



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, Chairman
N.H. Senate
Energy and Natural Resources Committee
Legislative Office Building, Room 102
Concord, New Hampshire 03301

Re: Senate Joint Resolution 1, requesting the governor to enter into an anti-ethanol compact with other northeastern states.

Dear Chairman Odell and Members of the Committee:

Thank you for the opportunity to provide information on behalf of the Department of Environmental Services (DES) regarding Senate Joint Resolution (SJR) 1, which requests that the governor enter into an anti-ethanol compact with other Northeastern states. DES understands the concerns expressed by this resolution and supports the concept of working regionally to address any issues associated with the State's fuel supply. Several discreet issues are raised in SJR 1 and the department offers information below for consideration by the committee relevant to these issues.

SJR 1 requests that the governor enter into an anti-ethanol "compact" with other Northeastern states. It is important to recognize that the term "compact" has a very specific definition under the "Compact Clause" of the United States Constitution, including a requirement that such arrangements between or among states receive the consent of Congress. Accordingly, New Hampshire has worked regionally to address and solve issues of regional impact on numerous occasions without taking the step of forming a formal "compact". The department suggests the requirement to form a compact be reconsidered to avoid the burden of seeking congressional approval for this effort. The General Court should also be aware of potential Commerce Clause restrictions (Article 1, Section 8) that may impact the State's ability to restrict fuel movement across state lines.

SJR 1 raises numerous concerns regarding the costs and impacts of corn-based ethanol. The department recently provided testimony on House Bill 1214 seeking to ban corn-based ethanol in New Hampshire and would like to share current information with the committee. In particular, the committee may be pleased to learn that on December 31, 2011, two subsidies for U.S. produced ethanol were allowed to expire. The first was the Volume Ethanol Excise Tax Credit that gave gasoline suppliers \$0.45 per gallon tax credit for ethanol blended with gasoline. The second was a \$0.54 per gallon tariff on imported ethanol that, in effect, supported the domestic corn-ethanol industry.

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SJR 1 also comments on the large energy requirement for producing ethanol. DES agrees that some sources of ethanol, such as corn-based ethanol, can entail significant energy consumption and that any evaluation of a fuel source should include a comprehensive review of the impacts of producing and using the fuel. Numerous analyses of land use changes forced by increased use of crops for fuel have been conducted. In the scientific community there remains a significant degree of uncertainty of the exact impact, both on energy use and food prices, of crop-based fuels. However, DES notes that the emerging sources of cellulosic ethanol fuel have far lower energy demands, are based on non-food crops and therefore do not impact crop prices, and could potentially utilize renewable resources from the Northeast. At this time the economically viable corn-based ethanol may serve as a bridge to this more advanced fuel. A regional effort to evaluate such potential and associated impacts is entirely appropriate.

Any state or regional action must operate within the confines of existing federal statutes, including the Clean Air Act Amendments of 1990 (CAA) as well as the Renewable Fuels Standard (RFS) established under the Energy Policy Act (EPACT) of 2005 and revised under the 2007 Energy Independence and Security Act (EISA), and referred to as RFS2. The CAA places certain limitations on a state's legal authority to control the composition of fuel offered for sale in a state, primarily allowing changes only as a means of addressing air quality needs. RFS2, the primary driver for ethanol use in the U.S., mandates inclusion of a certain annual volume of renewable fuel in gasoline and differentiates between cellulosic/advanced biofuels and conventional crop-based fuels. RFS2 establishes 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, as well as separate volume requirements for the conventional and cellulosic ethanol, RFS2 creates a limited market incentive for conventional corn ethanol and a significant market incentive for cellulosic and advanced biofuels.

SJR 1 proposes that "states banding together...would send a message to the United States Environmental Protection Agency, pressuring such agency to abandon the ethanol mandate". The ethanol mandate was established by Congress through RFS2, not by the EPA and, therefore, EPA cannot change the requirement simply due to pressure from states. Likewise, the "banding together to...send a message to gasoline refiners and distributors, pressuring them to supply such states with ethanol free gas" could result in their non-compliance with RFS2 requirements, thus potentially subjecting them to penalties which could drive up the cost of fuel in the region.

EPACT also contains a "boutique fuels" provision that limits the number of fuel blends allowed nationally in an effort to reduce the number of different fuels required around the country and, thus, increase the fungibility of fuels. Under EPACT the EPA cannot approve a State Implementation Plan for a proposed boutique fuel unless that fuel already exists in another state or Petroleum Administration for Defense District (PADD), the new fuel will not cause any supply disruptions, and the new fuel is necessary for a state to achieve National Ambient Air Quality Standards. In summary, use of ethanol in the State's fuel supply is largely driven by EPACT and EISA requirements as established by the U.S. Congress.

DES is not aware of potential action by any Northeast states at this time to restrict the use of ethanol. In fact, many states are actively seeking opportunities to develop and expand

cellulosic ethanol in their state as a means of economic development. DES agrees that any efforts along these lines should be undertaken on a regional or national basis and should take into account existing federal requirements.

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) or Rebecca Ohler, Transportation and Energy Programs Manager (271-6749, rebecca.ohler@des.nh.gov).

Sincerely,



Thomas S. Burack
Commissioner

cc: SJR 1 sponsors