



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

April 22, 2024

The Honorable Kevin Avard
Chairman, Senate Energy and Natural Resources Committee
State House, Room 103
Concord, NH 03301

RE: HB 1294, AN ACT establishing a committee to study ways to facilitate municipal compliance with Clean Water Act requirements.

Dear Chairman Avard and Members of the Committee:

Thank you for the opportunity to testify on HB 1294. This bill would create a legislative study committee to examine two aspects of surface water quality discharge regulations: 1) delegation of the National Pollutant Discharge System (NPDES) permit from EPA to NHDES, and 2) to identify funding options for communities to comply with NPDES permit requirements. NHDES opposes the first part but sees merit in the second part of this charge.

The NPDES permit program addresses water pollution by regulating point and non-point sources that discharge pollutants to waters of the United States. Created in 1972 by the Clean Water Act, the NPDES permit program is authorized to state governments by EPA to perform many permitting, administrative, and enforcement aspects of the program. New Hampshire is one of three states that are “non-delegated” for NPDES and, as such, EPA writes and enforces the permits. The primary NPDES permits include the following types of discharges: industrial, municipal, agricultural, industrial pretreatment, large vessel, biosolids, and pesticides. State NPDES programs are required to include regulations that are at least as strict as their federal counterparts, regulations that New Hampshire does not have on the books.

The process of authorization includes a public review, comment period, and a public hearing. If EPA disapproves the program, EPA remains the permitting authority for that state. A state may receive authorization for one or more of the NPDES program components. EPA retains authorization for the program components for which a state is not authorized. The EPA reviews state programs every four years.

The delegation process was proposed for study by a commission authorized by HB 342 in 2017. That bill ultimately turned into SB 450 in 2018. The bill was enrolled and a commission met through the fall of 2018. NHDES provided testimony about the financial resources that would be needed if NPDES permitting authority was sought and granted. In other states similar in size to New Hampshire, annual program costs are in the \$2 million - \$3 million range; those costs would be much higher today. Using EPA’s own estimates, NHDES would need to hire 10-14 new full-time employees. It should be noted that

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the NPDES program is complex. The federal rules that govern how the states implement the program are over 90 pages in length. Those rules would have to be integrated into state statutes and rules.

The proposals to advance delegation quickly faded away once the full cost of the program was reported to the General Court. It should be noted that many states are attempting to return their NPDES delegation to EPA. Finally, the Commission also heard testimony that EPA provides oversight over delegated programs, so it is unlikely that NHDES decisions would vary from what EPA would decide.

Relative to the costs of NPDES compliance, this is a challenge for permittees, especially municipal systems. The costs of compliance, however, are dwarfed by the costs of aging infrastructure and the impending challenges associated with the disposal of sewage sludge, which will have significant associated costs to drinking water and wastewater facilities. These aspects will be very expensive and vexing for many years to come. Therefore, NHDES supports the second part of this bill that seeks to identify funding options for municipalities to comply with NPDES permit requirements.

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.j.crepeau@des.nh.gov, or 603-271-8806, or Ted Diers, NHDES Assistant Water Division Director at ted.diers@des.nh.gov, or 603-271-2951.

Sincerely,



Robert R. Scott
Commissioner

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