



The State of New Hampshire  
**Department of Environmental Services**



**Robert R. Scott, Commissioner**

April 11, 2023

The Honorable Andrew Renzullo  
Chairman, Resources, Recreation and Development Committee  
Legislative Office Building, Room 305  
Concord, NH 03301

**RE: SB 60, “An Act relative to water quality”**

Dear Chairman Renzullo and Members of the Committee:

Thank you for the opportunity to comment on Senate Bill (SB) 60. This bill would:

- 1) Define the ability to waive water quality certifications required under state law at RSA 485-A:12, III as afforded by section 401 of the Clean Water Act (CWA) and associated federal regulations.
- 2) Define the processing time and how the department would act on requests for water quality certifications required under RSA 485-A:12, III and section 401 of the CWA and under RSA 485-A:12, IV for surface water withdrawals.
- 3) Defines in RSA 485-A:12, IV the withdrawal rates and conditions of surface water withdrawals that require a water quality certification.
- 4) Clarify rules that must be adopted by the department for reviewing requests for water quality certification include public notice and public hearing requirements.
- 5) Define the applicability of the water conservation rules on surface water withdrawals requiring a water quality certification under RSA 485-A:12, IV.
- 6) Remove language that prohibits the use of the flow statistic 7Q10 in the calculation of nutrient effluent limits under RSA 485-A:8.

The New Hampshire Department of Environmental Services (NHDES) supports SB 60 as amended and approved by the Senate. However, NHDES recommends additional changes to the bill outlined in this letter. With these recommended changes, NHDES asserts that SB 60 will better define the state’s role in federal processes under section 401 of the CWA, provide clear applicability of the laws, improve the predictability of the process for applicants, and further define the processes related to water quality certifications and wastewater permitting.

Relative to point number 6 above, SB 60 removes language that was adopted in 2017 into RSA 485-A:8, Standards for Classification of Surface Waters of the State, that prohibits the use of a flow statistic commonly used in the calculation of nutrient effluent limits. The proposed change to RSA 485-A:8 is critical for the following reasons:

- 1) The United States Environmental Protection Agency (EPA) uses 7Q10 for total phosphorus limits in its permits. The 2017 language prohibiting the use of 7Q10 was not approved by EPA and

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therefore not usable in CWA actions [i.e., National Pollutant Discharge Elimination System (NPDES) permits].

- 2) The department is updating the Surface Water Quality Standards Rules Env-Wq 1700 and eliminating the restriction on using 7Q10 which may benefit some communities relative to permitting while others will benefit from the additional flexibility in the draft rule revisions.

SB 60 will remove the restriction against using the 7Q10 flow statistic from state law. This change allows for administrative rule revisions that may result in potentially less stringent effluent limits that are still protective of human health and aquatic life, for the regulated communities.

Since the creation of SB 60, NHDES has recognized that certain changes would improve the bill and suggests that the following changes be incorporated:

- 1) In the current version of SB 60, amendments to RSA 485-A:12 are proposed by adding paragraphs III-a and IV-a. NHDES recommends adding the following sentence at the end of each of those paragraphs to provide applicants with an adequate opportunity to extend their ability to submit additional application information requested by NHDES: "Upon a written request of the applicant prior to the end of this time period, the department shall grant an extension of this 120-day time period."

III-a. In processing a request for certification under paragraph III:

- (a) Within 50 days of receipt of the request for certification, the department shall either notify the person who submitted the request that the request is complete or request any additional information required to complete its evaluation of the request. Any request for additional information shall specify that the person requesting certification submit such information as soon as practicable and shall notify the person that if all the requested information is not received within 120 days of the request, the department shall deny the request. Upon a written request of the applicant prior to the end of this time period, the department shall grant an extension of this 120-day time period.

And, also in section IV --

IV-a. In processing a request for certification under RSA 485-A:12, IVI:

- (a) Within 50 days of receipt of the request for certification, the department shall either notify the person who submitted the request that the request is complete or request any additional information required to complete its evaluation of the request. Any request for additional information shall specify that the person requesting certification submit such information as soon as practicable and shall notify the person that if all the requested information is not received within 120 days of the request, the department

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shall deny the request. Upon a written request of the applicant prior to the end of this time period, the department shall grant an extension of this 120-day time period.

- 2) In the current version of SB 60, an amendment to RSA 485-A:12 is proposed by adding paragraph III-a. Based on testimony in the Senate by NHDOT, NHDES recommends the following change to subparagraph (c) and striking subparagraph (f) in the current version of the amended bill to address the potential for a federal agency to set a reasonable period of time that is shorter than the statutory language in SB 60 and removes the default action for the department to deny the request if the department is unable to act on a request for certification within the reasonable time period. The suggested changes to subparagraph (c) and striking subparagraph (f) are presented below:

(c) Notwithstanding subparagraphs (a) and (b) of this paragraph, within the period of time specified under section 401 of the Clean Water Act, the department shall:

- (1) Provide its response to grant the request for certification;
- (2) Provide its response to waive the request for certification; or
- (3) Provide its response to deny the request for certification and issue written findings in support of the denial.

~~(f) If the department is unable to act on a request for certification within the period of time specified under section 401 of the Clean Water Act because of insufficient time to implement subparagraphs (a) and (b) or the rules the commissioner adopted under RSA 485-A:6, IV-a, the department shall deny the request.~~

Thank you again for the opportunity to comment on SB 60. Should you have questions or need additional information, please feel free to contact either Ted Diers, Assistant Director of the Water Division ([theodore.e.diers@des.nh.gov](mailto:theodore.e.diers@des.nh.gov), 271-2951) or Erin Holmes, Watershed Bureau Administrator ([erin.holmes@des.nh.gov](mailto:erin.holmes@des.nh.gov), 271-3289).

Sincerely,



Robert R. Scott  
Commissioner

ec: Sponsors of SB 60: Senators Gray, Watters, Avard; Representatives Renzullo, Hills