



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

January 8, 2024

The Honorable Judy Aron
Chair, House Environment and Agriculture Committee
Legislative Office Building, Rooms 301-303
Concord, NH 03301

RE: HB 1294, AN ACT relative to prohibiting the state of New Hampshire from enforcing the regulations of the Environmental Protection Agency.

Dear Chair Aron and Members of the Committee:

Thank you for the opportunity to testify on HB 1294. The New Hampshire Department of Environmental Services (NHDES) opposes this bill.

This bill would prohibit NHDES from “the enforcement of, or any collaboration with the Environmental Protection Agency.” This proposed legislation, assuming it were to be adopted, would have far-reaching implications for NHDES and the public it serves. NHDES administers many programs which are linked to EPA programs. In general, these implications fall into three categories: 1) programmatic and regulatory, 2) funding, and 3) logistical.

I) Some examples of programmatic and regulatory implications include:

1. The New Hampshire Safe Drinking Water program has been delegated primacy by EPA. If the state were to lose that primacy, all drinking water requirements and compliance would be regulated by EPA. The timeframes for EPA to act on requests for new wells or upgrades to infrastructure would be much longer than the state process.

2. The Title V Operating Permit Program combines all federal and state air regulations into one document for major sources of air emissions such as power plants, industrial facilities, and waste facilities such as incinerators and landfills. This is a state program that NHDES has been delegated primacy by EPA based on the current regulatory structure of statutes and state rules. If the state were to lose that primacy, all Title V Operating Permits would be issued by EPA. The timeframes for EPA to act on these permits would be significantly longer than the state process.

3. The Clean Air Act assigns primary responsibility for air pollution control to state governments. New Hampshire has fulfilled these requirements through a constantly evolving state implementation plan (SIP) that started in 1970 and continues to be updated as new standards for certain pollutants and state rules are updated. Under the current framework, NHDES works with the regulated community to develop local solutions to environmental issues and then advocates for those solutions to EPA on behalf of the regulated community in order to receive approval of the SIP. If the state were to fail to meet certain obligations

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incorporated in our federally mandated SIP or no longer have a SIP in place, the state could be subject to imposition of a Federal Plan (FP) which would be developed and enforced by EPA and impact regulated sources in NH without NH input.

4. Loss of the delegation of federal programs would also include the enforcement of asbestos regulations and the ability for NHDES to conduct AHERA inspections in schools which would result in the loss of grant funding for that program and potential public health risks. NHDES receives approximately 2,000 notifications of asbestos projects per year. If those notifications and enforcement of asbestos rules were reverted back to EPA, construction projects throughout NH would be negatively impacted. Finally, training and licensing of asbestos contractors is currently done primarily out-of-state with reciprocity for licensing of asbestos contractors between states. The reciprocity aspect could be lost if NH developed asbestos training and licensing requirements different than those imposed by current federal laws.

5. Assuming that the public demanded a similar level of protection from air pollution, writing state level rules to replace the hundreds, if not thousands, of pages of EPA regulation currently incorporated into Air Resources Division rules would require several new staff and take a significant number of years to adopt. Revising the entire SIP to reflect these regulatory changes would be costly and take a number of years to complete and would result in no environmental improvement. In the meantime, sources currently subject to state level regulation and/or enforcement (which is the majority of environmental enforcement cases in the state) would be subject to direct federal regulation with little recourse. Even after adoption of NH statutes and rules, there would be ambiguity as to which entity (EPA or NHDES) would have enforcement authority. This would impact both large and small private sector entities that need permits to operate.

II) Funding implications – With regard to funding implications, NHDES receives over \$150 million per year from the EPA across dozens of programs. This bill, in its proposed prohibition on “collaboration” with EPA would prevent NHDES from receiving those funds. In many cases, such as the Safe Drinking Water program and implementation of the Clean Air Act, NHDES is either delegated or required by the EPA to both regulate and coordinate activities on behalf of the federal government. The loss of these funds would have a huge impact on local governments and drinking water suppliers who depend on funding sources such as the State Revolving Fund (SRF). Over the past 30 years, the State Revolving Loan Fund (SRF) for drinking water and wastewater have loaned out over \$1 billion to local governments. EPA must review and approve the Intended Use Plans for SRF and many other funds on an annual basis. If NHDES were prohibited from seeking that approval, as this bill requires, the SRF would be unavailable to New Hampshire communities to upgrade and modernize their facilities and protect human health. In 2024, the budgeted amount in the SRF federal funds is \$74 million. The need for funding for water and wastewater projects has been calculated at over \$6 billion over the next 10 years, mostly due to aging infrastructure, not regulatory pressure from EPA. Under the Clean Air Act, if the state failed to follow its obligations under the approved SIP, EPA would impose federal sanctions including the potential loss of federal highway funds and additional costly requirements on NH businesses to reduce air emissions. In addition, the annual funding from EPA provides certain staffing as well as the ability to purchase and maintain the ambient air monitoring network which is crucial to

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implementation of existing air regulations both state and federal, as well as providing public health alerts on days with poor air quality.

III) There are many “logistical” interactions between NHDES and EPA that would be affected by this proposed legislation. For example, Wetland Permits are coordinated between NHDES and the Army Corps of Engineers under the Clean Water Act. EPA plays a role in that coordination. If NHDES were prohibited from that activity, the process of getting a wetlands permit would be more complicated, become more expensive and take more time. This would have cost implications for local and county governments that need permits or desire development projects, such as housing.

Finally, NHDES does not concur with the premise of this proposed legislation as stated in section 1, paragraph V and section 2, paragraph III(a) relative to the constitutional authority of the EPA and recommends consultation with the Attorney General. The bill is quite broad and covers “environmental protection”. NHDES and EPA also have many joint programs that are focused on public health, and it is not clear if those programs are also covered by this bill. This bill would directly conflict with certain requirements of RSA 125-C, 125-D, 125-I, 125-J, 125-R, 485-A and potentially numerous other NHDES related statutes that incorporate federal requirements by reference. If state administrative rules are needed to align with federal regulations, NHDES could not meet the 60-day effective timeframe described in the bill.

To sum up, this bill would increase expenditures for both the state and state residents and would cost the state and localities hundreds of millions of dollars in lost revenue. The examples above are a small subset of the implications. It would increase state expenditures due to making up for the federal funds lost.

Thank you again for the opportunity to comment on HB 1294. Should you have questions or need additional information, please feel free to contact NHDES Assistant Commissioner, Adam Crepeau at adam.i.crepeau@des.nh.gov, or 603-271-8806.

Sincerely,



Robert R. Scott
Commissioner

cc: Sponsors of HB 1294: Representatives Granger, Bailey, Burnham, Gerhard, Cushman, Belcher