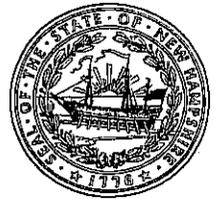




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

January 26, 2010

The Honorable Judith Spang, Chairman
Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, New Hampshire 03301

Re: HB 1221, relative to excavating and dredging permits.

Dear Chairman Spang:

Thank you for the opportunity to comment on HB 1221 relative to excavating and dredging permits. The Department of Environmental Services (DES) does not support this bill for the following reasons.

In Sections 1 and 3, HB 1221 proposes to amend RSA 482-A to include a requirement that DES hold public hearings at the request of any abutter (in Section 3) and that the applicant provide DES with documentation that the applicant has noticed abutters of the right to request a hearing (in Section 1). In the existing statute, RSA 482-A:8 requires that *"the department shall provide reasonable opportunity for public comment on proposals under RSA 482-A:3 and shall hold a public hearing for projects with significant impact on the resources protected by this chapter or of substantial public interest"* (emphasis added). With regard to the first statutory test, abutters are already provided "reasonable opportunity for public comment" by individual notification by certified mail by the applicant of the existence of a dredge and fill application for an abutting property that DES is considering. Abutters then, in turn, have the opportunity to review the application and provide comments to DES, which DES will consider in its application review. We believe that this provides reasonable opportunity for abutter input to wetlands permit applications. We also believe that the current standard for public hearings is reasonable, balanced and works well. Specifically, DES is required to hold a hearing upon a determination that the proposed impacts are "significant" or "of substantial public interest." Based on these criteria, DES annually typically conducts in the order of 20 to 25 public hearings for wetlands permit applications. In comparison, over the last year, DES has received and processed a total of around 1,500 permit applications, most of which were for very small projects. Since public hearings are very time consuming and expensive to conduct, and abutters already are provided reasonable notice and the ability to comment on all projects, the existing statutory criteria under which DES must hold public hearings are adequate and should not be amended as proposed.

In Sections 2, 4 and 5, HB 1221 requires that DES follow up on every complaint received within 30 days by inspection and issuance of an administrative order, and is also very prescriptive on the required time frames to impose penalties. Each year, DES receives 400 to 500 complaints and simply does not have the staff resources needed to react to every complaint in 30 days, as proposed in HB 1221. Each complaint requires a

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site inspection and a detailed investigation to determine if a violation has occurred, the extent of the violation, and the proper remedy. Furthermore, there are certain times of the year, such as during snow cover, when it is not possible to conduct proper inspections. In Section 4, DES is required to assess penalties within 60 days of the violation of a corrective action plan. And, in Section 5, DES is required to assess a penalties within 30 days of knowledge of a violation. In our opinion, this does not provide DES with reasonable discretion as to the nature and timing of the enforcement action that considers, for example, the size of the environmental impact and the level of cooperation of the property owner in correcting a violation. DES has a Compliance Assurance Response Policy (CARP) under which we set penalties and consider other factors to address wetlands violations. We would be happy to provide you with more detailed information on the DES CARP and other elements of the Wetlands Bureau compliance program upon your request.

Thank you for this opportunity to comment on this bill. Please feel free to call me at 271-2958, or Collis Adams at 271-4054, if you have any questions or need additional information.

Very truly yours,

Thomas S. Burack
for Thomas S. Burack
Commissioner
Ass't Commr

cc: Representative J. Day
Representative Kepner

