

HB 463-FN - AS AMENDED BY THE SENATE

23Mar2017... 0875h

05/18/2017 1678s

2017 SESSION

17-0553

08/10

HOUSE BILL

463-FN

AN ACT regulating groundwater pollution caused by polluting emissions in the air and relative to standards for emerging contaminants in drinking water.

SPONSORS: Rep. Byron, Hills. 20; Rep. Lascelles, Hills. 20; Rep. Azarian, Rock. 8; Rep. Suzanne Smith, Graf. 8; Rep. Backus, Hills. 19; Sen. Soucy, Dist 18

COMMITTEE: Resources, Recreation and Development

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. Requires the commissioner of the department of environmental services to adopt a state drinking water standard relative to perfluorochemicals.

IV. Requires the commissioner to establish ambient groundwater quality standards.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

AN ACT regulating groundwater pollution caused by polluting emissions in the air and
relative to standards for emerging contaminants in drinking water.

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

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

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

7 2 New Section; Requirements for Air Pollutant Emitters Impacting Soil and Water. Amend
8 RSA 125-C by inserting after section 10-d the following new section:

9 125-C:10-e Requirements for Air Contaminant Emitters Impacting Soil and Water.

10 I. For the purposes of this section:

11 (a) "Best available control technology" means "best available control technology" as
12 defined in RSA 125-C:10-b, I(a); and

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

15 II. A device that emits an air contaminant that has caused or contributed to an exceedance
16 of an ambient groundwater quality standard or other applicable standard, as a result of the
17 deposition of the contaminant from the air, shall be subject to the determination and application of
18 best available control technology. Within 6 months of the department determining that the device
19 is subject to such control technology, the owner of the device shall submit to the department an
20 application for a permit. Within 12 months of permit issuance, the applicant shall complete
21 construction and installation of controls consistent with the permit. Operation of the source may
22 continue through the permitting, construction, and installation time period. A source which can
23 demonstrate to the department that its device no longer contributes to an exceedance of an ambient
24 groundwater quality standard or other applicable standard shall be exempt from this section.

25 III. The construction, installation, or modification of any device that has the potential,
26 based on an applicability threshold adopted by the department, to cause or contribute to an
27 exceedance of an ambient groundwater quality standard or other applicable standard as a result of
28 the deposition of contaminants from the air, shall be prohibited without first applying for and
29 obtaining a permit from the department that establishes emission limitations for such device based
30 on best available control technology.

1 IV. Part of the initial application for a permit under this section shall include an analysis of
2 best available control technology for controlling emissions. Any permit issued shall contain
3 inspection, testing, and reporting requirements, as applicable, to ensure the conditions of the permit
4 are met.

5 V. Any determination of best available control technology under this section shall be subject
6 to the following:

7 (a) In no event shall application of best available control technology result in:

8 (1) Emission of any air contaminant that would exceed the emissions allowed by any
9 applicable standard under RSA 125-C or RSA 125-I or rules adopted pursuant to either chapter.

10 (2) Emission of any air contaminant subject to this section in an amount
11 disproportionate to the emissions of such air contaminant from other similar air pollution control
12 devices for that air contaminant at facilities using similar technology.

13 (3) Emission of any air contaminant subject to this section which causes or
14 contributes to or has the potential to cause or contribute to an exceedance of an ambient
15 groundwater quality standard or other applicable standard, as a result of the deposition of the
16 contaminant from the air.

17 (b) If the department determines that the facility has more than one device that emits
18 such air contaminants, the department shall determine best available control technology emission
19 limitations for each such device.

20 VI. This section shall only pertain to contaminants for which at least one study has been
21 conducted in accordance with generally accepted scientific principles that demonstrates that the
22 contaminant of concern is known to cause or may reasonably be anticipated to cause acute, chronic,
23 mutagenic, reproductive, or developmental health effects in humans as a result of exposure to such
24 contaminant. The implementation of this section shall only rely upon standards that are based on
25 federal maximum contaminant levels, health advisories, provisional health advisories; standards
26 that are derived from federally published toxicological data; or more restrictive New Hampshire
27 state standards.

28 3 New Subdivision; Contaminants in Drinking Water. Amend RSA 485 by inserting after
29 section 16-d the following new subdivision:

30 Perfluorochemicals

31 485:16-e Perfluorochemicals. The commissioner shall, in consultation with the commissioner of
32 the department of health and human services and stakeholders, within 120 days from the effective
33 date of this section, initiate rulemaking to adopt a maximum contaminant limit (MCL) for
34 perfluorooctanesulfonate (PFOS) and perfluorooctanoic acid (PFOA) for public water systems
35 regulated by this chapter. The commissioner shall consider the standards of other states, including
36 the science considered by states with standards lower than those contained in health advisories
37 from the United States Environmental Protection Agency. The commissioner shall adopt MCLs
38 that reasonably protect public health, particularly prenatal and early childhood health, and that are

1 reasonably supported by peer reviewed science and independent or government agency studies,
2 provided no MCL shall exceed that contained in any MCL promulgated by the United States
3 Environmental Protection Agency. The commissioner shall annually review the newest peer
4 reviewed science and independent or government agency studies and undertake rulemaking in
5 order to comply with this paragraph, if necessary.

6 4 New Paragraph; Ambient Groundwater Quality Standards. Amend RSA 485-C:6 by inserting
7 after paragraph III the following new paragraph:

8 IV. The commissioner shall, in consultation with the commissioner of the department of
9 health and human services and stakeholders, within 120 days from the effective date of this
10 paragraph, determine whether to revise the ambient groundwater quality standards for
11 perfluorooctanesulfonate (PFOS) and perfluorooctanoic acid (PFOA) established in rule in order to
12 comply with this paragraph and shall make public his or her determination. The commissioner
13 shall consider the standards of other states, including the science considered by states with
14 standards lower than those contained in the lifetime health advisory promulgated by the United
15 States Environmental Protection Agency. The commissioner shall adopt standards that reasonably
16 protect public health, particularly prenatal and early childhood health, and that are reasonably
17 supported by peer reviewed science and independent or government agency studies, provided no
18 standard shall exceed that contained in any standard promulgated by the United States
19 Environmental Protection Agency. If the commissioner determines that the standard should be
20 changed, the commissioner shall initiate rulemaking within 60 days of making the determination.
21 The commissioner shall annually review the newest peer reviewed science and independent or
22 government agency studies and undertake rulemaking in order to comply with this paragraph, if
23 necessary.

24 5 Effective Date. This act shall take effect 60 days after its passage.

HB 463-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2017-1678s)

AN ACT (New Title) regulating groundwater pollution caused by polluting emissions in the air and relative to standards for emerging contaminants in drinking water.

FISCAL IMPACT: ☒ State ☒ County ☒ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2018	FY 2019	FY 2020	FY 2021
Appropriation	\$0	\$0	\$0	\$0
Revenue	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Air Pollution Control Permit Fee Program Fund and Air Resources Fund			

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill establishes new standards under Chapter 125-C (Air Pollution Control) for devices emitting air contaminants that cause or contribute to an exceedance of an ambient groundwater quality standard or other applicable standard. The Department of Environmental Services states entities with such devices would have to pay an application fee and an emissions-based permit fee which would increase state restricted revenue. The fee amounts would be established through administrative rules. The Department is unable to estimate how many entities would be impacted. Application fees collected under Chapter 125-C are deposited into the Air Pollution Control Permit Fee Program fund (RSA 125-C:12, IV-d) and permit fees are deposited into the Air Resources fund (RSA 125-C:12, V).

This bill requires the Department of Environmental Services to establish a drinking water standard and ambient groundwater quality standard for perfluorooctanesulfonate (PFOS) and perfluorooctanoic acid (PFOA) via rules within 120 days of passage. No drinking water standard (maximum contaminant level) for PFOS or PFOA current exists. However, there is a ambient groundwater quality standard at 70 part per trillion for combined PFOA and PFOS

consistent with EPA's health advisory standards. To the extent the Department determines a lower standard is appropriate, the bill would result in the adoption of two new rules; one to set a drinking water maximum contaminant level and one to revise the existing ambient groundwater quality standard. The Department states that aside from sampling costs associated with routine monitoring for the new maximum contaminant level at public water systems, other associated costs will vary significantly depending on the standard set with more costs resulting from lower standards. There is no method available to determine the costs until the standards are established. However, the Department states that a preliminary analysis for a different bill, that set standards at the same rates of Vermont, estimated local costs to exceed \$40 million.

There are 2,500 regulated public water systems. The 1,200 systems that are non-transient in nature (i.e. communities, large workplaces and institutions) are owned by municipalities, private entities, counties and the state. Once a drinking water standard, known as a maximum contaminant level is set for a contaminant, these non-transient public water systems must routinely sample for the chemical. The Department estimates that quarterly sampling will initially be required for most contaminants and will cost \$2,000 for each public water system to sample for PFOA and PFOS. If the maximum contaminant level is exceeded, the source of water must be treated, blended or taken off line in order to comply with the standard.

There are over 40 publicly owned wastewater treatment facilities that discharge treated effluent to groundwater. These facilities are currently prohibited from discharging wastewater that exceeds a maximum contaminant level or ambient groundwater standard. There are over 100 closed landfills in New Hampshire owned by municipalities that have ongoing groundwater quality monitoring. Testing would be required to determine if waste water treatment facilities of landfill waste sites exceed the new standard. Because the standards have not yet been set, the Department cannot determine the amount of additional costs that might be incurred for facilities to come into compliance.

AGENCIES CONTACTED:

Department of Environmental Services