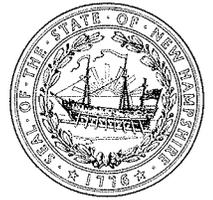


The State of New Hampshire  
**Department of Environmental Services**

**Thomas S. Burack, Commissioner**



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

January 19, 2012

The Honorable Bob Odell,  
Energy and Natural Resources Committee  
Legislative Office Building, Room 102

RE: SB 265 An Act relative to the definition of stormwater

Dear Senator Odell:

Thank you for the opportunity to comment on Senate Bill 265 which would define stormwater in RSA 485-A, Water Pollution and Waste Disposal. The Department of Environmental Services (DES) supports SB 265.

The Commission to Study the Issue of Stormwater Management (the "Stormwater Commission") was established in 2009 by enactment of House Bill 1295 (Chapter 71, Laws of 2008). The Stormwater Commission studied issues relating to stormwater, including its effects on water quality, water quantity and water-related habitats and also evaluated existing state, federal and local regulations. The Commission's final report, entitled "Final Report on HB 1295, Chapter 71, Laws of 2008", was presented to Governor Lynch and the House and Senate leadership by memorandum dated November 1, 2010 from the Commission Chair, Mr. David Cedarholm.

If enacted, SB 265 would implement the first recommendation of the Stormwater Commission by amending state law to define the term "stormwater" and clarify the definition of "other wastes." Enactment of a stormwater definition would fill a gap that needs to be addressed in response to the recognition of stormwater contamination as an important environmental issue in New Hampshire and at the national level. In New Hampshire, pollutants carried by stormwater that are a concern include bacteria that contaminate water at beaches, phosphorus that triggers toxic cyanobacteria blooms in lakes, and nitrogen that causes water quality problems in our coastal waters, such as the Great Bay Estuary.

If SB 265 were enacted, the proposed "stormwater" definition would complement existing definitions in RSA 485-A, which include definitions for "sewage", "industrial waste", "other wastes", "waste" and "sludge"<sup>1</sup>. A clear distinction in statute between stormwater and these other potential water pollution sources would be useful because the regulatory requirements and solutions are typically different. For example, sewage and industrial wastes both typically require treatment by sophisticated processes to meet very explicit and stringent federal permitting requirements before discharge to surface waters. In contrast, stormwater management will typically require the implementation of best management practices (BMPs) that may include public education and outreach, investigations for illicit discharges, management of construction practices and some structural measures to reduce pollution. BMP implementation requirements are typically less complex technically than to treat wastewater.

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

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The proposed New Hampshire stormwater definition would also be consistent with the federal definition.<sup>2</sup> The Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Stormwater Program regulates stormwater discharges from three different sources: municipal separate storm sewer systems (MS4s), construction activities, and industrial activities. The EPA typically requires implementation of BMPs, such as discussed above, that depend on the nature of the activity and are the same as New Hampshire would require. In this context, consistency between the state and federal agencies would be beneficial to New Hampshire's regulated community. This would also help us to be consistent with the regulatory approach embodied in SB 142 for integrated permitting, which was recently unanimously supported by your committee.

Thank you for this opportunity to comment on this bill. Please feel free to call Ted Diers at 271-3289 or me at 271-2958, if you have any questions or need additional information.

Sincerely,



Thomas S. Burack  
Commissioner

cc. Senator Merrill  
Senator Stiles  
Representative Spang

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<sup>1</sup>RSA 485-A:2 Definitions. –

VI. "Industrial waste" means any liquid, gaseous or solid waste substance resulting from any process of industry, manufacturing trade or business or from development of any natural resources.

VIII. "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, ashes, offal, oil, tar, chemicals and other substances other than sewage or industrial wastes, and any other substance harmful to human, animal, fish or aquatic life.

X "Sewage" means the water-carried waste products from buildings, public or private, together with such groundwater infiltration and surface water as may be present.

XI-a. "Sludge" means the solid or semisolid material produced by water and wastewater treatment processes, excluding domestic septage; provided, however, sludge which is disposed of at solid waste facilities permitted by the department shall be considered solid waste and regulated under RSA 149-M.

XVI. "Waste" means industrial waste and other wastes.

<sup>2</sup> Under the rules of the United States Environmental Protection Agency, 40 CFR 122.26(b)(13), "stormwater" is defined as "stormwater runoff, snow melt runoff, and surface runoff and drainage."