



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

January 30, 2018

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

RE: SB 450-FN-A – An act establishing an advisory commission for the department of environmental services relative to the delegation of authority of the National Pollutant Discharge Elimination System Program.

Dear Senator Avard and Members of the Committee:

Thank you for the opportunity to comment on SB 450-FN-A. This bill establishes an advisory commission for the NH Department of Environmental Services (NHDES) regarding the potential delegation of authority for the National Pollutant Discharge Elimination System (NPDES) Program. This bill is a request of the NPDES study commission established under RSA 483-B:7-a. This bill appropriates \$500,000 for the fiscal year ending June 30, 2019 in order for NHDES to hire a consultant to assist the department and the NPDES advisory commission to prepare a report on its findings and file it with the senate president, house speaker, senate clerk, house clerk, governor, and state library before November 1, 2019. NHDES supports this bill, but suggests some considerations and changes, as explained below.

This bill is a continuation of the work accomplished by the SB 121 study commission whose original charge was to determine if NHDES should request delegation of the municipal separate storm sewer system (MS4) permit program from the Environmental Protection Agency (EPA), and to recommend a funding mechanism to pay for the costs of administering the program. During the process, the commission learned that NHDES could not choose NPDES programs for delegation but rather would have to assume delegation of all NPDES programs. As such, SB 121 was amended from “take over the MS-4 permit system” to “request delegation of the NPDES program.”

The origins of SB 121 reflected the importance of the MS4 permit to many communities. The MS4 permit requirements as well as all NPDES permit requirements have cost implications for many communities. During the hearings of the SB 121 study commission, NHDES learned that communities generally appreciated working with NHDES staff; technical assistance provided by NHDES was informative and helpful, and communities wanted to ensure that sound science was used when issuing permits. However, notwithstanding which agency is the permitting authority, all permits issued must comply with the Clean Water Act and be as stringent as EPAs.

Presently, New Hampshire is one of four states in the nation that are “nondelegated” for NPDES. This issue has been raised many times over the past 20 years. It is quite clear that assuming delegation of the NPDES program would be very expensive. Many new positions at NHDES would be needed to meet the requirements of assuming delegation of the entire program. There are over a dozen different types of permits under the

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • TDD Access: Relay NH 1-800-735-2964

The Honorable Kevin Avard
Chair, Senate Energy and Natural Resources Committee
January 30, 2018
Page 2

NPDES program. A consistently-funded fee structure is required in order to hire the required number of employees to administer the program.

Due to the potential cost of assuming delegation of the entire NPDES program, NHDES does not want to lose sight of what issues are important to NPDES permit holders including their relationship with NHDES, technical assistance provided, and permits based on sound science. As such, this study should also examine what issues are most important to NPDES permit holders and determine the best approach to address those particular issues, be that delegation or other improvement to the current structure.

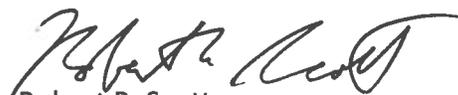
NHDES has a few minor comments and suggestions for committee consideration as noted below.

- Generally a quorum is defined as having more than half the committee present. Thus, for a committee having 13 members, a quorum would be seven or more.
- Consider adding a member from another state entity to represent state interests since there are many NPDES permits held by the state for entities such as NH Fish & Game (fish hatcheries), Winnepesaukee River Basin Program Wastewater Treatment Facility (WWTF), Wallis Sands State Park WWTF, and NHDOT (non-traditional MS4).
- Consider adding a member or members representing affected environmental groups.
- Add language to ensure that at least one of the three members appointed by the New Hampshire Municipal Association is not an MS4 community and consider geographical coverage of the state to include one seacoast, one central, and one northern community.

Finally, NHDES has had the opportunity to discuss the study with experts who have conducted similar investigations with other states. After discussing the approach and content of the study, the consultants we spoke with were able to determine a level of effort needed to accomplish the study in the given timeframe. The costs of the study are driven by a number of factors, including, the level of expertise needed, the scope of the study, the need for public and stakeholder participation, and the complexity of the issue, especially related to the analysis of state authorities. They estimate that a reasonable level of effort to bring finality to the study of this issue is approximately \$350,000.

Thank you again for the opportunity to comment on SB 450-FN-A. If you have further questions or need additional information, please contact Gene Forbes (Eugene.Forbes@des.nh.gov, 271-3308) or Tracy Wood (Tracy.Wood@des.nh.gov, 271-2001).

Sincerely,



Robert R. Scott
Commissioner

cc: Sponsors of SB 450-FN-A: Senators Bradley, Carson, Fuller Clark, Gannon, Gray, Innis, Reagan, Watters
Representatives Vose, Mullen, Smith, Spang