



The State of New Hampshire

DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 24, 2011

The Honorable Gene Chandler, Chairman  
Public Works and Highways Committee  
Legislative Office Building, Room 201  
Concord, New Hampshire 03301

**Re: HB 621, relative to the authority of the Department of Transportation**

Dear Chairman Chandler:

Thank you for the opportunity to comment on HB 621, which would provide for an excavation and dredging permit by notification for applicants proposing to construct and maintain structures in jurisdictional streams and wetlands. The Department of Environmental Services (DES) strongly opposes this bill.

HB 621 would result in a much less stringent state wetlands permitting process for stream crossing structures, such as culverts and bridges, than under the federal permitting process that now exists in New Hampshire and that is implemented by the United States Army Corps of Engineers for federally-regulated wetlands. As a result, the benefits for permit applicants of the Army Corps of Engineers State Programmatic General Permit (SPGP) would likely be invalidated for most projects. The SPGP is a permit issued by the US Army Corps of Engineers to the State of New Hampshire to enable streamlined permitting processes. Under the SPGP, DES performs reviews for most projects with wetlands impacts of less than three acres, and then issues permits that cover both the state and federal requirements. In order for the SPGP to be in effect, DES regulations and state statutes need to be as stringent as federal requirements, which is now the case.

If the state program were to become less stringent, individual permit applications to the Corps of Engineers would be required for all proposed impacts in federally-regulated wetlands where a state permit would be less stringent. Individual permits from the Army Corps of Engineers typically require at least 6 to 9 months as compared to less than 60 days for wetlands permits from DES for major projects with complete applications and cost considerably more to obtain than state-issued permits. Therefore, this would result in both substantial delays for applicants to receive wetlands permits as well as substantial additional costs. Specific concerns with the bill are described below.

Section 4 of HB 621 would insert a new paragraph, RSA 482-A:3,XVI, into RSA 482-A, Fill and Dredge of Wetlands, to make all new stream crossing projects, as well as replacement and maintenance projects for existing structures, eligible for permit by notification. The proposed paragraph would define all of these projects as "minimum impact activities" irrespective of project size, owner or whether the impact is new or for maintenance. Existing DES administrative rules establish a permit by notification process for routine roadway and railway maintenance activities, and this process has worked well for maintenance of culverts and other similar work performed by properly trained personnel. However, new construction and replacement projects that are not replacement in kind require a wetlands permit, with the exact requirements based on the nature and size of the project. This would create a conflict with the SPGP requirements. HB 621 would also

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allow any person or political subdivision to perform maintenance activities, rather than trained personnel as specified in the rules. In addition, the information required as proposed by RSA 482-A XVI (b) is much less than under current administrative rules and notification to the local governing body is not required. Please also note that Section 3 of the bill references a paragraph XVI(c), which does not appear in Section 4.

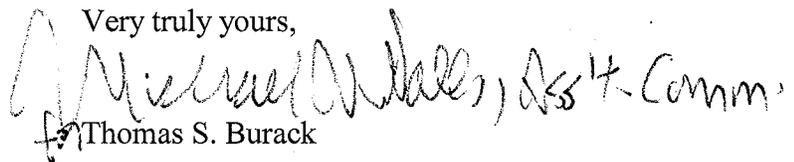
The proposed new paragraph, RSA 482-A, XVII, in Section 4 would authorize the installation of culverts or bridges for single family building lots through a notification process based on a notification that would contain only the name of the applicant, type of structure, and location of the structure identified on a USGS map. Under the proposed language, a permit by notification would be required to be approved by DES without regard for the size of the structure, the nature of the crossing, the location relative to property lines or size of the stream that would be crossed. This proposed language would also be in conflict with the SPGP.

Sections 2, 3, 5 and 6 would result in a substantial modification to the wetlands and shorelands review fund, the existing non-lapsing fund that helps support the wetlands program. Wetlands permit application filing fees would still be appropriated to, and expended by, the DES. However, at the end of the fiscal year, the account would lapse and any remaining funds would be turned over to the general fund. The revenue stream from wetlands permit application fees has historically been highly variable both annually due to the state of the economy and seasonally with the construction cycle in New Hampshire. As a result, both annual and monthly revenues are unpredictable. Without the buffer provided by the existing dedicated non-lapsing fund, downward adjustments in staffing, beyond those that have already occurred temporarily in the current recession economy, would be required over time. This would also likely cause DES to not be able to fulfill its responsibilities under the SPGP or to timely process applications.

In conclusion, HB 621 would put in jeopardy the existing Army Corps of Engineers SPGP for New Hampshire which currently operates well in conjunction with the existing state wetlands program. This benefit should not be put at risk by a change in the permitting process that makes New Hampshire's program less stringent for certain projects in a way that would cause unnecessary delays and costs to wetlands permit applicants. Therefore, we strongly oppose HB 621 and ask that it be found inexpedient to legislate.

Thank you for this opportunity to comment. Please call Collis Adams at 271-4054, or me at 271-2958, if you have any questions or need additional information.

Very truly yours,

  
Thomas S. Burack

cc: Representatives Hill, Coffey, Kreis, Chandler, Keane and Foose  
Senator Bradley