



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

February 16, 2021

The Honorable Edward Gordon
Chairman, House Judiciary Committee
Legislative Office Building, Room 208
Concord, NH 03301

RE: HB 135, An Act requiring parties responsible for pollution of a drinking water supply to be financially responsible for certain consequences of that pollution

Dear Chairman Gordon and Members of the Committee:

Thank you for the opportunity to testify on HB 135. This bill would require parties deemed responsible for pollution of a drinking water supply to be financially responsible to: 1) connect any affected residence or business to a public water supply; 2) supply drinking water to the affected residence or business until the connection is made; 3) pay for installation and maintenance of a “whole house water filter” if the connection cannot be made within six months; and 4) pay for the monthly water usage bills of the affected residence or business. The New Hampshire Department of Environmental Services (NHDES) is not taking a position on this bill. However, I am writing to describe how these matters are handled under the current regulatory scheme, and to share some concerns regarding potential unintended consequences of the bill.

Under current law and administrative rules, parties responsible for releases of regulated contaminants that impact a drinking water well are required to provide safe drinking water to the impacted residence or business. This includes providing and paying for bottled water until such time as a permanent solution can be implemented. In cases where it is deemed technically and financially feasible, connection to a nearby public water system is the preferred solution. In cases where such connection is infeasible (e.g., when no public water system exists in the vicinity of the impacted property), a point-of-entry (POE) treatment system (sometimes also referred to as a “whole house treatment system”) is required. In these cases, the responsible party is required to pay for both installation and ongoing maintenance of the treatment system. In practice, where connection to a public water system is the remedy, the responsible party is required to pay all costs of connection to the system, including any necessary extensions of the water main, connection from a curb stop to the home, and any necessary indoor plumbing modifications, but not monthly water bills.

Upon review of HB 135, NHDES has identified the following questions and concerns about possible unintended consequences:

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • Fax: 271-2867 TDD Access: Relay NH 1-800-735-2964

- 1) NHDES is concerned about the potential impacts of the requirement to install POE treatment if connection to a public water system cannot be completed within six (6) months for two reasons. First, it is unclear whether this requirement is intended to be a temporary remedy, or if ultimate connection to a public water system is required in all cases. In NHDES' experience, it is often the case that connection to a public water system is impractical and economically infeasible, because no water system is located nearby. With typical costs of watermain extensions costing as much or more than \$1 million per mile, proximity is a critical factor. Second, when connection to a public water system is determined to be the preferred solution, it often takes more than six months to properly design and construct the extension, and make the final service connection(s). If responsible parties are required to install POE systems when they can't meet the six-month deadline, it will add significant costs to their project, and may adversely impact their willingness to cooperate and comply. Also, there will be little incentive to choose the preferred (and almost always more expensive) remedy of a water system connection, if they will end up incurring the full costs for both.
- 2) The bill's requirement that responsible parties must pay for five years of monthly water usage bills for properties that they connect to public water systems may serve as a significant disincentive for cooperation and compliance. NHDES views connection to public water systems as the preferred and superior solution for addressing contaminated wells. In practice, responsible parties who select this significantly more expensive option (in lieu of POE treatment) often make the decision to do so in order to fully resolve and conclude their responsibilities and avoid a lingering administrative and financial burden. This bill's provision would eliminate that incentive, and could result in the less preferred POE option being implemented far more often.
- 3) Finally, the overall impact of this bill, while well-intentioned, would likely be to increase the cost of compliance for responsible parties. NHDES has been implementing the existing requirements for many years and, in practice, we have seen very good compliance. Most people are aware of the significant and widespread impacts of per- and polyfluoroalkyl substances (PFAS) contamination on many hundreds of private wells in several southern New Hampshire towns. In that case, a large corporation with the means to do so has invested tens of millions of dollars, and will invest more in the future, to extend public water systems and provide safe, clean drinking water to affected property owners. However, in contrast to this well-known example, many of the responsible parties in New Hampshire who must comply with these requirements are small business owners and municipalities, for whom the costs of compliance are already a significant burden. NHDES is concerned that this bill would increase the costs of compliance and cause otherwise cooperative parties to cease cooperating, or simply walk away from their responsibilities.

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Thank you again for the opportunity to comment on HB 135. We would welcome the opportunity to work with the bill's sponsors to address these concerns. Should you have questions or need additional information, please feel free to contact Michael Wimsatt, Waste Management Division Director (michael.wimsatt@des.nh.gov, 271-1997).

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Scott", with a long horizontal flourish extending to the right.

Robert R. Scott
Commissioner

cc: Sponsors of HB 135: Representatives Boehm, Lascelles, and Notter