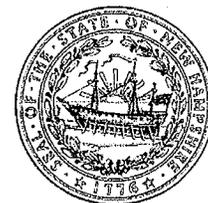


The State of New Hampshire  
**Department of Environmental Services**

**Thomas S. Burack, Commissioner**



*Celebrating 25 years of protecting  
New Hampshire's environment.*

January 19, 2012

The Honorable James Garrity, Chairman  
N.H. House of Representatives  
Science, Technology, and Energy Committee  
Legislative Office Building, Room 304  
Concord, New Hampshire 03301

**Re: House Bill 1214, banning corn-based ethanol as an additive to gasoline sold in New Hampshire.**

Dear Chairman Garrity and Members of the Committee:

Thank you for the opportunity to comment on behalf of the Department of Environmental Services (DES) regarding House Bill 1214, which seeks to ban the manufacture of corn-based ethanol for use in gasoline and the sale of gasoline containing corn-based ethanol in New Hampshire. While DES understands the concerns relative to increasing use of corn to produce ethanol, the department is opposed to this bill due to potential conflict with federal law and potential for this action to result in supply disruption and/or price volatility in the state.

The nation's fuel supply is regulated under the Clean Air Act Amendments of 1990 (CAA) which, in Section 211(c)(4), place certain limitations on a state's legal authority to control the composition of fuel offered for sale in a state. Specifically, Section 211(c)(4) states:

*"Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine"*

The potential conflict of a NH corn-ethanol ban with federal CAA requirements could put NH petroleum suppliers in a difficult position, forcing them to choose between complying with federal law or with state law. In addition to fuel supply disruptions and price volatility, this could also result in costly and protracted litigation brought by either the industry or the federal government, or both, to resolve the conflict.

Motor vehicle fuel is also subject to federal regulatory requirements of the Renewable Fuels Standard (RFS), established by the 2005 Energy Policy Act and modified by the 2007 Energy Independence and Security Act (EISA). The RFS mandated inclusion of a certain annual volume of renewable fuel in gasoline. EISA created RFS2, which expanded the initial RFS to include diesel as well as gasoline and increased the volumetric requirements. RFS2 also made two additional, very significant changes to the original standard. First, it differentiated between categories of renewable fuel, including cellulosic and advanced biofuels, and set separate volume

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

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095  
(603) 271-3503 • TDD Access: Relay NH 1-800-735-2964

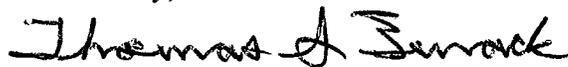
requirements for each one. RFS2 also required EPA to apply lifecycle greenhouse gas (GHG) performance threshold standards to ensure that each category of renewable fuel emits fewer greenhouse gases than the petroleum fuel it replaces. The lifecycle analysis is inclusive of energy and emissions inputs for fuel and feedstock production, indirect land use impacts, distribution, and use, as well as economic models that predict changes in agricultural markets. Through this mechanism RFS2 creates a limited market incentive for conventional corn ethanol and a significant market incentive for cellulosic and advanced biofuels.

A recent (December 29, 2011) Federal District Court ruling found restrictions established under California's Low Carbon Fuel Standard, which effectively blocked the sale of mid-west corn ethanol in the state, violates the US Constitution's Commerce Clause. The ruling found that the standard sought to control conduct beyond the boundary of the state and thus violated the Commerce Clause's "strict scrutiny" test because it "directly regulates or discriminates against" interstate commerce. While this case will most likely be appealed all the way to the U.S. Supreme Court, it does suggest that a targeted ban such as that proposed by HB 1214 would likely face similar challenges.

In past testimony on similar bills the department has noted the potential for supply or price disruptions to New Hampshire motorists from a ban on corn ethanol due to lack of a gasoline terminal in the state and the relatively low volume of fuel used here. HB 1214 seeks to address this issue by including a contingency clause whereby the ban would only take effect if two other New England states were to also adopt similar legislation. Given the above noted court ruling it appears very unlikely that such a contingency would be met until such time as there has been a final ruling by the U.S. Supreme Court, an action that is probably several years in the future.

Thank you for the opportunity to provide testimony on this bill. 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 Rebecca Ohler, Transportation and Energy Programs Manager (271-6749, [rebecca.ohler@des.nh.gov](mailto:rebecca.ohler@des.nh.gov)).

Sincerely,



Thomas S. Burack  
Commissioner

cc: HB 374 sponsors