



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

April 24, 2018

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

RE: HB 1233, An Act preempting local regulation of seeds and fertilizer.

Dear Chairman Avard and Members of the Committee:

Thank you for the opportunity to comment on HB 1233. This bill preempts local authority to regulate seeds and the use of fertilizers. The NH Department of Environmental Services (NHDES) takes no position on the amended bill.

In 2013, the General Court passed and the Governor signed, HB 393 which mandated that household lawn fertilizers contain a certain amount of slow release nitrogen and clarified the phosphorus content. That bill contained a clause which preempted local authority for the "registration, sale, formulation, or transportation of fertilizer" (see RSA 431:4-d). The proposed language in HB 1233 would add the word "use" to that list of preemptions. This issue was discussed thoroughly during deliberations on HB 393 and both the house and senate committees agreed that localities should have the ability to limit the use of fertilizers. This was primarily due to the fact that local waterbodies are often impacted to different degrees by fertilizers.

Turf fertilizer is both a known source of nitrogen pollution to the Great Bay estuary as well as a source of phosphorus pollution to lakes and impoundments. Nutrients (both nitrogen and phosphorus) from turf fertilizer and other sources, such as wastewater and stormwater, need to be addressed in the long term to improve water quality in New Hampshire waters. Recent work by scientists at NHDES has estimated that residential lawn fertilizers are responsible for 10-15% of the nonpoint source nitrogen load to the Great Bay estuary. Phosphorus is a significant issue on many of the lakes in the state. Too much phosphorus leads directly to algal and cyanobacteria blooms which are detrimental to public health, recreation and property values.

Presently, many New Hampshire communities have ordinances which prohibit or restrict household fertilizer use in certain sensitive areas. NHDES believes that this type of regulation is better accomplished at the local level than by the state because the municipalities know which waterbodies are of concern and what types of regulations are best for their community. In addition, a recent survey of NH Lakes Association members found that fertilizer use was their top water quality concern.

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The Honorable Kevin Avard, Chair
Senate Energy and Natural Resources Committee
April 24, 2018
Page 2

Our research into local regulations also found that communities currently regulate what types of plants (and seeds) that can be used in certain zones, especially related to stormwater and erosion control. In addition, in some sensitive zones, there may be a requirement in some communities to use native species of plants. The bill in its original form would have prohibited communities from enacting these types of provisions.

NHDES worked closely with industry representatives, and municipal and environmental interests to help the House craft the amended bill which is now before you for discussion. We are satisfied that the amended version of the bill corrects the original bill's deficiencies and will allow communities to protect their drinking and surface water resources. While we still question the need for the bill, the amended form of the bill is much improved.

Thank you again for the opportunity to comment on HB 1233. Should you have further questions, or need additional information, please feel free to contact either Ted Diers, Watershed Management Bureau Administrator at 603-271-3289 or Ted.Diers@des.nh.gov, or me at 603-271-3449 or Robert.Scott@des.nh.gov.

Sincerely,



Robert R. Scott
Commissioner

cc: Representative Darrow