

PFAS/Drinking Water Standards: Environmental Organizations File Brief in New Hampshire Appellate Proceeding



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The Conservation Law Foundation and other environmental organizations (collectively “CLF”) filed a brief of Amici Curiae in support of New Hampshire Department of Environmental Services (“DES”) rules that establish maximum contaminate levels (“MCLs”) and ambient groundwater quality standards for four per- and polyfluoroalkyl substances (“PFAS”).

A New Hampshire trial court had issued an Order preliminarily enjoining the rules.

PFAS have been used in various industrial applications and consumer products such as:

- Fabrics for furniture
- Paper packaging for food and other materials resistant to water, grease or stains
- Firefighting airfields
- Utilization in several industrial processes

PFAS properties include resistance to heat, water and oil. Further, they have been described as persistent in the environment and resist degradation.

DES describes MCLs as drinking water standards with which non-transient public water systems must comply and ambient groundwater quality standard is described as a standard used to require remedial action and the provision of alternative drinking water at a contaminated site.

The CLF brief argues that the New Hampshire trial court did not consider the public’s substantial interest in the testing provisions of the DES rules before preliminarily enjoining them. The brief references the trial court’s Order stating:

. . . its order refers only to the prospect that Plaintiffs would be harmed without an injunction, because “Plaintiffs will never be able to recoup the expenses they incur” from DES. Id. at 23. The order does not specify those expenses, and the argument and testimony preceding it show that the only short-term expenses at issue were the modest costs plaintiff Plymouth Village Water and Sewer District – a regulated system – would incur to start quarterly testing.

The CLF brief argues that the trial court’s preliminary injunction Order:

- Does not address the public’s interest in letting the rule stand
- Find that the minimal short-term costs of testing outweigh those public interests

The brief's discussion includes the environmental organizations' views on potential health effects of PFAS and the need for testing. Included are figures on the number of water systems potentially affected and problems posed by testing delays.

A copy of the brief can be downloaded [here](#).