



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

January 23, 2018

The Honorable Richard Barry
Chair, House Science, Technology and Energy Committee
Legislative Office Building, Room 304
Concord, NH 03301

RE: HB 1515, An Act relative to an exemption from the combustion ban on construction and demolition debris

Dear Chair Barry and Members of the Committee:

Thank you for the opportunity to comment on HB 1515, relative to an exemption from the combustion ban on construction and demolition (C&D) debris. The proposed bill would revise RSA 125-C:10-c to exempt the combustion of bio-oil and bio-synthetic gas derived from the wood component of C&D debris, using non-combustion thermal or chemical processes including, but not limited to, pyrolysis or gasification. While the New Hampshire Department of Environmental Services (NHDES) is not taking a position on HB1515, it offers the following comments in the event that this bill is ultimately passed.

During the 2017 General Court session, an amendment to SB126 was introduced which contained similar language to HB1515. NHDES submitted comments on SB126 and worked with the sponsor of the amendment to develop additional language to address some concerns about potential environmental impacts of the bill. While the amendment to SB126 was ultimately withdrawn, the language contained in HB1515 reflects NHDES' work with the sponsor on this matter in 2017.

In our testimony letter on the amendment to SB 126, NHDES identified an area that we believed needed clarification. Due to the history of concerns expressed by citizens regarding potential contaminants (such as lead) in wood processed from C&D debris, NHDES stated that that it was important for the wood component to meet certain criteria to ensure that this feedstock is considered a fuel (as opposed to a waste). This would help ensure that potential contaminants in the resulting bio-oil or bio-synthetic gas are minimized such that they pose no significant public health risks. NHDES suggested adding the following language to the proposed amendment:

"The wood derived from C&D debris shall be processed in a manner no less stringent than the requirements of the Environmental Protection Agency's Non-Hazardous Secondary Materials Rule, 40 C.F.R. section 241.4(a)(5) (Non-waste Determinations for Specific Non-Hazardous Secondary Materials When Used as a Fuel) dated February 8, 2016."

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This is the same language adopted in HB1428 during the 2016 legislative session relative to the combustion of limited quantities of the wood component of C&D debris at municipal waste combustion facilities, as found in RSA 125-C:10-c, II(b). NHDES notes that HB1515 specifically references this processing requirement¹.

At the hearing on the amendment for SB126, a potential fuel producer stated that any potential contaminants in wood processed from C&D during the fuel production process would be bound in the “char”, or remaining residual material that is not converted to bio-oil or bio-gas and would presumably be landfilled. While this is NHDES’ understanding as well, it has not seen fuel analyses to confirm this. For this reason, NHDES recommends that the Committee confirm this understanding prior to recommending passage of HB1515.

NHDES also suggests that the bill sponsors review solid waste statute RSA 149-M:9 XIV to determine whether amendments to that statute are also appropriate to accomplish the full intent of their legislation. NHDES understands that the intent of this bill is to revise the ban on the combustion of certain derivatives of the wood component of C&D debris to open a pathway by which someone could create a product (fuel) from a solid waste (C&D debris). NHDES presumes that the sponsors intend to open the pathway such that the resulting fuel product could be distributed and used in New Hampshire. As currently proposed, HB1515 would only amend air pollution control statute RSA 125-C:10-c. NHDES notes that solid waste statute RSA 149-M:9 XIV also contains a restriction on the combustion of derivatives of C&D debris. Specifically, RSA 149-M:9 XIV currently prohibits NHDES from certifying as a waste-derived product the wood component of C&D debris, or any mixture or derivation thereof, to be combusted in any manner.

Without amendments to RSA 149-M:9 XIV, C&D-derived fuel would still be a regulated solid waste in New Hampshire and any entity handling or using the fuel would be subject to solid waste management requirements, including the requirement to obtain a solid waste permit. NHDES does not believe that this is the intent of the legislation, nor does NHDES believe that such regulation would be appropriate. If the sponsors intend to open a pathway by which someone could create, and offer for sale or use in New Hampshire, a fuel derived from the wood component of C&D debris, NHDES suggests that they also propose amendments to RSA149-M:8 XIV to create a clear pathway.

As a final matter, NHDES cautions that it does not currently have enough information to determine the types of environmental permits that may be needed for a bio-oil or bio-gas processing facility. As such, NHDES makes no representation that passage of this legislation would necessarily lead to approval of such permits.

¹ NHDES believes the reference to subparagraph (c) on line 20 of HB1515 is in error and assumes it intended to reference subparagraph (b) on line 3.

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Thank you again for the opportunity to comment on HB1515. If you have any questions or require further information, please contact either Michael Fitzgerald, Assistant Director, Air Resources Division, (michael.fitzgerald@des.nh.gov, 271-6390) or Gary Milbury, Permitting & Environmental Health Bureau Administrator, Air Resources Division, (gary.milbury@des.nh.gov 271-2630).

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Scott", with a long, sweeping flourish extending to the right.

Robert R. Scott
Commissioner

cc: Sponsors of HB 1515: Representatives Vose, Morrison

