



The State of New Hampshire
Department of Environmental Services



Clark B. Freise, Assistant Commissioner

February 14, 2017

The Honorable John O'Connor,
Chair, House Environment and Agriculture Committee
Legislative Office Building, Room 303
Concord, NH 03301

RE: HB342, AN ACT establishing a commission to study the transition of certain regulatory authority to the department of environmental services from the Environmental Protection Agency.

Dear Chair O'Connor and Members of the Committee:

Thank you for the opportunity to comment on HB342. This bill would create a commission to study requesting the delegation of one portion of the National Pollutant Discharge Elimination System (NPDES) from the Environmental Protection Agency (EPA) to the New Hampshire Department of Environmental Services (NHDES). The NHDES supports this legislation and provides the following information and suggestions to assist the committee in its considerations.

The NPDES permit program addresses water pollution by regulating point and non-point sources that discharge pollutants to waters of the United States. Created in 1972 by the Clean Water Act, the NPDES permit program is authorized to state governments by EPA to perform many permitting, administrative, and enforcement aspects of the program. New Hampshire is one of four states that are "non-delegated" for NPDES and, as such, EPA writes and enforces the permits. The primary NPDES permits include the following types of discharges: industrial, municipal, agricultural, industrial pretreatment, large vessel, biosolids, and pesticides. State NPDES programs are required to include regulations that are at least as strict as their Federal counterparts.

In order for a state to become delegated with the authority to write and enforce these permits, the submission of the following items is needed:

- a letter from the Governor requesting review and approval;
- a Memorandum of Agreement (MOA);
- a program description;
- a statement of legal authority (also known as an "Attorney General's Statement"); and
- the underlying state laws and regulations.

The process of authorization includes a public review, comment period, and a public hearing. If EPA disapproves the program, EPA remains the permitting authority for that state. A state may receive authorization for one or more of the NPDES program components. EPA retains

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authorization for the program components for which a state is not authorized. The EPA reviews state programs every four years.

HB342 would authorize a commission to examine only one part of the NPDES program, the municipal separate storm sewer system (MS4) permit. This permit applies to 60 communities in the state, 16 of which presently have waivers. Recent discussions in the New Hampshire Senate, as part of SB121, have revolved around MS4 and other discharge permits. In addition, the bill is silent regarding the specific aspects of the program that would need to be examined, such as costs. NHDES is highly concerned about the financial resources that would be needed if NPDES permitting authority was sought and granted. In other states similar in size to New Hampshire, annual program costs are in the \$2 million - \$3 million range. It should be noted that the NPDES program is complex. The federal rules that govern how the states implement the program are over 90 pages in length. Those rules would have to be integrated into state statutes and rules.

To address these issues, NHDES suggests two changes. First, in order to better align with SB121, that the reference to MS4 be stricken to cover all components of the program. And, second, that the study requirements (page 1 lines 21-26) include a list of specific items, including, but not limited to:

- Program components to be delegated;
- Costs, staffing and funding options;
- Statutory changes needed;
- Rule changes needed; and,
- Delegation process and timing.

Thank you again for the opportunity to comment on this proposed legislation. If you have questions or need additional information, please contact Gene Forbes, Water Division Director (Eugene.forbes@des.nh.gov or 271-0677) or Rene Pelletier, Assistant Water Division Director (rene.pelletier@des.nh.gov or 271-2951).

Sincerely,



Clark B. Freise
Assistant Commissioner

cc: Representatives Gould, Graham and Danielson