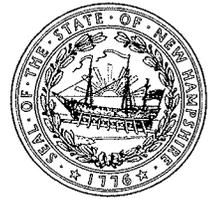


The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

*Celebrating 25 Years of Protecting
New Hampshire's Environment*



March 27, 2012

The Honorable Andrew Renzullo, Chairman
Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, NH 03301

RE: SB 265 An Act relative to the definition of stormwater

Dear Chairman Renzullo:

Thank you for the opportunity to comment on Senate Bill 265 which would redefine stormwater in RSA 149-I:6-a, II, Stormwater Utilities. The Department of Environmental Services (DES) supports SB 265, as amended.

The Commission to Study the Issue of Stormwater Management (the "Stormwater Commission") was established in 2009 by enactment of House Bill 1295 (Chapter 71, Laws of 2008). The Stormwater Commission studied issues relating to stormwater, including its effects on water quality, water quantity and water-related habitats and also evaluated existing state, federal and local regulations. The Commission's final report, entitled "Final Report on HB 1295, Chapter 71, Laws of 2008", was presented to Governor Lynch and the House and Senate leadership by memorandum dated November 1, 2010 from the Commission Chair, Mr. David Cedarholm.

If enacted, SB 265, as amended, would implement the first recommendation of the Stormwater Commission by redefining the term "stormwater." Enactment of this stormwater definition would fill a gap that needs to be addressed in response to the recognition of stormwater contamination as an important environmental issue in New Hampshire and at the national level. In New Hampshire, pollutants of concern carried by stormwater include bacteria that contaminate water at beaches, phosphorus that triggers toxic cyanobacteria blooms in lakes, and nitrogen that causes water quality problems in our coastal waters.

If SB 265, as amended, were enacted, the proposed "stormwater" definition would complement existing definitions in RSA 485-A, which include definitions for "sewage", "industrial waste", "other wastes", "waste" and "sludge"¹. Typically, stormwater management requires the implementation of best management practices (BMPs) that may include public education and outreach, investigations for illicit discharges, management of construction practices and some structural measures to reduce pollution. BMP implementation requirements are less technically and legally complex than treatment requirements. Stormwater utilities are a key mechanism to fund and implement widespread BMPs.

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The proposed New Hampshire stormwater definition would also be consistent with the federal definition.² The Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Stormwater Program regulates stormwater discharges from three different sources: municipal separate storm sewer systems (MS4s), construction activities, and industrial activities. The EPA typically requires implementation of BMPs, such as discussed above, that depend on the nature of the activity and are the same as New Hampshire would require. In this context, consistency between the state and federal agencies would be beneficial to New Hampshire's regulated community.

Thank you for this opportunity to comment on this bill. Please feel free to call Ted Diers at 271-3289 or me at 271-2958, if you have any questions or need additional information.

Sincerely,



Thomas S. Burack
Commissioner

cc. Senator Merrill
Senator Stiles
Representative Spang

¹RSA 485-A:2 Definitions. –

VI. "Industrial waste" means any liquid, gaseous or solid waste substance resulting from any process of industry, manufacturing trade or business or from development of any natural resources.

VIII. "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, ashes, offal, oil, tar, chemicals and other substances other than sewage or industrial wastes, and any other substance harmful to human, animal, fish or aquatic life.

X "Sewage" means the water-carried waste products from buildings, public or private, together with such groundwater infiltration and surface water as may be present.

XI-a. "Sludge" means the solid or semisolid material produced by water and wastewater treatment processes, excluding domestic septage; provided, however, sludge which is disposed of at solid waste facilities permitted by the department shall be considered solid waste and regulated under RSA 149-M.

XVI. "Waste" means industrial waste and other wastes.

² Under the rules of the United States Environmental Protection Agency, 40 CFR 122.26(b)(13), "stormwater" is defined as "stormwater runoff, snow melt runoff, and surface runoff and drainage."