



The State of New Hampshire
Department of Environmental Services



Clark B. Freise, Assistant Commissioner

January 31, 2017

The Honorable Kevin Avard
Chair, Energy and Natural Resources Committee
State House, Room 103
Concord, NH 03301

RE: SB 118 An Act relative to impervious surfaces under the shoreland water quality protection act

Dear Chair Avard and Members of the Committee:

Thank you for the opportunity to testify on SB 118. This bill would amend the definition of "impervious surface" as used in the context of RSA 483-B to specify that grass shall not be considered an impervious surface. The New Hampshire Department of Environmental Services (NHDES) has concerns about this bill.

RSA 483-B, the Shoreland Water Quality Protection Act, establishes stormwater requirements for those projects occurring within protected shorelands that exceed certain impervious surface coverage thresholds. For implementation purposes, RSA 483-B:4 VII-b defines "impervious surface" as "any modified surface that cannot effectively absorb or infiltrate water." It goes on to specify various structures that are generally considered to be impervious surfaces such as roofs, decks, patios, driveways, parking areas, and walkways but also allows that these structures may incorporate a construction method that effectively absorbs or infiltrates water and thus be removed from the calculation of impervious coverage. Removal of these structures from the impervious surface calculation through the implementation of pervious construction techniques reduces, and can even eliminate, the need for stormwater management on site.

Currently grass, and any surface vegetated with grass, is not considered to be impervious. It can be argued that SB 118 simply reaffirms the fact that grassed surfaces are pervious and should thus have no negative effect on the clarity of the statute. Therefore, NHDES does not oppose this legislation. However, NHDES has concerns that modifying the definition of impervious surfaces in a manner that begins to call out and define those surfaces that are instead pervious may lead to unnecessary questions and confusion. We anticipate that this change will result in future amendment requests to specify additional surfaces also considered pervious, to allay concerns about the status of each specific surface type. The Department believes it to be in the interest of clarity and the general public to simply define what an impervious surface is, with the implicit understanding that everything else shall be considered pervious.

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Thank you again for the opportunity to comment on SB 118. Should you have further questions or need additional information, please feel free to contact either Rene Pelletier, Assistant Director, Water Division (Rene.Pelletier@des.nh.gov, 271-2951) or Darlene Forst, Shoreland Section Supervisor, Land Resource Management Programs (Darlene.Forst@des.nh.gov, 271-4067).

Sincerely,

Clark B. Freise
Assistant Commissioner

cc: Sponsors of SB 118: Senators Sanborn, Avard, French, Fuller Clark, Giuda, Gray, Innis, Kahn, Reagan, Ward, and Watters