

HB 478 - AS INTRODUCED

2021 SESSION

21-0608
08/10

HOUSE BILL **478**

AN ACT relative to treatment of PFAS contaminants in the drinking water of the Merrimack Village Water District.

SPONSORS: Rep. Mooney, Hills. 21; Rep. Notter, Hills. 21; Rep. Healey, Hills. 21; Rep. Rung, Hills. 21; Rep. Mayville, Hills. 21; Rep. Cushing, Rock. 21; Rep. Rice, Hills. 37; Sen. Daniels, Dist 11; Sen. Ricciardi, Dist 9; Sen. Sherman, Dist 24; Sen. Carson, Dist 14

COMMITTEE: Resources, Recreation and Development

ANALYSIS

This bill requires Saint Gobain Performance Plastics to pay for the remediation of water in certain wells in Merrimack that it contaminated.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Twenty One

AN ACT relative to treatment of PFAS contaminants in the drinking water of the Merrimack Village Water District.

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

1 1 Findings. The general court finds that:

2 I. On April 1, 2016, the New Hampshire department of environmental services issued
3 correspondence to Saint Gobain Performance Plastics stating, in relevant part, the following: This
4 letter is a follow up to our meeting held on March 28, 2016, regarding environmental contamination,
5 including but not necessarily limited to drinking water and groundwater contamination, near the
6 Saint Gobain Performance Plastics (Saint Gobain) facility located at 701 Daniel Webster Highway in
7 Merrimack, New Hampshire (the facility). As you are aware, a number of public water systems and
8 private drinking water wells tested in recent weeks have been found to contain elevated levels of
9 perfluorinated compounds (PFCs), in particular, perfluorooctanoic acid (PFOA). Several of these
10 wells have shown levels of PFOA that are above the EPA Provisional Health Advisory of 0.4 ug/l.
11 Based on the information available to date, the New Hampshire department of environmental
12 services (NHDES) has determined that Saint Gobain is potentially responsible for the cleanup of the
13 Site, restoration of impacted groundwater and drinking water, other actions necessary to protect
14 public health and the environment, and any costs NHDES incurs for addressing the impacts of this
15 contamination. At our meeting, we discussed a number of critical steps that need to be taken
16 immediately to address the threats to public health and the environment posed by the PFC
17 contamination. To begin identifying the full extent of the contamination, NHDES is initially
18 sampling potentially contaminated wells and water sources, including surface waters and sediments,
19 within an approximate one mile radius of the facility. To date, this sampling effort has detected
20 impacts to private and public drinking water wells located both within and outside this one mile
21 radius. At this time, we formally request that Saint Gobain commit to the following:

22 (a) Provide for the design, installation, operation, maintenance and monitoring of all
23 water treatment system(s) necessary to effectively treat and remove PFC contamination from all
24 affected public water systems.

25 (b) This may most effectively be accomplished by Saint Gobain by working in
26 collaboration with the affected public water system suppliers, to ensure fully operational treatment
27 not later than August 1, 2016, and will include, but may not necessarily be limited to, the following
28 elements:

1 (1) Retain the services of a qualified professional engineer to design the treatment
2 system(s) necessary to effectively treat and remove PFC contamination from all affected public water
3 systems.

4 (2) Upon approval from NHDES and the public water supply owner(s), construct,
5 install and make operational the approved treatment system(s).

6 (3) Provide for the necessary long term operation, maintenance, and monitoring of
7 the installed treatment systems.

8 II. On July 25, 2019, the department of environmental services issued correspondence to
9 Saint Gobain Performance Plastics stating the following: "Air deposition of per- and polyfluoroalkyl
10 substances (PFAS) released from the Saint Gobain Performance Plastics (Saint Gobain) facility
11 located at 701 Daniel Webster Highway in Merrimack (Facility) has resulted in regional
12 groundwater contamination. The New Hampshire department of environmental services (NHDES)
13 and Saint Gobain have sampled water supply wells in an area defined as a preliminary-groundwater
14 management zone ("preGMZ") that included numerous wells with perfluorooctanoic acid (PFOA)
15 and/or perfluorooctane sulfonic acid (PFOS) in groundwater at levels that exceed the current
16 combined ambient groundwater quality standard (AGQS) of 70 parts per trillion (ppt) for these two
17 compounds. Pursuant to Env-Or 600, a responsible party needs to identify a GMZ (i.e., the
18 subsurface volume in which groundwater contamination associated with a discharge is contained)
19 with monitoring ultimately governed by a corresponding groundwater management permit (GMP).
20 As such, further delineation of the extent of groundwater contamination, relative to the newly
21 adopted PFAS standards, is necessary. In light of the fact that the new PFAS water quality
22 standards are anticipated to become effective this fall, NHDES requests submission of a work plan
23 to identify water supply wells that exceed the four new AGQS due to impacts by releases from the
24 Saint Gobain facility, and to provide an alternate source of potable water that meets applicable
25 federal and state water quality criteria where the new standards are exceeded."

26 III. In March 2016, PFAS were detected in the Merrimack Village Water District's public
27 drinking water supply wells 4 and 5 at levels above 70 ppt.

28 IV. In May 2016, the department of environmental services adopted an AGQS of 70 ppt for
29 PFAS.

30 V. Wells 4 and 5 serve drinking water to customers in Merrimack and portions of Bedford
31 and Amherst.

32 VI. That Merrimack Village District wells 4 and 5 are contaminated with PFAS and are
33 within the Saint Gobain Performance Plastics preliminary Groundwater Management Zone, the
34 boundaries of which were agreed to between Saint Gobain and the department of environmental
35 services in the consent decree between the State of New Hampshire and Saint Gobain Performance
36 Plastics dated March 20, 2018 which Groundwater Management Zone will be modified following

1 completion of additional site investigations and which will be included in a Groundwater
2 Management Permit to be issue to Saint Gobain by the department of environmental services.

3 VII. The Merrimack Village Water District has incurred costs in addressing PFAS
4 contamination impacting wells 4 and 5 and has constructed a "Water Treatment System" to treat the
5 drinking water in wells 4 and 5 to remove PFAS contamination, said "Water Treatment System" was
6 activated on October 21, 2020.

7 VIII. The Merrimack Village Water District and Saint Gobain Performance Plastics entered
8 into a Settlement Agreement dated March 28, 2018 whereby Saint Gobain Performance Plastics paid
9 for a portion of the construction and installation costs of the "Water Treatment System" and agreed
10 to pay for a portion of the future operation and maintenance costs of the "Water Treatment System"
11 limited to the first 5 years of operation.

12 IX. That the "Water Treatment System" operation and maintenance costs will continue for a
13 period of time well beyond five years in order to continue to treat the drinking water of wells 4 and 5
14 for PFAS. Considering that the PFOA concentration at wells 4 and 5 has been measured in excess of
15 100 ppt, and that the half-life for PFOA is approximately 95 years, decrease of the current PFOA
16 concentration will require approximately 3 half-lives, or 300 years to be reduced from 100 ppt, to 50
17 ppt, to 25 ppt, to 12.5 ppt, before being reduced to the current 12 ppt MCL.

18 X. That as a result of the consent decree with the department of environmental services,
19 Saint Gobain Performance Plastic paid for water line extensions and hook-ups for well-owners to
20 connect to, and become customers of, the Merrimack Village Water District and that approximately
21 58 of these connections use water primarily from wells 4 and 5.

22 XI. The general court adopted new standards for PFAS effective July 23, 2020, under RSA
23 485:16-e, and that Merrimack Village District wells 4 and 5 are required to comply with these
24 standards for its drinking water.

25 2 Remedy.

26 I. The general court finds that the on-going operation and treatment costs for the "Water
27 Treatment System" for wells 4 and 5 owned and operated by the Merrimack Village Water District
28 should not be borne by the Merrimack Village Water District ratepayers, who are not responsible for
29 the contamination. Therefore, beginning on October 27, 2025 Saint Gobain Performance Plastics, its
30 successors, transferee, subsidiaries, parent companies, or assigns shall pay, within 30 days of receipt
31 of quarterly submissions from the Merrimack Village Water District, all costs associated with the
32 continued operation, monitoring and maintenance, and any necessary additional modifications
33 thereto, as determined by the Merrimack Village Water District, of the "Water Treatment System",
34 and all additional incidental operation and maintenance costs of wells 4 and 5 caused by the
35 installation of the "Water Treatment System."

1 II. These payments from Saint Gobain Performance Plastics shall continue for so long as the
2 Merrimack Village Water District and its successor organizations treats the water from wells 4 and
3 5 in order to comply with any existing or future water quality standards set for PFAS.

4 III. This remedy shall not affect any rights of Saint Gobain Performance Plastics to seek
5 reimbursement for all costs it incurs associated with the "Water Treatment System" against any and
6 all other parties, if any, responsible under any and all applicable laws.

7 IV. If any of the payments are not timely made by Saint Gobain Performance Plastics, the
8 office of the attorney general shall seek such a remedy through any means appropriate.

9 3 Severability. If any provision of this act or the application thereof to any person or
10 circumstance is held invalid, the invalidity does not affect other provisions or applications of the act
11 which can be given effect without the invalid provision or application, and to this end the provisions
12 of this act are severable.

13 4 Effective Date. This act shall take effect upon its passage.