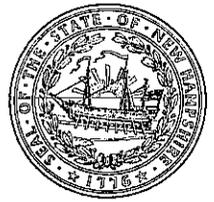




The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

April 8, 2010

The Honorable Martha Fuller Clark, Chairman, and Members  
Senate Energy, Environment and Economic Development Committee  
Legislative Office Building, Room 102  
Concord, NH 03301

**Re: HB 1542-FN relative to repealing nitrogen oxide emitting generation source requirements**

Dear Chairman Fuller Clark and Members of the Committee:

The Department of Environmental Services (DES) is pleased to offer testimony in support of House Bill 1542-FN, which would repeal the Nitrogen Oxide (NOx)-Emitting Generation Source requirements, effective January 2014. House Bill 1542-FN also amends RSA 125-J:13, II (c), to provide that DES can use the funds for the time it spends administering the requirements in the current law until such time as it is repealed.

The provisions in RSA 125-J that apply to NOx-emitting generation sources were adopted in 1999 (Chapter 343). In enacting the law, the General Court found that: "due to high retail electric rates in the state that businesses had sought to control their electric costs by use of internal combustion engine electricity generators that run on fossil fuels." As stated in the purpose section, the General Court also found that: "[t]hese generators have increased nitrogen oxide (NOx) emissions and use of additional units has the future potential to substantially increase such emissions and to increase electric rates for customers purchasing electricity from sources subject to more stringent NOx regulations."

As currently defined, there are 5 categories of generators that are exempt from the law. These exemptions apply to emergency generators, generators that provide start-up or temporary power to a facility that generates electric power for use or sale, portable generators, generators at facilities that emit less than 5 tons of NOx per calendar year, and generators located in an area where electrical power is not reasonably or, considering the type of power needed by the user, reliably available. In addition, the law provided that NOx-emitting generation sources that were in existence as of July 1, 1999 and had an air permit from DES were exempt from the requirements of the law until November 18, 2007 and sources that had applied for an air permit as of May 1, 1999, but had not been issued a permit as of July 1, 1999, were exempt from the requirements of the law until November 18, 2005.

The law then established a program whereby sources that were defined as NOx-Emitting Generation Sources were required to pay up to \$1,000 for every ton of NOx

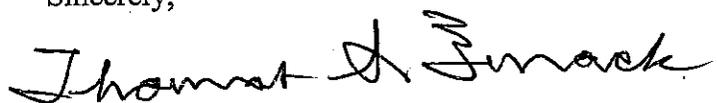
emissions above 7 pounds of NOx emitted per megawatt-hour of electricity produced. The law also established a non-lapsing, revolving special fund and set forth uses for the money deposited into the fund. To date, no money from the fund has been expended and there is currently a net balance of approximately \$90,000 in the fund.

During the past 10 years since the law went into effect, EPA has adopted a more stringent set of standards for comparable new generators. For example, when the law went into effect, NOx emissions from these generators were approximately 35 pounds per megawatt-hour of electricity produced. Under the current federal rules, as of 2006, new generators can emit no more than 14 pounds of NOx per megawatt-hour of electricity produced and by 2014 new generators will be required to emit no more than 1.5 pounds of NOx per megawatt-hour of electricity produced. The current fleet of devices will eventually be replaced with these new, lower emitting generators. Given that the federal requirements for the installation of new devices in 2014 will be more stringent than the current state law, no further devices will qualify for payment into this fund.

Further, due to a number of factors, not the least of which includes the number and nature of exemptions in the law and the complexity of calculating the actual emissions that are subject to the fee provisions, DES has found that there is a significant administrative burden associated with implementing the law. Accordingly, the provisions of RSA 125-J that apply to these generators has a decreasing environmental benefit with a high administrative burden for DES. Under the bill, DES will be allowed to recover its administrative cost until such time that the program is repealed in 2014. Any funds remaining at that time will be transferred to the special account established in RSA 125-J:5, IX for the acquisition and generation of Emission Reduction Credits (ERCs) for future economic development.

Thank you for the opportunity to provide testimony. Should you have further questions or need additional information, please feel free to contact Robert R. Scott, Director, Air Resources Division (271-1088, [robert.scott@des.nh.gov](mailto:robert.scott@des.nh.gov)) or Craig A. Wright, Assistant Director, Air Resources Division (271-6791, [craig.wright@des.nh.gov](mailto:craig.wright@des.nh.gov)).

Sincerely,



Thomas S. Burack  
Commissioner

cc: HB 1542-FN Sponsors