



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

March 13, 2013

The Honorable Russell Prescott, Chairman
Energy and Natural Resources Committee
Legislative Office Building, Room 101
Concord, NH 03301

RE: SB 167 – Relative to groundwater.

Dear Chairman Prescott:

Thank you for this opportunity to comment on SB 167, which would amend RSA 485-C:20 by removing the preemption in state law that prevents municipalities from regulating large groundwater withdrawals. The Department of Environmental Services (DES) opposes this legislation.

RSA 485-C, the Groundwater Protection Act was initially enacted in 1991 and has been amended a number of times. The permitting requirements for groundwater withdrawals became effective on August 1, 1998 for withdrawals of greater than 57,600 gallons in a 24-hour period. A primary purpose for the enactment of this program was to protect surrounding water users and resources from being negatively impacted from new large groundwater withdrawals. We believe that this has been effectively accomplished over the last 15 years. And, as described below, improvements to RSA 485-C have been made incrementally over time.

The Groundwater Commission, originally established by the Legislature in 2003, studied many issues concerning New Hampshire's groundwater withdrawal permitting process from 2003 to 2010. In part, the Commission found that New Hampshire's new groundwater withdrawal permitting program was (and still is) among the most stringent among the "Eastern Water Law" states. The Commission further found that the role of New Hampshire municipalities in permitting new large groundwater withdrawals is more extensive than in all of the other eastern states with similar programs. The Commission's final report was issued in November 2010. All the reports of the Groundwater Commission are available at www.nhgroundwater.com.

The Groundwater Commission in part concluded that the State of New Hampshire, as the ultimate steward of the groundwater resource, should be the entity that makes permitting decisions about proposed withdrawals and that these permits should be issued by DES based on objective criteria established in statute and rule. In arriving at this conclusion, the Commission considered many aspects of this issue but especially the fact that groundwater resource management is ultimately a watershed-wide and statewide issue, rather than a local issue. In simple terms, water supply aquifers do not recognize municipal boundaries. Consequently, the Commission concluded that municipalities should not have authority to establish different, additional regulatory processes for new groundwater withdrawals already covered by RSA 485-C.

DES Web site: www.des.nh.gov

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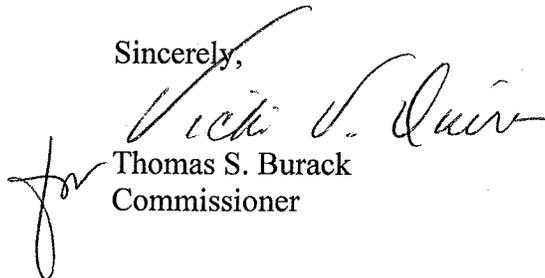
RSA 485-C has been amended a number of times to improve the process for permitting large groundwater withdrawals. These changes have specifically provided for an increased role for municipalities in New Hampshire's large groundwater withdrawal permitting process. For example, the following were enacted in 2005 and 2006:

- 1) DES is now required to conduct an additional public hearing and provide an additional written comment period after all the testing and other technical work have been completed for a groundwater withdrawal. This second opportunity for comment is in addition to an earlier public hearing after the initial application has been filed with DES.
- 2) DES and the applicant are now required to proactively ensure a higher level of active information sharing with municipalities. As a result, DES and permit applicants are required to proactively provide municipalities with copies of all submittals and correspondences.
- 3) The permit decision appeals process was changed to include the opportunity for initial appeals to the Water Council prior to appeal to the Supreme Court. This change was in part to lower the cost for initial legal challenges to permit decisions for municipalities and citizens.

Since 1998, DES has permitted twenty-nine large groundwater withdrawals and is in the process of reviewing seven other applications. Feedback received from applicants, municipal officials, and others involved in the permitting process demonstrates that this process has been fair and effective. Environmental monitoring data collected as condition of the large groundwater withdrawal permits and the continued viability of private drinking water supply wells located near the permitted large groundwater withdrawals further demonstrate that the existing statutes and rules have been adequate to prevent adverse impacts from occurring.

Thank you, again, for this opportunity to comment, and please call either me at 271-3503 or Sarah Pillsbury at 271- 1168 if you have any questions or need additional information.

Sincerely,



Thomas S. Burack
Commissioner

cc: Senator Reagan