



The State of New Hampshire
Department of Environmental Services



April 7, 2015

The Honorable Chris Christensen, Chair
Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, NH 03301

RE: Amendment to SB 168 *An act relative to the duties of the commissioner of the department of environmental services.*

Dear Chairman Christensen and Members of the Committee:

An amendment has been proposed to SB 168 (a bill concerning the limited lease of submerged lands in the Great Bay estuary for shellfish restoration) that would eliminate the numeric reference to percent saturation of dissolved oxygen content in RSA 485:A-8, II, and clarifies DES rulemaking authority to modify its regulations under Env-Wq 1700. DES supports this bill.

Dissolved oxygen (DO) is the amount of oxygen gas contained in water, and aquatic biota depend on it for respiration. Oxygen saturation is a ratio of the concentration of dissolved oxygen (O₂) in the water to the maximum amount of oxygen that will dissolve in the water at a given temperature and pressure. Since as early as 1947, the 75% saturation standard has been in statute. Beginning in the 1980's many states began moving toward using DO concentration as preferred standard because it directly measures the amount of O₂ available for the biota. The New England states are divided in that some use both criteria in their water quality standards while others use solely concentration.

This amendment would remove the DO saturation criteria from statute and make clear that DES has the ability to set the criteria for both DO saturation and concentration in administrative rule. Presently, the vast majority of NH water quality criterion are defined in rule as opposed to statute. This makes sense because, in the face of scientific advances, EPA frequently changes guidance on these criteria which necessitate changes to state regulations. This change also allows for greater flexibility in applying different criteria for different types of waterbodies (eg. lakes and ponds versus rivers). In addition, this change will facilitate the potential creation of different criteria for different types of waterbodies. DES has had excellent success in interacting with natural resource professionals around the state to craft administrative rules which are both protective of the ecosystem and allow for robust economic activity. We are confident that we can apply the same effective approach as we review the existing DO criteria in Env-Wq 1700.

Thank you for your consideration in this matter. If you have questions or need additional information, please contact Ted Diers (ted.diers@des.nh.gov or 271-3289) or me (Thomas.burack@des.nh.gov or 271-3449).

Sincerely,


for Thomas S. Burack
Commissioner

CC: Sen. Watters, Sen. Fuller Clark, Sen. Prescott, Rep. Bush, Rep. Bixby, Rep. Schroadter