



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner



*Celebrating 25 Years of Protecting
New Hampshire's Environment*
April 12, 2012

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

Re: HB 1636, relative to the extension of fill and dredge in wetlands permits.

Dear Chairman Odell:

Thank you for the opportunity to comment on HB 1636, relative to the extension of fill and dredge in wetlands permits. It is our understanding that the intent of the sponsor of HB 1636 is to simplify the permitting requirements for repair or replacement of shoreline structures regularly damaged by storms or ice where previous damage had been repaired under an existing DES wetlands permit issued under RSA 482-A. The Department of Environmental Services (DES) supports HB 1636 in concept but we are concerned that the proposed language could be interpreted too broadly. In the attachment to this letter, we have proposed an amendment that would address our concerns.

Under the existing permitting process, if a shoreline structure has been damaged by a storm or ice and requires repair, the property owner would typically apply to DES for a Permit-by-Notification (PBN) each time that repair or replacement is required. Each PBN application includes a Permit by Notification Form and a fee of \$200 established by statute. PBNs typically become effective immediately after a conservation commission review period, which can be either 10 or 25 days depending on the circumstances. As a condition of a PBN, a completed *Confirmation of Project Completion* form must be submitted to DES within 10 calendar days following completion of the work.

Please note that DES also frequently issues emergency authorizations immediately for damaged structures when damage is caused by major storm events, such as hurricanes or ice storms. Emergency authorizations require submission of information and an application for an after-the-fact permit to document the work that occurred to repair storm damage in order to ensure compliance with existing statutory requirements.

If HB 1636 were to be enacted with our proposed revisions, the original PBN or other wetlands permit issued by DES would remain in effect for 10 years for shoreline structures shown to be regularly damaged by storm events. Qualifying shoreline structures could be repaired or replaced as necessary in the future with certain conditions to ensure consistency with the original permit. The repair or replacement work would be required to occur within the original footprint of the shoreline structure and to comply with all other permit conditions. And, the work would be required to be reported to DES just as for the original permitted work. A 10-year permit life would also be consistent with the length of United

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States Army Corps of Engineers permits for structures which also require federal permits. In conclusion, we believe that our proposed revisions would serve to streamline the existing process for repair of shoreline structures that are subject to regular damage while assuring compliance with the existing statutory requirements for wetlands permits.

Thank you for this opportunity to comment. Please contact Rene Pelletier at 271-2951 or me at 271-2958, if you have any questions or need additional information.

Very truly yours,



Thomas S. Burack
Commissioner

ATTACHMENT

cc: Representative Moran

ATTACHMENT TO DES COMMISSIONER THOMAS BURACK LETTER OF TESTIMONY
DATED APRIL 12, 2012 ON HB 1636 TO SENATOR BOB ODELL

DES Recommendations¹ for Proposed Amendments HB 1636

1 Excavating and Dredging Permit; Certain Exemptions. Amend RSA 482-A:3, XIV-a to read as follows:

XIV-a. (a) [AH] *Subject to subparagraph (b)*, permits issued pursuant to this chapter shall be valid for a period of 5 years. Requests for extensions of such permits may be made to the department. The department shall grant one extension of up to 5 additional years, provided the applicant demonstrates all of the following:

~~[(a)]~~ (1) The permit for which extension is sought has not been revoked or suspended without reinstatement.

~~[(b)]~~ (2) Extension would not violate a condition of law or rule.

~~[(c)]~~ (3) The project is proceeding towards completion in accordance with plans and other documentation referenced by the permit.

~~[(d)]~~ (4) The applicant proposes reasonable mitigation measures to protect the public waters of the state from deterioration during the period of extension.

~~(b) No permit issued to repair, replace, or shore up property that is regularly affected by storms and ice, including but not limited to docks, sea walls, access to ramps and stairs, protective rip rap, and stone walls, in order to maintain the integrity and safety of such property, shall expire as long as it is not in violation of subparagraphs (a)(1) and (a)(2).~~

(b) Any permit issued to repair or replace shoreline structures to maintain the integrity and safety of these structures including but not limited to docks, sea walls, breakwaters, riprap, access ramps and stairs, that are damaged by storms or ice, shall expire 10 years from the date the permit was issued so long as any work performed after the initial permitted work complies with the following:

(1) The work is not in violation of the original permit or subparagraphs (a)(1) through (a)(4) of this section.

(2) All structures are repaired or replaced to the original permitted, location and configuration.

(3) All significant work is reported to the department in accordance with the reporting requirements for the original permit.

2 Effective Date. This act shall take effect 60 days after its passage.

¹ Note: DES Recommendations are provided in bold italics that are underlined.