



The State of New Hampshire
NHDES 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 1515, An Act relative to an exemption from the combustion ban on construction and demolition debris

Dear Chair Avard and Members of the Committee:

Thank you for the opportunity to comment on HB 1515 as amended in the House, 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 as well as RSA 149-M:9 XIV to allow DES to certify any such product as a "waste-derived product". 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.

In testimony on prior legislation¹ substantially similar to HB 1515, 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."

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 requirement.

¹ A proposed amendment to SB 126 (2017), later withdrawn

At the hearing on the prior legislation referenced above, 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 disposed of appropriately. While this is NHDES' understanding as well, it has not seen fuel analyses to confirm this.

^{L NHDES} NHDES also understands that the intent of this bill is to ^{create an exemption} revise the ban on the combustion of certain derivatives of the wood component of C&D debris and also 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. Solid waste statute 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. The House amendment reflects appropriate revisions to this RSA (subject to the necessary correction noted below).

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.

NHDES also cautions that it has not currently been provided sufficient 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. This legislation simply removes the barriers that would prevent NHDES from considering such permits.

As a final matter, NHDES has identified an issue with the current amendment that appears to be a drafting error, thus making the bill inconsistent with its intent. Specifically, the language proposed in section 2 of HB1515 (amendment #2018-0560h) as passed by the House states:

2 Solid Waste Management; Permit Required. Amend RSA 149-M:9, XIV to read as follows: XIV. [~~Notwithstanding any provision of law or rule to the contrary,~~] the department shall not certify as a waste-derived product the wood component of construction and demolition debris, or any mixture of or derivation therefrom, to be combusted in any manner, except [~~that~~] methane gas collected from the decomposition of waste at a facility authorized pursuant to this chapter as a landfill for the disposal of solid waste may be certified as a waste-derived product for distribution and use as a fuel, provided that it meets market fuel standards as allowed under RSA 125-C:10-c, II(d).

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The placement of the phrase "*as allowed under RSA 125-C:10-c, II(d)*" appears to modify the term "market fuel standards", where NHDES understands that this phrase was intended to be a stand-alone exemption. As such, this appears to (incorrectly) change the meaning of section 2.

To address this issue, NHDES suggests the following change to the current bill language:

2 Solid Waste Management; Permit Required. Amend RSA 149-M:9, XIV to read as follows:
XIV. ~~[Notwithstanding any provision of law or rule to the contrary,]~~ the department shall not certify as a waste-derived product the wood component of construction and demolition debris, or any mixture of or derivation therefrom, to be combusted in any manner, except

(1) ~~[that]~~ methane gas collected from the decomposition of waste at a facility authorized pursuant to this chapter as a landfill for the disposal of solid waste may be certified as a waste-derived product for distribution and use as a fuel, provided that it meets market fuel standards; *and*

(2) *as allowed under RSA 125-C:10-c, II(d)*.

It appears that the current language was the result of a simple drafting error, as this was not the language that NHDES had previously discussed with bill's supporters and sponsor.

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,



for Robert R. Scott
Commissioner

cc: Sponsors of HB 1515: Representatives Vose, Morrison

