The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner

February 24, 2011

The Honorable Bob Odell
Energy and Natural Resources Committee
Legislative Office Building, Room 102
Concord, NH 03301

RE: SB 84-FN relative to state regulation of the septic system installation process

Dear Senator Odell:

Thank you for the opportunity to comment on SB 84-FN, an act relative to state regulation of septic system installation process. The Department of Environmental Services (DES) strongly opposes SB 84 for the reasons described below.

SB 84 would in part eliminate the statutory requirements for applicants to receive approval of septic system plans and inspections by the DES Subsurface Systems Bureau for most septic systems installed in New Hampshire. Septic system plans by DES-certified designers for smaller systems (those that serve single family homes and other structures with design flows of less than 2,500 gallons per day) would be "deemed approved," and thus no review and formal state permit would be required. Inspections of constructed systems, which DES now performs, would be shifted to municipalities by requiring that all municipalities take on this part of the program by appointing or hiring one or more plumbing inspectors by January 1, 2012. The bill also specifies the fees that municipalities could charge for inspections (See Section 4). SB 84 would also cause the layoff of 10 of 17 filled positions in the DES Subsurface Systems Bureau due to the reduction in fee revenues. DES estimates that these layoffs would cost the state general fund approximately $348,000 in FY 2012 because the Subsurface Systems Fund, the dedicated non lapsing fund that supports this program, has inadequate resources to pay for these layoffs at this time. Furthermore, because the Subsurface Systems Bureau provides match for federal grants, these reductions would cause a reduction of over $1 million in federal grants from the Environmental Protection Agency, resulting in additional reductions in DES staff supported by these grants and to pass through grants to New Hampshire communities.

The DES Subsurface Systems Program was created in 1967 by the enactment of RSA 149-E (now RSA 485-A), which authorized the regulation of septic systems by the Water Supply and Pollution Control Commission, now part of the DES Water Division. The purpose of this program was, and continues to be, to ensure that septic system installations occur in a consistent and technically sound manner across the state to prevent pollution and public health hazards from occurring due to poorly installed and failed systems. System failures can cause significant public health risks from human exposure to raw sewage on the land near failed systems, contamination of drinking water wells, and contamination of surface waters used for swimming, fishing and drinking. This program also provides assurance to prospective buyers of new or existing homes and other small commercial operations that septic systems meet New Hampshire state standards and, therefore, are likely to operate properly.

The DES Subsurface Systems Bureau accomplishes its purpose by implementation of a number of program functions. The Bureau reviews applications for the subdivision of land and the design of individual septic systems; performs on-site inspections of all septic systems prior to their being backfilled (i.e., covered with soil) in order to ensure compliance with approved plans; implements and administers the program for licensing designers and installers of septic systems; and investigates complaints of possible failed septic systems and then ensures correction of failed systems that are discovered. This is a well-integrated program that is considered to be highly successful and responsive to the needs of New Hampshire's citizens by many people, including municipal officials and the regulated community. This is clearly one of the top programs of its kind in the country.

The Subsurface Systems Bureau is responsible for the review and issuance of permits for approximately 80% of all development that occurs in New Hampshire. Over the last ten years, depending on construction activity and the health of the economy, the Bureau has performed plan reviews and inspections for between 3,800 to almost 10,000 septic systems annually across the state. These plan reviews and inspections have consistently occurred in a timely and effective manner in accordance with statutory requirements. Currently, applications for septic systems are being reviewed within 1 to 3 business days of submission, as compared with a statutory requirement of 15 days. And, system installation inspections are occurring within 3 days of "ready to backfill" calls, as compared with a statutory requirement of 7 business days.

However, it is important to understand that not all plans are acceptable upon initial submission. In fact, approximately 30 percent of the plans received by DES are not acceptable after the initial submission and must be revised to receive approval. If SB 84 were enacted, given that 3,800 to 10,000 plans per year would be deemed approved, DES estimates that 1,000 to 3,400 noncompliant plans per year would pass without regulatory review, and thus would be defective at the time of construction. DES has also historically observed that about 20 percent (or 750 to 2,000 septic systems/year, depending on the economy) of septic system installations are unacceptable upon initial inspection and require re-work by the contractor before the system can be approved to be backfilled. It is unreasonable to expect that plumbing inspectors (with, as described below, no required training) for over 200 municipalities would catch all the deficiencies that DES does now. Therefore, if SB 84 were enacted, we believe that the quality and integrity of septic systems installations would deteriorate across New Hampshire. This would result in greater risk of septic system failure, thus increasing the risk to public health and the environment as well as the potential for unnecessary future costs for new home owners and other building owners to repair preventable system defects.

In addition to our overall concerns, DES also has the following comments on specific sections of SB 84:

- In Section 1, there are no qualifications required for plumbing inspectors. We would expect that they would be required to achieve some level of certification, for example, as designers and installers of septic systems or to have demonstrated expertise in the areas of soil science and hydrogeology which are necessary to understand how to properly

design and install septic systems. We believe that this is a fundamental flaw that would need to be corrected to ensure high quality inspections by all municipalities if SB 84 were to be enacted into law.

- In Section 1, compensation for plumbing inspectors "*shall be determined by the governing body and paid by the municipality.*" There is no relationship between the actual cost to the municipality and the fee set in Section 4 ($100, with $25 of the $100 passed through to DES). In our opinion, municipal costs are likely to exceed the revenues collected under this proposal.
- In Section 5, the approval mechanism for encroachment waivers is ambiguous. Our interpretation is that encroachment waivers for "deemed approved" designs would be automatic, with no regulatory review, if notification of the local code enforcement officer and abutters has occurred. This leaves too much independent discretion to designers for waivers that now are reviewed by DES.
- Section 6 allows any designer to, in effect, unilaterally waive the protective well radius requirement for any lot upon notice to the applicant of "*the consequences of such reduced radius and ...whether special precautions should be taken relative to well installation.*" We believe that this also provides too much discretion for the designer for "deemed approved" plans and should not be allowed.
- In Section 13, the proposed RSA 485-A:50-a, Reconsideration and Appeal Procedure, describes an appeal procedure for an "annual assessment" by DES levied against municipalities. However, the referenced annual assessment does not appear in the bill. The intent of this section needs to be clarified or the section deleted.

In summary, DES strongly opposes SB 84 because we believe that the result would ultimately be more failed septic systems. And, these failed systems would both increase risk to public health and the environment and costs to homeowners and other property owners due to failed systems that would require replacement or repair. This bill would also result in higher costs to municipalities with no net benefit over the existing state regulatory system which has worked very well for over 40 years and does not merit the proposed major overhaul.

Thank you for this opportunity to comment on this bill. Please feel free to call Rene Pelletier, Assistant Water Division Director at 271-2951 or me at 271-2958, if you have any questions or need additional information.

Very truly yours,

Thomas S. Burack
Commissioner

cc: Senators Groen, Sanborn, Lambert, Forsythe, Barnes and Carson