



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 4, 2010

The Honorable Martha Fuller Clark, Chairman
Energy, Environment, & Economic Development Committee
Legislative Office Building, Room 102
Concord, New Hampshire 03301

Re: SB 480, relative to appeals of decisions by the department of environmental services

Dear Chairman Fuller Clark and members of the Committee:

Thank you for the opportunity to testify on SB 480, relative to appeals of decisions by the Department of Environmental Services. SB 480 proposes to amend various provisions of RSA 21-O, the enabling legislation for DES and its related Councils, to adjust the role of the Councils in administrative appeals of DES decisions. The bill proposes to require persons who are qualified to conduct administrative hearings be appointed from the Civil Bureau of the Attorney General's Office to serve as hearing officers for such administrative appeals. DES supports this bill.

Under the current statute, four environmental councils hear appeals from DES's permitting decisions and administrative orders; the Wetlands Council, the Water Council, the Waste Management Council and the Air Resources Council. Members are appointed to represent state agencies, the public at large and particular industrial, academic, commercial, recreational, or conservation interests. (A list of Council members and the interest(s) represented is attached.) While the knowledge and experience of the members can be invaluable when considering substantive issues, for the most part council members are not experienced or well-versed in the conduct of adjudicative hearings or in writing appeal decisions. As a result, many cases are not heard or decided promptly -- which raises serious due process concerns.

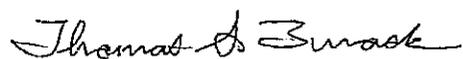
Case data for all four councils show that, of the 23 appeals that were filed in the first half of 2009, 2 cases were withdrawn, 2 cases are on hold at the request of the parties, 2 cases were dismissed for lack of standing, and 1 case was summarily denied, leaving 16 cases still active. Of those 16 cases, prehearing conferences (PHCs) have been held in 7, PHCs have been scheduled but not yet held in 6, and PHCs have not yet been scheduled in 3. Of the 7 cases for which PHCs have been held, a hearing has been held in only 1. Of the 4 cases awaiting decisions (2 dismissed, 1 denied, and 1 heard), no decisions have been issued. Of the 15 appeals filed in the last half of 2009, 14 cases are still active (1 withdrawn); of those 14, PHCs have been scheduled in 2, no PHCs or hearings have been held, and no decisions have been issued.

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Under the proposed bill, the Councils would continue to hear all appeals and would retain the authority to decide all issues of fact, but the legal issues and the preparation of the actual decisions would be the responsibility of an Assistant Attorney General who is trained and educated specifically to have such expertise. In this way, the Council members will continue to be responsible for the substantive aspects/outcomes of appeals, where their expertise is most useful -- while the burden of ensuring that the proceedings meet all legal requirements will rest with someone who is well qualified to bear it.

Thank you again for the opportunity to comment on this bill. If you have any questions, please call me or Gretchen Hamel of my staff at 271-3137.

Sincerely,



Thomas S. Burack
Commissioner

cc: Senator Merrill
Senator Cilley
Senator Laskey
Senator Bradley
Representative Kappler
Representative Spang

Member	Interest Represented
Air Resources Council (RSA 21-O:11; 11 members; no vacancies)	
Robert Duval, Chair	Public Interest
David Collins, Vice Chair	[Fuel] Oil Industry
William Smagula	Steam Power Generating Industry
Debra I. Hale	Natural Gas Industry
Steven Walker	Manufacturing Component of Industry
Raymond R. Donald	Municipal Government
Robert Hickey, M.D.	Public Interest/Licensed Practicing Physician
Terry Callum	Public Interest/Recreation
Georgia Murray	Public Interest/Environmental Interests
J. Ryan Bielagus	Public Interest
Linda Garrish Thomas	Public Interest
Waste Management Council (RSA 21-O:9; 13 members; 1 vacancy)	
G. Bradley Richards, Chair	Public Interest
Ronald Allard, Vice-Chair	Private Industries that Generate Hazardous Waste
Charles Connell	Municipal Official
Stephen R. Crean	Elected Municipal Official
Elaine M. Lauterborn	Elected Municipal Official
Michael B. Blayney	Public Health Expert
Duncan Watson	Local Conservation Commission Member
Nancy E. Kinner	Associate Prof. Env'l Sciences or Sanitary Engineering
David J. Tooley	Private Solid Waste Management Industry
Arthur J. Cunningham	Licensed Sanitary or Environmental Engineer
Carl L. Quiram	Municipal Public Works Field
<i>Vacant</i>	<i>Business or Financial Community</i>
Mike Durfor	Community that Recycles or Recovers Solid Waste
Water Council (RSA 21-O:7; 16 members; no vacancies)	
John F. Bridges, Chair	Public
Nancy E. Christie, Vice Chair	Public
James Varotsis	Industrial
Christopher Rawnsley	Industrial
Ray S. Cowan	Vacation Homes/Recreation
Stanley Rastallis	Agriculture
Stephen J. Densberger	Water Works
Robert S. Phillips	Septage Haulers
Joel Harrington	Statewide Nonprofit Conservation or Env'l Organization
Malcolm R. Butler	Wastewater Treatment Plant Operators
Bruce Barnard	Granite State Designers & Installers
Nicholas Toumpas, Commissioner (by designee)	NH Dept. of Health and Human Services
Glenn Normandeau, Commissioner (by designee)	NH Fish & Game
Ted Austin, Director of Parks (by designee)	NH Div. of Parks & Recreation
Joanne Morin, Director (by designee)	Office of Energy & Planning
John Barthelmes, Commissioner (by designee)	NH Dept. of Safety
Wetlands Council (RSA 21-O:5-a; 14 members; 2 vacancies)	
Lawrence E. Morse, Chair	Natural Resource Scientist
Dennis Lydon, Vice Chair	[Non-Marine] Construction Industry
Glenn Normandeau, Executive Director (by designee)	NH Fish & Game
George Campbell, Commissioner (by designee)	NH Dept. of Transportation
George Bald, Commissioner (by designee)	NH Dept. of Resources and Economic Development
Joanne Morin, Director (by designee)	NH Office of Energy & Planning
Lorraine Merrill, Commissioner (by designee)	NH Dept. of Agriculture, Markets & Foods
John J. Barthelmes, Commissioner (by designee)	NH Dept. of Safety
Paul Dionne	Municipal Conservation Commission
David A. Thompson	County Conservation Districts
Lawrence Ballin	Elected Municipal Official
<i>Vacant</i>	<i>Marine Industry</i>
<i>Vacant</i>	<i>Environmental Protection and Resource Management</i>
George Kimball	Farm/Forest Landowner