The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner

March 11, 2010

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

Re: SB 370, relative to sewage disposal systems

Dear Senator Fuller Clark:

Thank you for the opportunity to comment on SB 370, relative to sewage disposal systems. The Department of Environmental Services has concerns about the bill as introduced, but believes an amendment which addresses those concerns will be proposed.

As introduced, SB 370 proposes to add language to RSA 485-A to allow the expansion of a structure without approval from the Department if the expansion does not increase the load on a sewage disposal system. The Department agrees that no approval for a new septic system is necessary for an expansion if the loading does not increase, but notes that many factors must be considered in determining whether loading will be increased, and that other programs implemented by the Department may apply to require approval even if loading does not increase. The Department is thus concerned that the language could easily be misinterpreted, which could lead to inadvertent violations and associated problems.

The Department has worked with the prime sponsor of the bill, Senator Odell, to craft an amendment that more clearly articulates what types of expansion, relocation, or replacement of a structure are allowed without approval of a new septic system. The Department believes the language of the amendment will provide an accurate and understandable framework for people who wish to expand, relocate, or replace an existing structure.

As part of the amendment, the Department also has drafted language to address a separate issue relating to permit renewals for permitted septic system designers and installers. Under the existing language of RSA 485-A:35, I, and RSA 485-A:36, I, such permits expire on December 31 of each year but are renewable "upon proper application, payment of a biennial fee of $80, and documentation of compliance with the continuing education requirement..." The statute does not clearly direct the Department as to how to regulate permitted designers and installers who fail to apply to renew their permits in a timely manner and/or who fail to complete the required amount of continuing education. Under RSA 541-A:30, I, an existing license (which is defined to include permits and approvals of any kind) that expires by operation of law (as do designer and installer permits) continues in existence after its termination date only if "a timely and sufficient application has been made" for renewal. Thus, under the existing language of RSA 485-A:35 and 36, the most logical conclusion is that any designer or installer who does not file a renewal application with proof of completing the required continuing education simply loses his or her permit as of December 31, and must apply as for a new permit, including taking the examination.

DES Web site: www.des.nh.gov
P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095
Telephone: (603) 271-3501 • Fax: (603) 271-6683 • TDD Access: Relay NH 1-800-735-2964

To address this issue, the language proposed in the amendment establishes a process designed to encourage permit holders to renew in a timely way, but allows a grace period of up to 90 days in which a permit can be renewed. The Department believes this process will help to ensure that individuals who design and install septic systems in New Hampshire are maintaining their permits appropriately.

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,

Michael Walls, Ass't. Comm.

for Thomas S. Burack
Commissioner

cc: Senator Odell
Senator D'Allesandro
Senator Houde
Senator Fuller Clark
Representative Foose
Representative Hawkins
Representative Sad
Representative Patricia McMahon

1 New Paragraph; Sewage Disposal Systems; Approval to Increase Load on a Sewage Disposal System. Amend RSA 485-A:38 by inserting after paragraph II the following new paragraph:

II-a. No construction or operational approval shall be required from the department prior to expanding, relocating, or replacing any structure that does not increase the load on a sewage disposal system, as long as all of the following conditions are met:

(a) The lot is served by a sewage disposal system that received construction and operational approval from the department within 20 years of the date of the issuance of a building permit for the proposed expansion, relocation, or replacement;

(b) No waivers were granted in the construction or operational approval to any requirements for total wastewater lot loading, depth to groundwater, or horizontal distances to surface water, water supply systems or very poorly drained soils;

(c) For lots that do not meet current standards for wastewater loading, no expansion of the structure's footprint is proposed; and

(d) The proposed expansion, relocation, or replacement complies with the requirements of the comprehensive shoreland protection act, RSA 483-B.

2 Amended paragraphs; Permit Eligibility; Exemption; Expiration of Septic Designer Permit; Continuing Education Requirement. Amend RSA 485-A:35, I, by revising paragraphs (a) and (b) as follows:

I. (a) All applications, plans, and specifications submitted in accordance with this chapter for subsurface sewage or waste disposal systems shall be prepared and signed by the [~~person~~] ***individual*** who is directly responsible for them and who has a permit issued by the department to perform the work. The department shall issue a permit to any [~~person~~] ***individual*** who applies to the department, [~~and~~] pays a fee of $80, and [~~who has demonstrated~~] ***demonstrates*** a sound working knowledge of the procedures and practices required in the site evaluation, design, and operation of subsurface sewage or waste disposal systems. The department shall require an oral or written examination or both to determine who may qualify for a permit. Permits shall be issued from January 1 and shall expire December 31 of every other year, ***subject to the grace periods specified in subparagraphs (c) and (d)***. Permits shall be renewable upon proper application, payment of a biennial ***permit*** fee of $80, and documentation of compliance with the continuing education requirement of subparagraph (b). A permit issued to any [~~person~~] ***individual*** may be suspended, revoked or not renewed only for just cause and after the permit holder has had a full opportunity to be heard by the department. An appeal from a decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 541. All fees shall be deposited in the subsurface systems fund established in RSA 485-A:30, I-b.

(b) Permitted designers shall complete a minimum of [~~3 hours annually~~] ***6 hours biennially*** of continuing education approved by the department.

3 New paragraph. Septic Designer Permit Renewal, Suspension, Reinstatement. Amend RSA 485-A:35, I, by inserting paragraphs (c) through (e) as follows:

(c) A permitted designer who fails to file a complete application for renewal, the biennial permit fee, and documentation that the required continuing education has been completed with the department prior to the expiration of the permit shall pay an additional late renewal fee of $80 with the renewal application, biennial permit fee, and documentation, provided the fees, renewal application, and documentation are filed with the department within 30 days of the permit expiration date.

(d) If the renewal application, biennial permit fee, late renewal fee, and documentation are not filed within 30 days of the permit expiration date, the permit shall be deemed suspended. The permit holder may request reinstatement of the permit within 60 days of the suspension by submitting a complete application for renewal, the biennial permit fee specified in subparagraph (a), the late renewal fee specified in subparagraph (c), documentation that the required continuing education has been completed, and a reinstatement fee of $80. If

the individual does not request reinstatement within 60 days of the suspension, the permit shall be deemed void. Any individual whose permit has become void who wishes to obtain a designer's permit shall apply as for a new permit pursuant to subparagraph (a).

(e) No individual whose permit has been suspended or voided pursuant to subparagraph (d) shall submit any design to the department for a subsurface sewage or waste disposal system. Submittal of such a design after the designer's permit has been suspended or voided pursuant to subparagraph (d) shall constitute a violation of the provisions of this subdivision that is subject to the penalties specified in RSA 485-A:43.

4 Amended paragraphs; System Installer Permit; Expiration of Septic Installer Permit; Continuing Education Requirement. Amend RSA 485-A:36, I, by revising paragraphs (a) and (b) as follows:

I. (a) No [~~person~~] ***individual*** shall engage in the business of installing subsurface sewage or waste disposal systems under this subdivision without first obtaining an installer's permit from the department. The permit holder shall be responsible for installing the subsurface sewage or waste disposal system in ***strict*** accordance with the [~~intent of the~~] approved plan. The department shall issue an installer's permit to any [~~person~~] ***individual*** who submits an application provided by the department, pays a fee of $80 and demonstrates a sound working knowledge of RSA 485-A:29-35 and the ability to read approved waste disposal plans. The department shall require an oral or written examination or both to determine who may qualify for an installer's permit. [~~Individuals who have been actively engaged in the business of installing systems for at least 12 months prior to January 1, 1980, shall not be required to submit to such examination, but shall be issued a permit upon filing an application and paying the initial fee, if application is made before June 30, 1980.~~] Permits shall be issued from January 1 and shall expire December 31 of every other year. Permits shall be renewable upon proper application, payment of a biennial ***permit*** fee of $80, and documentation of compliance with the continuing education requirement of subparagraph (b). The installer's permit may be suspended, revoked or not renewed for just cause, including, but not limited to, the installation of waste disposal systems in violation of this subdivision or the refusal by a permit holder to correct defective work. The department shall not suspend, revoke or refuse to renew a permit except for just cause until the permit holder has had an opportunity to be heard by the department. An appeal from such decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 21-O:14. All fees shall be deposited in the subsurface systems fund established in RSA 485-A:30, I-b.

(b) Permitted installers shall complete a minimum of [~~3 hours annually~~] ***6 hours biennially*** of continuing education approved by the department.

5 New paragraph. Septic Installer Permit Renewal, Suspension, Reinstatement. Amend RSA 485-A:36, I, by inserting paragraphs (c) through (e) as follows:

(c) A permitted installer who fails to file a complete application for renewal, the biennial permit fee, and documentation that the required continuing education has been completed with the department prior to the expiration of the permit shall pay an additional late renewal fee of $80 with the renewal application, biennial permit fee, and documentation, provided the fees, renewal application, and documentation are filed with the department within 30 days of the permit expiration date.

(d) If the renewal application, biennial permit fee, late renewal fee, and documentation are not filed within 30 days of the permit expiration date, the permit shall be deemed suspended. The permit holder may request reinstatement of the permit within 60 days of the suspension by submitting a complete application for renewal, the biennial permit fee specified in subparagraph (a), the late renewal fee specified in subparagraph (c), documentation that the required continuing education has been completed, and a reinstatement fee of $80. If the individual does not request reinstatement within 60 days of the suspension, the permit shall be deemed void. Any individual whose permit has become void who wishes to obtain an installer's permit shall apply as for a new permit pursuant to subparagraph (a).

(e) No individual whose permit has been suspended or voided pursuant to subparagraph (d) shall install any subsurface sewage or waste disposal system. Installation of such a system after the installer's permit has been suspended or voided pursuant to subparagraph (d) shall constitute a violation of the provisions of this subdivision that is subject to the penalties specified in RSA 485-A:43.