The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner

April 28, 2011

The Honorable James Rausch, Chairman
Senate Transportation Committee
Legislative Office Building
Concord, NH 03301

Re: House Bill 374 - banning corn-based ethanol as an additive to gasoline sold in New Hampshire.

Dear Chairman Rausch and Members of the Committee:

Thank you for the opportunity to comment on behalf of the Department of Environmental Services (DES) regarding House Bill 374, which seeks to ban corn-based ethanol as an additive to gasoline sold in New Hampshire. While DES understands concerns relative to increasing use of corn to produce ethanol, the department is opposed to this bill due to potential conflict with federal law and for this action to result in supply disruption and/or price volatility in the state.

The nation's fuel supply is regulated under the Clean Air Act Amendments of 1990 (CAA) which, in Section 211(c)(4), place certain limitations on a state's legal authority to control the composition of fuel offered for sale in a state. Specifically, Section 211(c)(4) states:

> *"Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine"*

The potential conflict of a NH corn-ethanol ban with federal CAA requirements could put NH petroleum suppliers in a difficult position, forcing them to choose between complying with federal law or with state law. In addition to fuel supply disruptions and price volatility, this could also result in costly and protracted litigation from either the industry or the federal government to resolve the conflict.

Motor vehicle fuel is also subject to federal regulatory requirements of the Renewable Fuels Standard (RFS), established by the 2005 Energy Policy Act and modified by the 2007 Energy Independence and Security Act (EISA). The RFS mandated inclusion of a certain annual volume of renewable fuel in gasoline. EISA created RFS2, which expanded the initial RFS to include diesel as well as gasoline and increased the volumetric requirements. RFS2 also made two additional, very significant changes to the original standard. First, it differentiated between categories of renewable fuel, including cellulosic and advanced biofuels, and set separate volume requirements for each one. RFS2 also required EPA to apply lifecycle greenhouse gas (GHG) performance threshold standards to ensure that each category of renewable fuel emits fewer greenhouse gases than the petroleum fuel it replaces. The lifecycle analysis is inclusive of energy and emissions inputs for fuel and feedstock production, indirect land use impacts, distribution, and use, as well as economic models that predict changes in agricultural markets.

Under RFS2 mandated renewable fuel volumes grow from 13.95 billion gallons in 2011 to 36 billion gallons in 2022. However, only 15 billion gallons of conventional ethanol may be used to meet the volumetric requirements in any year. Therefore a limited market incentive for conventional corn ethanol exists, while a significant market incentive for cellulosic and advanced biofuels is created.

It is widely recognized that the use of corn as our only source of ethanol is not sustainable over the long term, but must continue in the short term as a bridge to get to the point where cellulosic ethanol or other sustainable renewable fuels are widely available and necessary infrastructure is in place. The use of lower cost corn ethanol currently is supporting the vehicle and infrastructure development that must be in place when the second generation production capacity comes on line. Financing for the research and development of technology necessary to produce second generation biofuels commercially and affordably is dependant on a guaranteed future market. Without this ready market, the necessary investment in the second generation technology may not be forthcoming.

New Hampshire has not had its own major gasoline terminal since Sprague discontinued distributing gasoline from their Portsmouth terminal in 2005. Almost all gasoline now comes into the state through terminals in Chelsea and Everett, MA, Albany, NY, and Portland ME that also provide gasoline to our neighboring states. The volume of gasoline consumed in New Hampshire is small in comparison to the total fuel used by all states served by these terminals. Therefore, these terminals would likely continue supporting distribution of ethanol blends in demand in other New England states, or as required under federal regulation, rather than serve a very small NH "niche" market. New Hampshire has limited ability to impact the distribution of gasoline from out of state terminals.

Thank you for the opportunity to provide testimony on this bill. Should you have further questions or need additional information please feel free to contact Robert R. Scott, Director, Air Resources Division (271-1088, robert.scott@des.nh.gov) or Rebecca Ohler, Transportation and Energy Programs Manager (271-6749, rebecca.ohler@des.nh.gov).

Sincerely,

Thomas S. Burack

Thomas S. Burack
Commissioner

cc: HB 374 sponsors