



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

March 20, 2018

The Honorable Norman Major
Chair, House Ways and Means Committee
Legislative Office Building, Room 202
Concord, New Hampshire 03301

RE: SB 468-FN-A, An Act relative to fines and penalties collected by the department of environmental services.

Dear Chair Major and Members of the Committee:

Thank you for the opportunity to testify on SB 468-FN-A. The bill would amend several statutes to require that the proceeds of fines and penalties imposed by the Department of Environmental Services (NHDES) be deposited into the General Fund rather than into dedicated accounts. NHDES cannot support SB 468-FN-A because we believe it would have significant unintended consequences.

Currently, the majority of NHDES programs having fine or penalty authority are already required to deposit proceeds from enforcement actions into the General Fund. The programs that would be impacted by the bill have been identified by the General Court as having a particular need for funding through dedicated accounts. For those programs, fine proceeds support cleanup and mitigation efforts necessary to protect public health, safety, and welfare. For example, funds deposited into the hazardous waste cleanup fund are used to provide for the proper, adequate, and safe cleanup of sites at which wastes or hazardous materials have been improperly discharged, and have recently played a vital role in NHDES' response to widespread perfluorochemical contamination in southern New Hampshire.

Similar considerations apply to other programs that would be impacted by the bill. An important example is the Oil Pollution Control Fund established under RSA 146-A. This fund is used to provide vital preparedness and response services for oil spills statewide. In fact, later this week, on March 22, NHDES and its many partners, including the U.S. Coast Guard, the U.S. Navy, NH Marine Patrol, U.S. Fish and Wildlife, Irving Oil and many others will gather for a full day training exercise involving a simulated oil spill at the Irving Oil facility located on the Piscataqua River. The exercise will include both table-top and live, on-the-water activities to practice and test our collective readiness to respond to spills that can impact the river, our coastal beaches, and our sensitive estuaries, including Great Bay. Funding for such important preparedness training is provided by the Oil Pollution Control Fund.

The amendments proposed to RSA 485-A:54, V, the Winnepesaukee River Basin Control and Replacement Fund, would require proceeds of fines for violation of Winnepesaukee River Basin Program (WRBP) requirements to be deposited into the General Fund. However, as noted by

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the WRBP Advisory Board in its letter to the Senate Finance Committee dated January 26, 2018, the WRBP is funded entirely by the ratepayers of its member communities who bear the cost of any enforcement proceedings associated with such violations. NHDES concurs with the WRBP Advisory Board that the proceeds of such actions should remain with the WRBP for the benefit of its member communities.

NHDES does not rely upon fine/penalty proceeds to fund its programs. As noted, most programs are already required to deposit such proceeds into the General Fund. Further, NHDES' approach to enforcement is entirely independent of the account into which proceeds may be deposited and is spelled out in the NHDES Compliance Assurance Response Policy (CARP), which can be found on the NHDES website at the following link:

<https://www.des.nh.gov/organization/commissioner/legal/carp/index.htm>

As noted therein, NHDES' goal is to achieve compliance, first through education and outreach, then through assistance, and finally through enforcement action if appropriate.

In summary, NHDES opposes the bill because it would undermine efforts to protect public health, safety, and welfare, and would inappropriately divert funds from political subdivisions served by the WRBP.

Thank you again for the opportunity to comment on this proposed legislation. If you have questions or need additional information, please contact Mike Wimsatt, Waste Management Division Director, at michael.wimsatt@des.nh.gov or (603) 271-1997.

Sincerely,



Robert R. Scott
Commissioner

cc: Senator Daniels