



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

March 19, 2021

Mr. Richard C. Jones
Health Officer
Town of Merrimack
6 Baboosic Lake Road
Merrimack, NH 03054

**RE: Public Health Order
Saint Gobain Performance Plastics Cease and Desist
PFC Contamination of Town of Merrimack**

Dear Mr. Jones:

On March 4, 2021, the Town of Merrimack, NH ("Town") issued a Cease and Desist Order ("Order") to Saint Gobain Performance Plastics ("SGPP") under the authority of RSA 485-C:16. On March 6, 2021, SGPP through its counsel, McLane Middleton, Professional Association filed a request that New Hampshire Department of Environmental Services ("NHDES") review the Order as allowed for under RSA 485-C:16. In its Order, the Town alleges that the SGPP operations continue to "cause or contribute" to a violation of Ambient Groundwater Quality Standard ("AGQS") for certain PFAS chemicals. This statement is based on the fact that the regenerative thermal oxidizer ("RTO") required under Temporary Permit TP-0256 was not installed by the required permit deadline of February 11, 2021 pursuant to the requirements of RSA 125-C:10-e *Requirements for Air Emissions of Perfluorinated Compounds Impacting Soil and Water*.

In its March 6th communication, SGPP stated that since February 11, 2021, the facility is and has been operating in compliance with the annual emission limits in the temporary permit regardless of the fact that the RTO has not been installed. In its permit findings, NHDES established the annual emission limits to ensure that SGPP no longer causes or contributes to an AGQS violation. The annual PFOA and PFOS emission limitations contained in the permit were established to ensure that actual emissions would not exceed the lowest concentration minimum reporting level for these compounds as documented in EPA Method 533 for drinking water.¹ It is important to note that the emission limits in the permit are not based on the previously issued EPA Health Advisories as noted in the Town's Order.² Therefore, the premise of the Town's Cease and Desist Order is factually inaccurate.

¹ EPA Method 533: *Determination of per- and polyfluoroalkyl substances in drinking water by isotope dilution anion exchange solid phase extraction and liquid chromatography/tandem mass spectrometry* (November 2019). <https://www.epa.gov/sites/production/files/2019-12/documents/method-533-815b19020.pdf>

² See Temporary Permit - Findings of Fact and Director's Decision, Pages 13 – 16 dated February 11, 2020. <https://www4.des.state.nh.us/nh-pfas-investigation/wp-content/uploads/330110016518-0227TypeFindingsOfFact.pdf>

In addition, in a Consent Decree signed with NHDES on March 19, 2021 and filed in Hillsborough Superior Court, NHDES has addressed the violations associated with the matter related to the missed deadline while ensuring SGPP continues to operate in compliance with the emission limits in the temporary permit. In order to ensure uniform state enforcement, I have determined that the actions taken by NHDES are sufficient and consistent with the authority solely provided to NHDES under RSA 125-C:10-e, II and RSA 125-C:15.

Therefore, in accordance with RSA 485-C:16, I find that the Order has insufficient basis in fact or law and is not necessary, and determine that it is no longer in effect.

Sincerely,



Robert R. Scott
Commissioner

cc: Gregory H. Smith, Esq., McLane Middleton, Professional Association
Brett Slensky, Esq., Saint Gobain Performance Plastics Corporation
Chris Angier, Saint-Gobain Performance Plastics Corporation
William Kempeskie, Saint-Gobain Performance Plastics Corporation
Gabriel Caridade, Saint-Gobain Performance Plastics Corporation
Craig Wright, Director, NHDES ARD
K. Allen Brooks, Esq., Chief, Environmental Protection Bureau, NHDOJ
Eileen Cabanel, Town Manager, Town of Merrimack
Joanna Tourangeau, Esq., Counsel, Town of Merrimack