



The State of New Hampshire
Department of Environmental Service

Thomas S. Burack, Commissioner



*Celebrating 25 Years of Protecting
New Hampshire's Environment
January 10, 2012*

The Honorable Andrew Renzullo
Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, NH 03301

RE: HB 1415 - relative to exceptions for proposed sewage waste disposal systems

Dear Chairman Renzullo:

Thank you for the opportunity to comment on HB 1415, an act relative to exceptions for proposed sewage waste disposal systems. The Department of Environmental Services (DES) opposes HB 1415 for the reasons described below.

HB 1415 would modify current standards and approval procedures for the repair or replacement of existing septic systems that have failed. This would result in a step back in the design, installation and permitting requirements for failed systems. We strongly believe that sites with failed systems should be subject to at least the same level of evaluation as sites where new systems are being installed. Failed systems are located in areas where wastewater has failed to be properly treated and distributed and, therefore, thorough assessment is appropriate to ensure the replacement system will not also fail promptly due to site soil conditions, system design or other factors. To do otherwise would result in greater risk to public health and the environment and reduced assurances for current and future homeowners that onsite wastewater disposal systems that replace failed systems are acceptable and will provide appropriate treatment and disposal.

Septic system failures cause significant public health and environmental issues. For example, when sewage breaks out in yards where children play, the potential for direct contact with disease-causing bacteria such as *Escherichia coli* (i.e., *E. coli*) and other pathogens is created that can result in serious illnesses and even deaths. Failed systems can also cause bacteria contamination of nearby drinking water wells. And failed systems can also create environmental problems such as when sewage breaks out and flows to surface waters, thereby causing direct contamination by bacteria and other contaminants including nitrogen and phosphorus, which can trigger algae blooms and other water quality issues. Due to these risks and potential impacts, it makes sense that replacements for failed systems should be treated the same as new systems in terms of design, installation and state approval requirements.

Design, installation and approval under current standards also provides consumer protections that would be substantially diminished if HB 1415 were enacted. Under the program as it operates now, current and future homeowners can have the confidence that failed system replacement septic systems have been designed properly and installed to current standards. Our experience has also been that owners of properties where systems have been "replaced in kind" prior to program changes that became effective in 2011 may encounter difficulties in obtaining financing from financial institutions that do not occur at properties that have DES-approved systems. The existing requirements provide reasonable assurances that would no longer exist were HB 1415 to be enacted.

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HB 1415 specifically seeks to reverse a rule amendment to Env-Wq 1000, Subdivision and Individual Sewage Disposal Design Rules, that became effective on April 16, 2011. Briefly, the amended rule requires that individual sewage disposal systems (ISDS) for repair or replacement systems be designed, installed and inspected under the same standards as new systems, including those requiring an application review by DES. Under the revised process, DES is currently processing all replacement system applications within 5 business days and usually within 2 business days because DES treats these applications as our highest priority for review. If HB 1415 were enacted, most replacements for failed systems covered by the amended rule could be replaced in kind by a permitted installer after a simple test pit evaluation for water table elevation by a permitted designer, simple notification to DES and no "as built" inspection by DES. This would result in a considerably lower standard for design, installation and oversight. Moreover, it would effectively deny property owners the opportunity to consider the use of newer, innovative wastewater treatment options that may have lower installation costs and require a smaller footprint or less soil mounding.

Please note that the 2011 amendments to Env-Wq 1000 were the result of a two-year effort by DES that included outreach to a number of stakeholders. For example, meetings were held with members of the Granite State Designers and Installers Association (GSDI), a presentation was made to the Water Council and the required formal public hearing was held. Several parts of the proposed rule amendment were adjusted in response to stakeholder and public comments. After finalization, a hearing was held before the Joint Legislative Committee on Administrative Rules (JLCAR), at which only one person objected, and the rule amendment was subsequently formally adopted. This rule was developed and adopted through a fully transparent process and received support from the public and regulated community.

Finally, please note, while inadvertently not requested by the Office of Legislative Services, HB 1415 also requires a fiscal note since it would have a direct fiscal impact on DES. If HB 1415 were enacted, DES estimates that 600 to 700 failed systems would not require permitting, resulting in a total annual revenue loss of between \$180,000 to \$210,000 and two or three staff reductions in the Subsurface Systems Bureau, where staffing levels are already low due to the slow housing construction market.

Thank you for this opportunity to comment on this bill. Please feel free to call Rene Pelletier, Assistant Water Division Director at 271-2951 or me at 271-2958, if you have any questions or need additional information.

Very truly yours,



Thomas S. Burack
Commissioner

cc: Representative Warden
Senators Gallus and De Blois