



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

January 30, 2013

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

RE: SB 64, relative to public informational meetings on dams

Dear Chairman Prescott:

Thank you for the opportunity to testify on SB 64, which would modify the requirements under RSA 482:13 for notification and a public information meeting whenever a dam is to be breached or its water level lowered, except for the normal scheduled lowering of the water level.

Under the current statute, a dam owner is required to provide 30 days advance notification to the local governing body in the cities and towns in which the dam or water body is located in the event of any unscheduled lowering of the water level or breach of the dam. Thereafter, the local governing body is required to hold a public information meeting within 15 days of receiving the notification and to publish notice of this meeting 7 days in advance of the meeting. Under the bill as written, the local governing body is eliminated from this notification process. Instead, the dam owner would notify the Department of Environmental Services (DES), and DES would be responsible for conducting the public information meeting, while the dam owner would be responsible for publishing the public notice of the meeting.

DES agrees that the local governing body should not be solely responsible for conducting such public information meeting or for publishing the public notice of those meeting. However, those requirements should be the responsibility of the dam owner, not DES, except in the case where the DES is the owner of the dam. The dam owner, whether it is the state or a municipality or a private party, has the most knowledge about the reasons for lowering the water levels and the details regarding the depth and duration of the lowering. Thus, the owner is in the best position to respond to any concerns raised by the public.

DES also believes that the local governing body should still receive advance notification of an unscheduled lowering of a water body because such an event could have a significant impact on many of its citizens. The dam owner should also be required to notify DES at the same time, so DES is prepared to respond to any inquiries it receives.

In addition, if the dam owner is going to be responsible for the public information meeting, the timing of the meeting should no longer be based on when the local governing body receives notice of the

action, but, instead, should be based on a sufficient time in advance of the action. A suggested amendment to the bill, which reflects these recommendations, is attached.

The current requirements in RSA 482:13 were established by enactment of Chapter 215 of the Laws of 1985 (HB 312). That bill was recommended by the Legislative Dam Management Review Committee, a former statutory committee made up of four members of the House Resources, Recreation and Development Committee and four members of a predecessor committee to the Senate Energy and Natural Resources Committee. In its 1984 report recommending the bill, the Committee indicated that the requirement was needed "to alleviate the public hardship that results when the level of a water body is unexpectedly lowered. There are instances of private wells going dry when the water levels in lakes have been lowered. If the surrounding property owners had been notified, other arrangements could have been made; or, at the very least, private property owners would have had fair warning".

In the 28 years since the notification procedures specified in RSA 482:13 have been effect, they have generally worked well. Typically, the public information meeting has been held as an agenda item at a board of selectmen's meeting. However, the procedures could be improved by shifting the burden of the public information meeting and public notice from the local governing body to the dam owner. The local governing body should still continue to receive its advance notification of an unscheduled lowering of a water body and should cooperate with the dam owner in providing a forum for the dam owner to conduct the public information meeting. Therefore, DES respectfully suggests that the bill be amended as indicated in the attached suggested amendment.

Thank you for the opportunity to comment on this bill. Please contact Jim Gallagher, Dam Bureau Administrator, at 271-1961 or james.gallagher@des.nh.gov, or me at 271-2958 or thomas.burack@des.nh.gov if you have any questions or need additional information.

Sincerely,



Thomas S. Burack
Commissioner

Attachment

cc: Senator Jeff Woodburn

DEPARTMENT OF ENVIRONMENTAL SERVICES

PROPOSED AMENDMENT TO SB 64

Proposed modified language in red

AN ACT relative to public informational meetings on dams.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Erection and Inspection of Dams. Amend RSA 482:13 to read as follows:

482:13 Public Informational Meeting Required.

I. No owner shall breach any dam, lower any water body for the repair of any dam, or cause any significant lowering of the water level in a pond or lake without first notifying the local governing body in the cities or towns where said dam or water body is located *and the department* at least 30 days prior to any action specified above. The provisions of this section shall not apply to dams impounding bodies of water less than 10 acres or to the normal scheduled lowering of water levels each fall, the normal lowering of a water body by the exercise of water rights, the lowering of water levels by the department of environmental services to protect instream flows under RSA 483:9-c, or the lowering of water levels in any emergency situation.

II. The *dam owner, in cooperation with the local governing body of each of the cities or towns, department* shall hold a public informational meeting ~~within~~ *at least 15 days prior to any action specified above* of receipt of the notice from the dam owner. The [~~local governing body~~] *dam owner* shall publish a notice of the public informational meeting in a newspaper of general circulation in the county in which the action shall occur at least 7 days before the time set for said meeting. The public notice and informational meeting required by this section shall be in addition to and not in place of other provisions of law pertaining to dams.

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