Representative Chris Christensen, Chair, and Members of the Committee
Resources, Recreation, and Development Committee
New Hampshire House of Representatives
Concord, NH 03301

April 16, 2018

Re: Senate Bill 240

Dear Chairman Christensen and Members of the Committee:

Thank you for the opportunity to comment on this bill. Our members are involved in water quality protection, and we strongly support appropriate controls to reduce the risk of contamination of groundwater and drinking water.

We write today to urge a vote of “inexpedient to legislate” on Senate Bill 240.

The most significant concern with SB 240 is this: Private wells and their water have long been primarily the responsibility of their owners. DES routinely recommends that owners of private wells test their water quality\(^1\). At the same time, the purview of the state involves groundwater quality. DES currently has many tools in place for that work, which sometimes includes testing of private wells as part of identifying and understanding a particular issue. Widespread testing of private wells is not something that DES does – nor should it. This bill would suddenly and dramatically expand DES’s role in private well water quality. It seems the state would be taking on responsibility (and potentially liability) for private drinking water quality. There should be far more consideration and discussion of such a large change in policy.

Some of our other concerns with the bill, including both current draft amendments, and the unintended consequences it could have, include the following:

- **THE BILL LACKS A DEFINITION OF “MAN-MADE” CONTAMINANT.** As an example, consider nitrate nitrogen. Nitrogen fertilizer is synthesized (“man-made”), and, on farms, it is the constituent in fertilizers and manures that is most likely to leach to groundwater as nitrate. This means this bill could apply to many farms and neighboring drinking water wells. A “responsible party” could easily be an average farmer whose use of manures and fertilizer leads to a somewhat elevated level of nitrate in a neighbor’s well. The department could be saddled with monitoring a lot of situations of this sort all around the state. Arsenic in a well could also be swept up in this bill, depending on interpretation, because it can be from man-made sources. Both nitrogen and arsenic are examples of myriad contaminants that could be considered man-made and under the purview of this bill.

- **TESTING AND MONITORING WILL INCUR SIGNIFICANT COSTS.** Testing under this bill could be quite costly and quickly drain the resources of DES. The cost for domestic well water testing for a comprehensive set of trace contaminants that could be considered man-made is about $1,900 (including shipping). Add in the cost of sampling, handling, and data management, and the cost is at least $2,200.

- **THERE ARE NO PARAMETERS FOR TESTING AND MONITORING.** SB 240, and the proposed amendments, are vague about how a private well is identified and brought into the new testing and monitoring program that this bill would establish. It leaves open the possibility that anyone can insist that their well be tested and monitored, as long as one previous test (or just “information”) has shown the presence of some man-made contaminant. How will DES know if the current presence of a contaminant measured by one sampling event puts “the well at risk of a future violation of the existing ambient groundwater quality standard?” DES would likely not have the data needed to make this determination.

- **THE FISCAL IMPACT MUST BE CONSIDERED.** Monitoring a private well to determine if the level of a man-made contaminant is increasing will take at least one additional sampling and analysis, as well as groundwater flow studies to determine if an increase is likely. Only after such research would DES possibly be able to identify a “responsible party.” These activities might cost thousands of dollars; a modest estimate might be $4,000 for a relatively simple situation. The SB 240 (April 9, 2018) fiscal note hints at, but it does not clearly detail these real costs that would be borne by DES, at least initially. With the necessary two rounds of sampling and testing and

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1https://www.des.nh.gov/organization/divisions/water/dwgb/well_testing/index.htm
the site evaluation costs, dealing with just one private well could cost $8,400 or more. At the very least, this bill deserves careful fiscal review and should be required to go to the Finance Committee.

- **IDENTIFYING A RESPONSIBLE PARTY WILL BE CHALLENGING.** If and when a “responsible party” is identified, DES might be able to get that responsible party to reimburse these costs eventually, but not necessarily easily. Identifying responsible parties and getting their agreement and assistance is challenging. Cause and effect are hard to prove. Unfortunately, it often takes DES and other state agencies years on legal actions, negotiations, and settlements to get major responsible parties to pay. In addition, this bill could require DES to go after many small responsible parties, such as farmers and homeowners. Research shows that traces of chemicals from home septic systems can travel in some soils and impact neighboring drinking water wells at low levels. The cost of DES staff time alone could be significant.

SB 240 invokes additional comments and questions.² The costs outlined above could come to $10,000 for each private well brought into this new program. During PFAS investigations conducted by DES, nearly 2000 wells have been tested. Most of those test results show some detection of at least one targeted contaminant. Those well owners would be justified in requesting that DES continue monitoring their wells. That would add up to $20 million in costs, likely borne initially by DES. It is possible that, years later, some (and only some) of these costs would be reimbursed by “responsible parties.” And this example is only focused on PFAS contaminants; many more private well owners could point to traces of other man-made contaminants in their water.

We understand the intent of this bill, but we are very concerned about its broad impact and unintended consequences. Whether in its current draft or with the proposed amendments from Rep. Christensen and Rep. McConnell, this bill is unnecessary, has enormous cost implications, and will result in significant unintended consequences. Therefore, **WE URGE THE COMMITTEE TO VOTE ITL ON SB 240.**

Thank you for your consideration of our concerns.

Sincerely,

Charity Ross, Executive Director
New Hampshire Water Works Association

Tim Vadney, President
New Hampshire Water Pollution Control Association

Ned Beecher, Executive Director
North East Biosolids & Residuals Association

Jennifer O. Palmiotto, PhD, Executive Director
Granite State Rural Water Association

Barbara T. Reid, Government Finance Advisor
New Hampshire Municipal Association

Dennis Ward, President
New Hampshire Farm Bureau Federation

² The amendment that involves a 75% threshold does not do anything to improve the situation. It just moves the screening level against which a measured concentration is compared. The same issues prevail. And, ironically, the exception for salt (road salt) takes away what is actually one of the most significant and costly contamination issues in the state: today, public water supply wells are having to be replaced because of salt contamination. The “responsible parties” are, of course, the state and municipalities who salt roads for all of us. This is the reality and challenge of addressing traces of emerging contaminants of concern.