:06 AM
To: Stapler, Carol
Subject: HB 614 Minority Report

HB 614 Minority Report

This bill does 2 things, it doubles the amount of fines for certain pollution violations and it allows the fines to be charged on a daily basis, i.e. each day of violation gets a new double fine. The majority states the fines have not been updated for inflation which is true but doubling the fines combined with charging the fines for each day of violation clearly exceeds the inflation rate. The federal Clean Air Act states that fine should be charged on a daily basis and changing NH law to match this makes sense and this is what NH DES requested. Doubling the fines however was not requested by NH DES and is not necessary to enforce our pollution laws

OK
RAB

Voting Sheets

HOUSE COMMITTEE ON SCIENCE, TECHNOLOGY AND ENERGY

EXECUTIVE SESSION on HB 614-FN

BILL TITLE: (New Title) increasing penalties and fines for air pollution and water pollution.

DATE: March 6, 2019

LOB ROOM: 304

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. McGhee Seconded by Rep. Saunderson AM Vote: 16-3

Amendment # 2019-0791h

Moved by Rep. Moffett Seconded by Rep. Cali-Pitts Vote: 16-3

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Lee Oxenham, Clerk

HOUSE COMMITTEE ON SCIENCE, TECHNOLOGY AND ENERGY

EXECUTIVE SESSION on HB 614-FN

BILL TITLE: increasing penalties for air pollution.

DATE: 3-6-19

LOB ROOM: 304

Amendment 0991h

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. *McCree* Seconded by Rep. *Sawyer* Vote: *16-3-1*

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. *McMurt* Seconded by Rep. *Chal-Vitt* Vote: *16-3-1*

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: ___ YES ___ NO

Minority Report? ___ Yes ___ No If yes, author, Rep: _____ Motion

Respectfully submitted: *Lee Oxenham*
Rep Lee Oxenham, Clerk



2019 SESSION

Science, Technology and Energy

Bill #: HB 64-FN Motion: Amendment 2019-0991h AM #: _____ Exec Session Date: 3-6-19

| <u>Members</u> | <u>YEAS</u> | <u>Nays</u> | <u>NV</u> |
|--|-------------|-------------|-----------|
| Backus, Robert A. Chairman | X | | |
| Moffett, Howard M. Vice Chairman | X | | |
| Cali-Pitts, Jacqueline A. | X | | |
| Mann, John E. | X | | |
| Oxenham, Lee Walker Clerk | X | | |
| Somssich, Peter F. | X | | |
| Vincent, Kenneth S. | X | | |
| Balch, Chris TOWNE | X | | |
| McGhee, Kat | X | | |
| McWilliams, Rebecca J. LANE | X | | |
| Saunderson, George L. | X | | |
| Wells, Kenneth D. | X | | |
| Harrington, Michael D. | | X | |
| Notter, Jeanine M. | X | X | |
| Aldrich, Glen C. | | X | |
| Thomas, Douglas W. | | X | |
| Merner, Troy E. | X | | |
| Ober, Russell T. | | | X |
| Webb, James C. LANE | X | | |
| Plett, Fred R. | X | | |
| TOTAL VOTE: | 16 | 3 | 1 |



2019 SESSION

Science, Technology and Energy

Bill #: HB 64-FN Motion: OTPA AM #: _____ Exec Session Date: 3-6-19

| <u>Members</u> | <u>YEAS</u> | <u>Nays</u> | <u>NV</u> |
|--|-------------|-------------|-----------|
| Backus, Robert A. Chairman | X | | |
| Moffett, Howard M. Vice Chairman | X | | |
| Cali-Pitts, Jacqueline A. | X | | |
| Mann, John E. | X | | |
| Oxenham, Lee Walker Clerk | X | | |
| Somssich, Peter F. | X | | |
| Vincent, Kenneth S. | X | | |
| Balch , Chris <i>Towhe</i> | X | | |
| McGhee, Kat | X | | |
| McWilliams , Rebecca J. <i>Lane</i> | X | | |
| Saunderson, George L. | X | | |
| Wells, Kenneth D. | X | | |
| Harrington, Michael D. | | X | |
| Notter, Jeanine M. | X | | |
| Aldrich, Glen C. | | X | |
| Thomas, Douglas W. | | X | |
| Merner, Troy E. | X | | |
| Ober, Russell T. | | | X |
| Webb , James C. <i>Lang</i> | X | | |
| Plett, Fred R. | X | | |
| TOTAL VOTE: | | | |

16 3 1

Amendment to HB 614-FN

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

2

3 AN ACT increasing penalties and fines for air pollution and water pollution.

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5 541-A, may impose an administrative fine not to exceed [~~\$2,000~~] **\$4,000** for each offense upon any
6 person who violates any provision of this chapter including any rule adopted under the provisions of
7 this chapter *or any order or permit issued under this chapter. Each day of violation shall*
8 *constitute a separate offense.* Rehearings and appeals from a decision of the commissioner under
9 this paragraph shall be in accordance with RSA 541. Any administrative fine imposed under this
10 section shall not preclude the imposition of further penalties under this chapter. The proceeds of
11 administrative fines levied pursuant to this paragraph shall be deposited by the department in the
12 general fund. The commissioner shall adopt rules, under RSA 541-A, relative to:

13 (a) A schedule of administrative fines which may be imposed under this paragraph for
14 violations of this chapter as provided above.

15 (b) Procedures for notice and hearing prior to the imposition of an administrative fine.

16 VI. Any act or failure to act in violation of RSA 485:8, II; 31; 42; 43; 46; or 48; or any rule
17 adopted under RSA 485:2; 3; 4; 40; 41; 44; or 47 may be enjoined.

18 VII. Notwithstanding RSA 651:2, any person may, in addition to any sentence of
19 imprisonment, probation or conditional discharge, be fined not more than [~~\$25,000~~] **\$50,000** if found
20 guilty of any violation of paragraph II or III of this section. The court may also order the person to
21 pay the costs of remediation. Each day of violation shall constitute a separate offense.

22 8 Groundwater Protection Act; Penalties and Fines. Amend RSA 485-C:18-19 to read as
23 follows:

24 485-C:18 Administrative Fines. The commissioner, after notice and hearing pursuant to RSA
25 541-A, may impose an administrative fine not to exceed [~~\$2,000~~] **\$4,000** for each offense upon any
26 person who violates any provision of this chapter or any rule, permit or order adopted or issued
27 under this chapter. *Each day of violation shall constitute a separate offense.* Rehearings and
28 appeals from a decision of the commissioner under this section shall be in accordance with RSA 541.
29 Any administrative fine imposed under this section shall not preclude the imposition of further
30 penalties under this chapter. The commissioner shall adopt rules, under RSA 541-A, relative to:

31 I. A schedule of administrative fines which may be imposed under this section for violation
32 of this chapter.

33 II. Procedures for notice and hearing prior to the imposition of an administrative fine.

34 485-C:19 Penalties and Other Relief.

35 I. Any person who knowingly violates this chapter, or any rule, permit, or order adopted or
36 issued under this chapter; or who knowingly or recklessly makes any material false statement in
37 any document required to be filed or maintained pursuant to this chapter; or who knowingly or

1 recklessly renders inaccurate, falsifies, or tampers with any monitoring device or method required
2 under this chapter; or who knowingly fails, neglects, or refuses to obey any lawful order of the
3 department, shall be guilty of a misdemeanor if a natural person, and a felony if any other person.
4 Such person shall also be subject to a civil penalty not to exceed [~~\$25,000~~] **\$50,000** for each violation
5 or for each day of a continuing violation.

6 II. Any person who violates this chapter or a rule, permit, or order adopted or issued under
7 this chapter, shall be subject to a civil penalty not to exceed [~~\$10,000~~] **\$20,000** for each violation or
8 for each day of a continuing violation. Such violation may also be enjoined by the superior court
9 upon application of the attorney general.

10 9 Water Management; Penalties and Compliance. Amend RSA 488:7-8 to read as follows:

11 488:7 Compliance.

12 I. Registration and withdrawal of water under RSA 488:3 shall be deemed to grant
13 permission to the department to enter onto the registered property to review compliance with the
14 provisions of the registration.

15 II. Upon obtaining credible information that any person is not registered in accordance with
16 RSA 488:3, I and is withdrawing, discharging, or transferring a cumulative amount of more than
17 20,000 gallons of water per day, averaged over any 7-day period, or more than 600,000 gallons of
18 water over any 30-day period, at a single real property or place of business, the department may
19 obtain an administrative inspection warrant in accordance with RSA 595-B to determine compliance
20 with the registration requirements.

21 *III. The commissioner may issue an order to any person who violates this chapter,*
22 *or any rule or permit authorized under this chapter, and require such actions as may be*
23 *necessary. Any order issued by the department pursuant to this chapter may be recorded*
24 *in the registry of deeds for the county in which the subject facility or property is situated.*
25 *A recorded order shall run with the land; provided, that an appropriate description of the*
26 *land involved including the accurate name of the owner thereof is included in the order.*
27 *No fee shall be charged for recording an order; however, a fee may be charged for*
28 *discharging an order.*

29 *IV. If the department finds that an emergency exists requiring immediate action to*
30 *protect the public safety, it may issue an order stating that an emergency exists and*
31 *requiring that such action be taken as necessary to meet the emergency. Any person to*
32 *whom such an order is directed shall comply immediately, but may appeal to the water*
33 *council established under RSA 21-O:7.*

34 488:8 Administrative Fines.

35 I. The commissioner, after notice and hearing pursuant to RSA 541-A, may impose an
36 administrative fine not to exceed [~~\$2,000~~] **\$4,000** for each offense upon any person who knowingly:

37 (a) Violates any provision of this chapter or any rule or order adopted or issued under

1 it.

2 (b) Makes any material false statement in any document required to be filed or
3 maintained.

4 (c) Renders inaccurate, falsifies, or tampers with any monitoring device or method.

5 II. Rehearings and appeals from a decision of the commissioner under this section shall be
6 in accordance with RSA 541.

7 III. Any administrative fine imposed under this section shall not preclude the imposition of
8 further penalties under this chapter. The commissioner may assess additional fines upon any
9 person who has received written notification from the department regarding violations of the
10 provisions of this chapter or rules adopted pursuant to this chapter, if the violations have not been
11 mitigated within 30 days of receipt of notification.

12 *IV. Each day of violation shall constitute a separate offense.*

13 10 Effective Date. This act shall take effect January 1, 2020.

2019-0791h

AMENDED ANALYSIS

This bill increases penalties and fines for air pollution and water pollution.

Hearing Minutes

HOUSE COMMITTEE ON SCIENCE, TECHNOLOGY AND ENERGY

PUBLIC HEARING ON HB 614-FN

BILL TITLE: (New Title) increasing penalties and fines for air pollution and water pollution.

DATE: February 7, 2019

LOB ROOM: 304 **Time Public Hearing Called to Order:** 1:05 pm

Time Adjourned: 1:30 pm

Committee Members: Reps. Backus, Moffett, Oxenham, Cali-Pitts, Mann, Somssich, Vincent, Balch, McGhee, McWilliams, Saunderson, Wells, Harrington, Notter, Aldrich, D. Thomas, Merner, R. Ober, Webb and Plett

Bill Sponsors:

Rep. Rung
Sen. Fuller Clark

Rep. Backus

Rep. Danielson

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

***Rep. Rosemarie Rung, prime sponsor** - Introduced the bill; see written testimony. The original bill proposed a series of updates to the fines set under RSA 125-C, I-b-IV concerning air pollution controls. These updates both doubled the current fines for the enumerated air and water pollution violations listed, as well as added the provision that each day of violation shall constitute a separate offense. It also doubled the maximum fine for civil forfeiture until the statute. Amendment number 2019-0791 extended this update to also include the fines listed under the Acid Rain Control Act; the Air Toxic Control Act; the provisions concerning Asbestos Management and Control Act under RSA 141-E:16, I (a); the provisions concerning Oil Spills in RSA 146-A:14, II-a; the provisions concerning Oil Discharge or Spillage in Surface Water or Groundwater under RSA 146-A: 15, I; and the NH Safe Drinking Water Act. In each case authorizing a doubling of the fines and making each day of violation a separate offense. The amendment also added two new sections under the rubric of Water Management, Penalties and Compliance. Section III. states that the commissioner may issue an order to any person who violates this chapter, and require such actions as are necessary. Such order shall be recorded with the registry of deeds and "run with the land." Although no fee shall be charged to record the order, a fee may be charged for its discharge. Finally, the amendment stipulates that if the department determines that an emergency exists that requires immediate action to protect public safety, it may issue an order stating that an emergency exists and requiring that such action be taken as necessary to deal with it. Any person receiving such an order is required to comply immediately, but provision is also included permitting an appeal of any such order to the water council established under RSA 21-O:7.)????

Mike Fitzgerald, NH DES - No position on the bill; provided information. There

is an enforcement bureau internally and an internal group called CARP that has discretion on fining; four states allow fines. Fines go to general fund with the exception of asbestos. There is currently a range of fines for various offenses.

Blue sheet: Pro, 15; Con, 0

Respectfully Submitted;

A handwritten signature in cursive script, appearing to read "Lee Oxenham". The signature is written in black ink and is positioned above the printed name.

Lee Oxenham, Clerk

HOUSE COMMITTEE ON SCIENCE, TECHNOLOGY AND ENERGY

PUBLIC HEARING ON HB 614-FN

BILL TITLE: increasing penalties for air pollution.

DATE: 2-7-19

ROOM: 304

Time Public Hearing Called to Order: 1:05 P.M.

Time Adjourned: 1:30 P.M.

(please circle if present)

Committee Members: Reps. Backus, Moffett, Oxenham, Cali-Pitts, Mann, Somssich, Vincent, Balch, McGhee, McWilliams, Saunderson, Wells, Harrington, Notter, Aldrich, D. Thomas, Merner, R. Ober, Webb and Plett

Bill Sponsors:

Rep. Rung
Sen. Fuller Clark

Rep. Backus

Rep. Danielson

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

* Rep. Rung prime sponsor written testimony provided

Mark Fitzgerald No prosecution - there is enforcement because internally and an internal group called CAPP that has discretion on fining & states allow fines. This goes to gov funds with the exception of asbestos: there is currently a range of fines for various offenses.

Public Hearing - HB 614

Committee chair and prime sponsor, Rep. Bob Backus, presented the bill. The original bill proposed a series of updates to the fines set under RSA 125-C, I-b-IV concerning air pollution controls. These updates both doubled the current fines for the enumerated air and water pollution violations listed, as well as added the provision that each day of violation shall constitute a separate offense. It also doubled the maximum fine for civil forfeiture until the statute.

Amendment number 2019-0791 extended this update to also include the fines listed under the Acid Rain Control Act; the Air Toxic Control Act; the provisions concerning Asbestos Management and Control Act under RSA 141-E:16, I (a); the provisions concerning Oil Spills in RSA 146-A:14, II-a; the provisions concerning Oil Discharge or Spillage in Surface Water or Groundwater under RSA 146-A: 15, I; and the NH Safe Drinking Water Act. In each case authorizing a doubling of the fines and making each day of violation a separate offense.

The amendment also added two new sections under the rubric of Water Management, Penalties and Compliance. Section III. states that the commissioner may issue an order to any person who violates this chapter, and require such actions as are necessary. Such order shall be recorded with the registry of deeds and "run with the land." Although no fee shall be charged to record the order, a fee may be charged for its discharge.

Finally, the amendment stipulates that if the department determines that an emergency exists that requires immediate action to protect public safety, it may issue an order stating that an emergency exists and requiring that such action be taken as necessary to deal with it. Any person receiving such an order is required to comply immediately, but provision is also included permitting an appeal of any such order to the water council established under RSA 21-O:7.

Lee Okenham

Testimony

Ban on debris burning backed by Lynch, groups

By TOM FAHEY
State House Bureau Chief
Wednesday, Apr. 25, 2007

CONCORD – Environmental and public health groups joined Gov. John Lynch yesterday in support of a bill that would ban the burning of construction and demolition debris.

Lynch said House Bill 428, banning the incineration of the materials known as C&D, will prevent "an unnecessary and unacceptable danger to the health of New Hampshire people and the health of our environment." A moratorium on burning the material is set to expire at the end of this year.

Lynch told the Senate Energy, Environment and Economic Development Committee a permanent ban should be in place because "the risks are too great." Lynch said toxins contained in the C&D, including lead, arsenic and mercury, would be released into the air during incineration. All are known to cause cancer, and fears are higher levels in the atmosphere would result in higher incidence of birth defects, asthma, and other illnesses.

The bill passed the House last month on a voice vote. A companion bill, HB 427 which bars C&D from being defined as a fuel, also passed.

The bills came forward after the owners of the Bio Energy wood-to-energy incinerator in Hopkinton tried to switch from virgin wood chips to C&D as a fuel.

Environmental Services Commissioner Thomas Burack said the state would be better off focusing on recycling and reusing C&D waste than in burning it as a source of energy.

New Hampshire generates only a small amount of C&D itself, he said.

Some witnesses noted that Bio Energy would have to import truckloads of C&D in order to have enough fuel to run the plant. Others feared that allowing C&D incineration would open the state to a flood of imported waste and more C&D incinerators. Maine imports an estimated 80 percent of the waste it burns, witnesses said.

Senate President Sylvia Larsen, D-Concord, said that in addition to the public health risks allowing C&D incineration, "will cause our state to become a dumping ground for out-of-state toxic waste and threaten the growth and development of clean energy." Once waste is imported to the state, ash left over from incineration would have to be buried in state landfills, others warned.

Testimony was not unanimous in favor of the two bills yesterday. Some in the waste management industry argued that forcing the material to be put into landfills is worse than burning it. They also said extra trucking involved will put more pollution in to the air that would result from the incineration.

**WRITTEN TESTIMONY for HB 614-FN
TO THE
NH HOUSE SCIENCE, TECHNOLOGY, AND ENERGY COMMITTEE**

FROM: Rep. Rosemarie Rung, Hillsborough 21 (Merrimack)

DATE: February 7, 2018

This bill seeks to update the administrative fines and penalties for air pollution control violations and, by amendment, for groundwater and drinking water contamination.

During the 23 years since the fines and penalties were last updated in RSA 125-C (Air Pollution Control), inflation has increased 63%. Doubling the financial consequences brings these amounts more in line to current dollars and reestablishes the deterrence and punishment effects of enforcement.

Additionally, and at the request of NH DES, this bill allows administrative fines to be applied daily by adding the following, *"Each day of violation shall constitute a separate offense."* This language already exists for penalties.

Since the filing of this bill, another bill, HB204 was introduced seeking to establish a committee to review and update the penalties for contamination of drinking water and groundwater. During its public hearing in front of the Resource, Recreation and Development Committee, former representative, Chris Christensen, speaking on behalf of the prime sponsor, Rep. Jeanine Notter, suggested that an amendment this year would address outdated fines and penalties in a more timely manner than a bill proposing a committee.

Amendment 2019-0220h does this by doubling all fines and penalties pertaining to groundwater and drinking water contamination. Water contamination penalties were last updated in 1992.

###

Fiscal Note

HB 614-FN- FISCAL NOTE
AS INTRODUCED

AN ACT increasing penalties for air pollution.

FISCAL IMPACT: State County Local None

| STATE: | Estimated Increase / (Decrease) | | | |
|-----------------|---|------------------------------------|----------------------------------|--------------------------------|
| | FY 2020 | FY 2021 | FY 2022 | FY 2023 |
| Appropriation | \$0 | \$0 | \$0 | \$0 |
| Revenue | Indeterminable Increase | Indeterminable Increase | Indeterminable Increase | Indeterminable Increase |
| Expenditures | \$0 | \$0 | \$0 | \$0 |
| Funding Source: | <input checked="" type="checkbox"/> General | <input type="checkbox"/> Education | <input type="checkbox"/> Highway | <input type="checkbox"/> Other |

METHODOLOGY:

This bill increases the penalties for air pollution. The Department of Environmental Services states this bill would double the maximum penalties established in RSA 125-C:15. The Department indicates the Division of Air Resources has authority to impose penalties pursuant to several other statutes which reference the amounts in RSA 125-C. These include:

- RSA 125-D:4 (Acid Rain)
- RSA 125-I:3-a (Air Toxics)
- RSA 125-M:6 (Mercury)
- RSA 141-E:16 (Asbestos)

The money received from the penalties imposed under these laws is deposited into the general fund except for amounts received under RSA 141-E:16 which is deposited in the asbestos fund. The Department indicates, while the bill would double the maximum fine amounts, it is not necessarily the case that penalties actually imposed would double. Therefore the amount of additional revenue that would be received by the general fund and the asbestos fund is indeterminable. In addition, the bill specifies that each day of violation shall constitute a separate offense which could significantly increase the amount of fines. The Department does not expect state expenditures or county and local revenue or expenditures would be impacted by the bill.

AGENCIES CONTACTED:

Department of Environmental Services

Bill as Introduced

HB 614-FN - AS INTRODUCED

2019 SESSION

19-0506
08/05

HOUSE BILL

614-FN

AN ACT

increasing penalties for air pollution.

SPONSORS:

Rep. Rung, Hills. 21; Rep. Backus, Hills. 19; Rep. Danielson, Hills. 7; Sen. Fuller
Clark, Dist 21

COMMITTEE:

Science, Technology and Energy

ANALYSIS

This bill increases penalties for air pollution violations.

Explanation:

Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT increasing penalties for air pollution.

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

1 1 Air Pollution Control; Penalties. Amend RSA 125-C:15, I-b-IV to read as follows:

2 I-b. The commissioner of the department of environmental services, after notice and
3 hearing pursuant to RSA 541-A, may impose an administrative fine not to exceed [~~\$2,000~~] **\$4,000**
4 for each offense upon any person who violates any provision of this chapter, any rule adopted
5 pursuant to this chapter, or any permit, compliance schedule, stop use order, or order of abatement,
6 issued pursuant to this chapter; or upon any person who makes or certifies a material false
7 statement relative to any document or information which is required to be submitted to the
8 department pursuant to this chapter or any rule adopted pursuant to this chapter. Rehearings and
9 appeals from a decision of the commissioner under this paragraph shall be in accordance with RSA
10 541. Any administrative fine imposed under this paragraph shall not preclude the imposition of
11 further penalties under this chapter. The proceeds of administrative fines imposed pursuant to this
12 paragraph shall be deposited in the general fund.

13 (a) Notice and hearing prior to the imposition of an administrative fine shall be in
14 accordance with RSA 541-A and procedural rules adopted by the commissioner pursuant to RSA
15 541-A:16.

16 (b) The commissioner shall determine fines based on the following:

17 (1) For a minor deviation from a requirement causing minor potential for harm, the
18 fine shall be not less than \$100 and not more than [~~\$1,000~~] **\$2,000**.

19 (2) For a minor deviation from a requirement causing moderate potential for harm,
20 the fine shall be not less than \$601 and not more than [~~\$1,250~~] **\$2,500**.

21 (3) For a minor deviation from a requirement causing major potential for harm, the
22 fine shall be not less than \$851 and not more than [~~\$1,500~~] **\$3,000**.

23 (4) For a moderate deviation from a requirement causing minor potential for harm,
24 the fine shall be not less than \$601 and not more than [~~\$1,250~~] **\$2,500**.

25 (5) For a moderate deviation from a requirement causing moderate potential for
26 harm, the fine shall be not less than \$851 and not more than [~~\$1,500~~] **\$3,000**.

27 (6) For a moderate deviation from a requirement causing major potential for harm,
28 the fine shall be not less than \$1,251 and not more than [~~\$1,750~~] **\$3,500**.

29 (7) For a major deviation from a requirement causing minor potential for harm, the
30 fine shall be not less than \$851 and not more than [~~\$1,500~~] **\$3,000**.

31 (8) For a major deviation from a requirement causing moderate potential for harm,

1 the fine shall be not less than \$1,251 and not more than [~~\$1,750~~] **\$3,500**.

2 (9) For a major deviation from a requirement causing major potential for harm, the
3 fine shall be not less than \$1,501 and not more than [~~\$2,000~~] **\$4,000**.

4 (c) The commissioner may assess an additional fine for repeat violations.

5 (d) *Each day of violation shall constitute a separate offense.*

6 II. Any violation of the provisions of this chapter, or of any rule adopted or order issued
7 under it, or of any condition in a permit issued under it, shall be subject to enforcement by
8 injunction, including mandatory injunction, issued by the superior court upon application of the
9 attorney general. Any such violation shall also be subject to a civil forfeiture to the state of not
10 more than [~~\$25,000~~] **\$50,000** for each violation, and for each day of a continuing violation.

11 III. Any person who violates any of the provisions of this chapter, or any rule adopted or
12 order issued under this chapter, or any condition of a permit issued under this chapter shall be
13 guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

14 IV. Notwithstanding RSA 651:2, any person may, in addition to any sentence of
15 imprisonment, probation, or conditional discharge, be fined not more than [~~\$25,000~~] **\$50,000** if
16 found guilty of any violation pursuant to RSA 125-C:15, III. Each day of violation shall constitute a
17 separate offense.

18 2 Effective Date. This act shall take effect January 1, 2020.

