

Senate Energy and Natural Resources Committee

Griffin Roberge 271-3042

HB 271, relative to standards for per and polyfluoroalkyl substances (PFAS) in drinking water and ambient groundwater.

Hearing Date: May 3, 2021.

Time Opened: 1:30 p.m.

Time Closed: 2:03 p.m.

Members of the Committee Present: Senators Avard, Gray, Watters and Perkins Kwoka.

Members of the Committee Absent: Senator Giuda.

Bill Analysis: This bill directs the department of environmental services to set maximum contaminant limits for per and polyfluoroalkyl substances (PFAS).

Sponsors:

Rep. Rung

Rep. Weston

Who supports the bill: Representative Peter Bixby, Strafford - District 17; Representative Efstathia Booras, Hillsborough - District 33; Susan Bruce; Joanne Casino; Representative Wendy Chase, Strafford - District 18; Catherine Corkery, NH Sierra Club; Patricia Dahme; Corinne Dodge, Derry, NH; Representative Roger Dontonville, Grafton - District 10; Representative Chuck Grassie, Strafford - District 11; Representative Joan Hamblet, Rockingham - District 31; Representative Heidi Hamer, Hillsborough - District 17; Representative Linda Harriot-Gathright, Hillsborough - District 36; Janet Lucas; Nisa Marks; Honorable James McConnell, Swanzey, NH; Honorable Mindi Messmer, Rye, NH; Representative Maureen Mooney, Hillsborough - District 21; Evan Oxenham, Plainfield, NH; Representative Lee Oxenham, Sullivan - District 1; Representative Maria Perez, Hillsborough - District 23; Representative Andrew Renzullo, Hillsborough - District 37; Representative Cecilia Rich, Strafford - District 18; Representative Rosemarie Rung, Hillsborough - District 21; Dottie Schmidt; Lisa St. Hilaire; Lisa Sweet; Alyson Tanguay, New Castle, NH; John Tuthill, Acworth, NH; Representative Suzanne Vail, Hillsborough - District 30; Representative Safiya Wazir, Merrimack - District 17; Representative Joyce Weston, Grafton - District 8.

Who opposes the bill: None.

Who is neutral on the bill: David Creer, Business and Industry Association; Jodi Grimbilas and Stephen Risotto, American Chemistry Council.

Summary of testimony presented in support:

Representative Rosemarie Rung

Hillsborough – District 21

- HB 271 is a reintroduction of HB 1537 (2020). HB 1537 was referred to the House Resources, Recreation, and Development Committee. The committee later recommended the bill “ought to pass with amendment” by a vote of 20-0. The committee placed the recommendation on the House consent calendar. The full House

adopted the committee's recommendation on a voice vote. However, HB 1537 was laid upon the Senate table due to the suspension of legislative activity and the COVID-19 pandemic. HB 271 has the same language of HB 1537 as amended by the House with a very minor change.

- HB 271 ensures state statute uses consistent nomenclature for per and polyfluoroalkyl substances, also known as PFAS. HB 271 changes references in state statute from perfluorochemicals (PFCs) to per and polyfluoroalkyl substances (PFAS).
- PFCs often refer to PFOA, PFOS, and other per and polyfluoroalkyl substances. However, the Environmental Protection Agency (EPA) is now trying to use per and polyfluoroalkyl substances, or PFAS, instead of perfluorochemicals, or PFCs, to collectively describe PFOA, PFOS, and other chemicals in this group.
- HB 271 amends RSA 125-C:10-3, I(d). Currently, RSA 125-C:10-e, I(d) defines PFCs as those listed on an EPA document under a specific analytical method. This EPA document only references 18 specific substances, making the list rather limiting. Over 5,000 PFAS chemicals now exist and new information on other PFAS chemicals is constantly discovered. HB 271 amends RSA 125-C:10-e, I(d) to define PFAS as per and polyfluoroalkyl substances. This new definition focuses on a chemical's general molecular structure.
- The House Resources, Recreation, and Development Committee adopted Representative Andrew Renzullo's amendment 2021-0577h that inserted the term "peer reviewed" on page 3, line 11. This language amends RSA 125-C:10-e, VI and ensures that NHDES may only set standards for a PFAS substance for which at least one peer reviewed study that has been conducted with generally accepted scientific principles that demonstrates that the PFAS of concern is known to cause or may reasonably be anticipated to cause acute, chronic, mutagenic, reproductive, or development health effects in humans as a result of exposure to such PFAS.
- In response to Ms. Grimbilas and Mr. Risotto's testimony, Representative Rung referred to the amendment made by the House Resources, Recreation, and Development Committee to RSA 125-C:10-e, VI. It is important to give NHDES the latitude to review the existing science on PFAS and have them make the determination on what PFAS chemicals should be regulated. HB 271 as amended by the House accounts for any future scientific findings on PFAS substances. Representative Rung also addressed Mr. Risotto's statement that polymers do not dissolve in water. Representative Rung said there are many polymers that do dissolve in water.
- In response to Director Wimsatt's testimony, HB 271 is a straightforward bill. NHDES may act as necessary as long as there is at least one peer reviewed study that demonstrates that a PFAS of concern is known to cause public health impacts.
- Senator Avar asked if Representative Rung would be okay with the ACC's suggested language change to RSA 125-C:10-3, I(d) to limit the definition of PFAS.
 - Representative Rung said she was not comfortable with the ACC's suggested amendment. Representative Rung has spent part of her career as a research analytical chemist. The ACC is representing industry that faces regulation when PFAS is proven to be a hazard to the environment and public health. HB 271 is about classifying a chemical that has an alkyl or carbon backbone with certain bonds coming off that backbone in various functional groups. If a molecule fits that description and is shown by peer reviewed science to have a negative environmental or public health impact, NHDES could regulate it.
- Senator Watters suggested that the changes made to RSA 125-C:10-e, VI on page 3, lines 1 to 18 were done by Representative Andrew Renzullo's amendment 2021-0577h to clarify the issues raised on HB 271. Senator Watters asked if these changes were made by Representative Renzullo to clarify that NHDES can set standards based on any new and existing scientific research.
 - Representative Rung said that Senator Watters was correct. That was why she supported Representative Renzullo's amendment.
- Senator Watters referenced Director Wimsatt's testimony in that HB 271 does not represent any major change in how NHDES would evaluate PFAS substances. It appeared that NHDES has the capability to evaluate any future substances.
 - Representative Rung agreed with Senator Watters. HB 271 does two things: 1) specifies that any PFAS of concern must have at least one peer reviewed study demonstrating its negative impacts, and 2) refers to PFCs as PFAS to create a standardized reference to these chemicals.

Honorable Mindi Messmer
Rye, NH

- Over the years, industry and government agencies have started to use PFAS terminology to describe perfluorochemicals. HB 271 is a housekeeping bill to update state statute to reflect modern terminology.

- Ms. Messmer said that there are 9,200 chemicals under the PFAS terminology.
- HB 271 may need an amendment on page 2, lines 18-19. The line reads: “Operation of the source may continue through the permitting, construction, and installation time period.” There is an unintended consequence in this language as it ties the hands of the NH Department of Environmental Services (NHDES). Generally, the NH General Court tries not to do that. Ms. Messmer suggested inserting “... unless otherwise determined by the department” following “time period.” This language will give NHDES the flexibility to protect the public health.

Michael Wimsatt

Waste Management Division Director, NHDES

- Director Wimsatt did not intend to testify on HB 271, but NHDES supports HB 271. Director Wimsatt did not listen to all of the testimony on HB 271 as he was taking with committee staff about HB 235 (2021).
- HB 271 just seeks to insert modern nomenclature into state statute. This nomenclature is widely used across the country in relevant industries and federal regulations.
- NH’s air emissions rules only apply when NHDES establishes an ambient groundwater quality standard for one or more PFAS compounds. Currently, NH only has four ambient groundwater quality standards for four PFAS compounds – PFOA, PFOS, PFHxS, and PFNA – unless and until NHDES establishes a new standard, which may well apply to other per or polyfluoroalkyl substances.
- Senator Watters said there was testimony that concluded that since there are some 9,000 PFAS chemicals, NHDES could not possibly test every single one or be aware of which one is a threat. He asked NHDES to comment.
 - Director Wimsatt said he understood the point, but there are no changes in HB 271 that would have any bearing on that. NHDES examines air emissions and any potential impact on groundwater quality per RSA 125-C:10-e. It is often the case to set a low ambient groundwater quality standard due to the nature of PFAS substances. HB 271 expands the universe of those PFAS substances to subject all potential substances to air emissions regulation if NHDES determines it is necessary through all its standard procedures.
- Senator Watters said there was testimony that argued that there should be carveouts for certain types of PFAS based on their usage. He asked if NHDES would be comfortable with language that would carveout NHDES from being able to evaluate and determine what is a threat to the public health.
 - Director Wimsatt said he could not imagine a scenario where a particular substance that was going to be emitted through the air and exceeded duly promulgated ambient groundwater quality standards should be carved out.

Summary of testimony presented in opposition: None.

Neutral Information Presented:

David Creer – provided written testimony

Director of Public Policy, Business and Industry Association (BIA)

- The BIA has no position on HB 271, which updates state statute to reflect modern terminology from perfluorinated compounds (PFCs) to per and polyfluoroalkyl substances (PFAS).
- The BIA is concerned that changing the definition of “perfluorinated compounds” in RSA 125-C:10-3, I(d) as done in Section 3 has the potential to increase the application of air emissions requirements to the entire class of PFAS chemicals rather than just the four – PFOA, PFOS, PFHxS, PFNA – that are currently regulated under state law. The entire class of PFAS chemicals includes over 5,000 chemicals, many of which do not have any environmental impact.
- HB 271 should be amended so that PFAS is defined as only those that are subject to state and federal regulation.

Jodi Grimbilas and Stephen Risotto – provided written testimony

American Chemistry Council (ACC)

- ACC takes a neutral position on HB 271 as amended by the House. However, ACC is concerned about the expansive definition for PFAS that HB 271 proposes on page 2, lines 3-7.
- While HB 271 has undergone changes to narrow its focus to peer reviewed science on PFAS substances, additional narrowing is necessary to provide for the effective use of resources and to align with the approach taken at the federal level.

- There have been different definitions of PFAS in legislation before the NH General Court. For example, Senator Watters' SB 257-FN (2019), which dealt with firefighting foams, defined PFAS as a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom. Currently, RSA 125-C:10-3, I(d) refers to an EPA testing methodology for a PFAS definition.
- The term PFAS encompasses thousands of substances with a wide range of physical, chemical, and biological properties. As has been acknowledged by many groups, most recently Vermont's Department of Environmental Conservation, it is not possible to treat this large group of substances as a single class. Of the thousands of substances that have been identified, moreover, the EPA has indicated that only about 600 are available commercially. More importantly, the EPA has developed validated analytical methods for a much smaller number of substances.
- While NH has been conducting stack testing for some time, EPA has not yet validated a method for measuring PFAS in source emissions. When completed, this method will be able to detect 50 individual PFAS. EPA has, however, developed validated methods for measuring a total of 29 PFAS in drinking water and has recently completed validation of analytical methods for 24 PFAS in ground, surface and wastewater.
- To ensure accuracy and reproducibility of the data, HB 271 should be focused only to those substances for which analytical techniques have been validated consistent with the existing law. While there is concern about limiting the NHDES to a smaller number of substances, the number of substances that can be detected with validated methods will continue to grow.
- The ACC suggests a definition for PFAS that focuses on those substances likely to be found in water – excluding polymers, refrigerants, pesticides, and pharmaceuticals. The definition is derived from materials developed by the Interstate Research and Technology Council of the Environmental Council of the States in which the NHDES is an active participant. The definition we propose would restrict the bill to PFAS with 2 or more fully fluorinated carbon atoms – excluding polymers, gases, and volatile liquids.
- Senator Avar asked if the ACC could offer any suggested language to the committee.
 - Mr. Risotto said the ACC provided written testimony to the committee but would follow up with suggested language to amend HB 271.
- Senator Avar asked Mr. Risotto to comment on Director Wimsatt's testimony.
 - Mr. Risotto said the ACC was not suggesting language be added to HB 271 that would carve out PFAS substances based on their usage. The ACC suggested polymers, refrigerants, pesticides, and pharmaceuticals as examples of the types of products. The ACC was referencing the physical state of a substance or whether the substance was a monomer or a polymer. A polymer does not dissolve in water. HB 271 looks at air emissions that could cause groundwater contamination. The ACC's contention is that if one does not have the means to measure the PFAS substance, then there is very little one can do. HB 271 as amended by the House suggests one has to measure air emissions for PFAS, which are defined in HB 271 as amended by the House as per and polyfluoroalkyl substances. This definition could include some 9,200 substances. HB 271 as amended by the House suggests NHDES has to sample for all 9,200 substances. The ACC wants to narrow the definition to examine PFAS substances that can be measured using validated methods. The number of PFAS substances that can be measured will increase overtime. If that substance can be measured and it has been shown to cause an impact on the environment or public health, then NHDES should act accordingly. The ACC is not suggesting carveouts or trying to limit what NHDES can look at except those that can be measured by validated methods.
- Senator Avar asked if a bioaccumulator was a substance that was emitted into the air and mixed with water.
 - Mr. Risotto said a bioaccumulator is a substance that remains in one's body. There are PFAS substances that will accumulate in the body.
- Senator Avar asked the ACC agreed with the nomenclature changes in HB 271.
 - Mr. Risotto said the term PFCs is an outdated term. PFAS is the modern term that is more descriptive. The ACC wants to help NH focus its resources on PFAS substances that can be measured.
- Senator Avar asked if there was really any problem in leaving HB 271 as it was.
 - Mr. Risotto said the vast majority of the 9,200 PFAS substances cannot be measured. The ACC wants to stick to what can be measured.

*Representative Andrew Renzullo
Hillsborough – District 37*

- Clarified that his amendment 2021-0577h was done to accommodate a request made by one member of the House Resources, Recreation, and Development Committee. The amendment did not delve into any other issue.
- Senator Avar asked if Representative Renzullo was comfortable with House's changes to RSA 125-C:10-3, I(d).
 - Representative Renzullo said he was comfortable with the HB 271's language at the time it was before the House, but there has been new information during the public hearing before the Senate Energy and Natural Resources Committee. Representative Renzullo did not recall the ACC's information coming before the House Resources, Recreation, and Development Committee.

GJR

Date Hearing Report completed: May 3, 2021.