



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

*Celebrating 25 Years of Protecting
New Hampshire's Environment*



January 26, 2012

The Honorable Bob Odell, Chair
Energy and Natural Resources Committee
Legislative Office Building, Room 102
Concord, New Hampshire 03301

Subject: SB 263, Relative to certified compliant products certified as such by the department of environmental services.

Dear Chairman Odell:

Thank you for the opportunity to comment on Senate Bill 263. This bill would require that the Department of Environmental Services create, maintain and make available to the public a list of certified compliant products that have met criteria set in statute and administrative rules administered by the department. DES is opposed to this bill because it would impose a significant and costly burden on the Department, would adversely impact New Hampshire businesses, and would result in potentially inferior protection of public health and the environment. While the purpose and scope of this legislation is not entirely clear to DES, we believe that it would have unintended adverse consequences. This testimony will highlight a several concerns DES has with the bill and the possible impact that this legislation would have if enacted into law.

The bill calls for DES to create, maintain, and make available to the public a list of certified compliant products. The product list would extend over all functions of the department including: water pollution control, water supply protection, waste disposal, dam maintenance and inspection, flood control and air pollution control. Each of these functional areas would include numerous products. For example, water pollution control products could include: sewer pipe, septic tanks, manholes, wastewater treatment equipment and wastewater treatment chemicals.

First, DES believes that the provisions of this bill would be very costly to administer. There are several DES programs whose rules require that products meet certain performance standards or specifications. The standards are set to ensure that specific levels of environmental protection are achieved. In order for DES to individually review and certify compliance of every product purporting to meet the standards, it would need to create and hire a number of new full time positions including some requiring advanced technical degrees. Although DES was not asked to prepare a fiscal note on this bill, a preliminary estimate is that the cost could easily be in the range of \$500,000 to \$1 million and possibly higher. The certification process would require staff to review documents prepared by a manufacturer attesting that their product meets DES's criteria. In some instances further testing may be required either by an independent third party or by DES directly to confirm claims of the applicant. This effort would be time consuming and represent a cost to DES, but the bill has no provisions for DES to recover its costs in

Honorable Bob Odell, Chair
Energy and Natural Resources Committee
SB 263
January 26, 2012
Page 2 of 2

performing product certification. As an example of the extent of certification necessary, the Air Resources Division has certain specifications regarding low VOC paints and coatings. Under this bill, every paint product sold by every manufacturer in the state would require certification.

Second, this bill would likely result in adverse impacts to the New Hampshire business community. Under the current system, manufacturers and distributors of products are empowered to determine their compliance with DES performance standards, to the extent they have been established, and, in most cases, can introduce those products into commerce without waiting for a review or approval by DES. Under this bill, users of products would likely come to rely on the certified compliant product list, and products awaiting certification by DES would probably not be purchased.

Third, the extent of the product list intended by the bill is unclear. The bill calls for the list of compliant products to extend over all of the functions of the department. This could mean that the list of compliant products would include sewer pipe, wastewater treatment chemicals, water treatment systems, synthetic landfill liner material, dam maintenance equipment and paint products, among others. This list could come to include, quite literally, hundreds of thousands of products.

Lastly, DES believes that this bill could ultimately result in decreased environmental protection. The bill is unclear as to whether or not only certified products could be used in the state, or if only certified products could be used on DES funded projects, or if the certified product list is only intended as a guide to consumers. Currently, any product that meets specifications established by DES could be used in the state. By requiring DES to certify all products, development of new and innovative product designs would likely be discouraged because of the delay in obtaining DES certification. In addition, DES's limited resources would be diverted from vital environmental protection activities to performing product certifications.

In summary, DES is concerned that SB 263 would be too costly to administer, and would have unintended adverse consequences on New Hampshire businesses and environmental protection. For these reasons, DES is opposed to SB 263. Thank you again for the opportunity to comment, and for your careful consideration of this bill. If you have any questions or require additional information please contact me at 271-2958.

Sincerely,



Thomas S. Burack
Commissioner

cc: Sen. John T. Gallus
Sen. Sharon M. Carson
Sen. Nancy F. Stiles
Rep. Evalyn S. Merrick
Rep. Candace C. W. Bouchard
Rep. Marc D. Tremblay