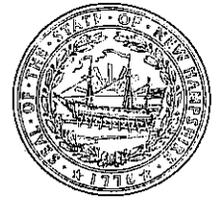




The State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 9, 2010

Honorable Judith T. Spang, Chair  
Resources, Recreation and Development Committee  
Legislative Office Building Room #305  
Concord, NH 03301

**RE: House Bill 1298, establishing a statewide septic system commission**

Dear Chairman Spang:

Thank you for the opportunity to comment on HB 1298, which would establish a statewide septic system commission. The DES does not support the bill as proposed for the reasons described below. However, we appreciate and support the goal of the sponsors to improve water quality in New Hampshire's lakes for future generations.

HB 1298 proposes to create a statewide septic system commission that focuses on the evaluation of existing septic systems as well as new septic system technologies for potential use in the Lakes Region. By inference, the focus of the commission would be on phosphorus impacts to lakes and potential phosphorus removal treatment technologies, since the primary impacts of septic systems on lakes, except under gross failure conditions, are related to the propagation of algae and cyanobacteria caused by elevated phosphorus concentrations (which are in part derived from septic system discharges to surface water through groundwater). We believe that this focus is too narrow. If a statewide septic system commission is to be formed, we recommend that the duties be broadened because, while phosphorus is the primary nutrient of concern for lakes, nitrogen is the concern for estuarine environments. The water quality in New Hampshire's Great Bay Estuary is currently impaired in part due to nitrogen discharges from many sources, including septic systems. For the proposed commission to fully consider statewide septic system nutrient issues, the scope of the proposed investigation would need to be expanded to include consideration of surface water impacts and treatment technologies for both fresh waters (phosphorus) and estuaries (nitrogen).

DES is concerned that the proposed commission makeup in HB 1298 does not include the right combination of scientific and technical expertise to successfully undertake the proposed investigation. We are also concerned that the creation of this commission would place a burden on DES to provide substantial technical and administrative support at a time when DES staff resources are already strained. Typically, state commissions bring together broad groups of stakeholders with diverse perspectives and technical knowledge to assess an issue and develop consensus recommendations, often for future legislation. To properly evaluate new septic system treatment technologies, we believe that the membership of the proposed commission should include, at a minimum, environmental engineers, septic system designers and installers, and academicians with expertise in wastewater treatment. And, if the intent is

to evaluate the environmental impacts of nutrient discharges to surface waters as well as treatment technologies (the bill is ambiguous in this regard and should be clarified), the commission membership would need to be further broadened to include scientists with expertise in nutrient impacts on surface water quality.

Finally, please note that DES has a very successful program to regulate the design and installation of septic systems that includes some special provisions for lakefront properties. For example, under RSA 485-A:39, I, and Env-Wq 1025, Waterfront Property Site Assessment Study, prior to the execution of a purchase and sale agreement for any developed waterfront property, a site assessment study is required to determine whether the individual sewage disposal system on the site is in compliance with DES standards and, if the system is in failure, a new system must be constructed that meets current design standards. DES also evaluates and approves new and innovative wastewater treatment and subsurface disposal technologies for individual sewage disposal systems under Env-Wq 1024, Innovative/Alternative Technology. Approval is based on system performance relative to conventional stone and pipe systems. Many of the technologies that DES has approved include smaller leaching field sizes, innovative septic tank designs or additional treatment for use near surface waters. However, there are no existing criteria for approval of technologies that provide "exceptional" phosphorus or nitrogen removal or criteria for when these technologies might be required for lots where, for example, the discharge is to a nutrient-impaired watershed. These are topics on which a commission such as proposed by HB 1298, but with expanded membership and more clearly defined duties, could provide useful recommendations to the Legislature and DES.

Thank you again for the opportunity to comment. If you have any questions or need additional information, please do not hesitate to call Rene Pelletier at 271-2951 or me at 271-2958.

Sincerely,



Thomas S. Burack  
Commissioner

cc: Representative Beaulieu  
Representative Long  
Representative Spaulding  
Representative Wheeler