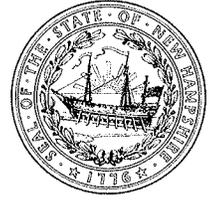




The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

April 28, 2011

The Honorable Bob Odell, Chairman  
Energy and Natural Resources Committee  
Legislative Office Building, Room 102  
Concord, NH 03301

**RE: HB 205-FN, relative to notice to owners of upstream dams.**

Dear Chairman Odell:

Thank you for the opportunity to comment on HB 205-FN. The bill, as amended, would modify a 2009 amendment to RSA 676:4 that requires local planning boards to send notification of proposed developments near rivers and streams and downstream of a dam to the owner of the dam and to the Department of Environmental Services (DES) Dam Bureau. This notification is intended to inform these parties so that there is opportunity to perform an evaluation to consider whether the proposed new structures downstream of the dam would increase the public safety risk and the hazard classification of the dam. DES supports this bill, but recommends that it be amended further to simplify the notification process for both the planning boards and DES.

After enactment of the 2009 amendment to RSA 676:4, some municipal officials expressed concern regarding the difficulty of complying with the new notification requirements because the information on the locations and contact information for dams, which may be upstream of a proposed development, was not readily accessible. To address this concern, DES has been working with the bill sponsors and representatives of the municipalities in simplifying the notification requirements. The results of some of those discussions are reflected in the amended bill. Under the amended bill, the planning board will notify only the DES Dam Bureau, not the dam owner, if any structure of the proposed development is within 500 feet of a river or stream and downstream of a dam. It will be the responsibility of the Dam Bureau to notify the owner of the upstream dam if the proposed development is an area that could be inundated in the event of failure of the dam.

After the amended bill was approved by the House, representatives of the municipalities had additional discussions with DES. Based on those discussions, DES believes that the notification process could be more simplified for both the municipalities and DES if the bill were amended further to better define when and how the Dam Bureau needs to be notified. The representatives of the municipalities are concerned that, under the amended bill, "rivers and streams" are not defined. In addition, they are concerned that, under the amended bill, they still have to determine if a proposed development is downstream of a dam, and information on the locations of the dams in the state is not readily accessible. To address these concerns, DES recommends that the bill be amended further to require notification if any structure of the proposed development is within 500 feet of surface waters of the state as defined in RSA 485-A:2 XIV, since failure of an upstream dam could also affect developments on lakes or ponds, not

DES Web site: [www.des.nh.gov](http://www.des.nh.gov)

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2982 • TDD Access: Relay NH 1-800-735-2964

just rivers and streams. With this change, the responsibility of determining whether there is a dam that is upstream of the proposed development would be the responsibility of DES, not the planning board. DES also recommends that the bill be amended so that the notification from the planning board includes the latitude and longitude of the proposed development. With this information the Dam Bureau can more easily locate a dam that may be upstream, determine if failure of the dam could inundate structures within the proposed development, and inform the municipality and the dam owner, accordingly.

To provide some background of the importance of this notification requirement, there are currently 2,618 active dams in New Hampshire. Of these, 841 are classified as hazardous dams because the flooding produced by their failure would result in loss of life or property damage downstream. The hazard classification of a dam is based on the extent of development downstream within the potentially inundated area.

Of the 841 hazardous dams, 141 are classified as High Hazard Dams because their failure would inundate houses or other occupied structures downstream and likely cause loss of life. One hundred and sixty (160) dams are classified as Significant Hazard Dams because failure would cause major property damage downstream, and 540 are classified as Low Hazard Dams because failure would cause minor property damage downstream, such as damage to a town or city road. The remaining 1,777 active dams are classified as Non-Menace Dams. Because of the lack of development downstream, the failure or poor operation of these dams would not cause loss of life or property damage downstream.

New Hampshire's dam safety regulations establish performance standards for dams based on hazard classification. For example, an existing Low Hazard Dam must be able to safely pass a flood with an expected recurrence interval of once in 50 years, also known as the 50-year flood. However, an existing High Hazard Dam must be able to pass 250% of the 100-year flood. In addition, the Annual Dam Registration Fee that a dam owner must pay is based on the hazard classification of the dam. The owner of a High Hazard Dam must pay \$1,500 per year to fund the annual inspection that DES performs on the dam. However, the Annual Dam Registration Fee for a Low Hazard Dam, which DES inspects every five years, is \$400, and there is no Annual Dam Registration Fee assessed for Non-Menace Dams.

Until enactment of the 2009 amendment to RSA 676:4, DES would review the hazard classification of a dam only during its scheduled inspection, which is once every year for a High Hazard Dam, once every two years for a Significant Hazard Dam and once every five years for a Low Hazard Dam. However, because of limitations on resources, DES would only periodically visit Non-Menace Dams, approximately once every 10 years, to make sure that no development has taken place downstream that would change the hazard classification.

With this requirement to notify DES of any proposed development, which may be downstream of a dam, the hazard classifications established by DES for the dams in the state can be kept more current, and the dam owner can be aware of the effect of the proposed downstream development on the dam's hazard classification before the development is constructed. In

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addition, the municipality and the developer would know if the proposed development is located in an area that could be inundated if the upstream dam were to fail. Because of these important benefits and protections, DES supports HB205 with amendments to further simplify the notification process for both the municipalities in the state and DES.

Thank you for the opportunity to comment on this bill. Please call either Jim Gallagher at 271-1961, or me at 271-2958, if you have any questions or need additional information.

Very truly yours,

  
for Thomas S. Burack  
Commissioner

cc: Representative Betsey L. Patten  
Representative Priscilla P. Lockwood