

**NATIONAL POLLUTANT DISCHARGE ELIMINATION  
SYSTEM STUDY COMMISSION  
RSA: 483-B:7-a Laws on 2017**

**Final Report  
November 1<sup>st</sup>, 2017**

**Introduction:**

The commission was established by Senate Bill 121 of 2017. This bill established a commission to determine if the department of environmental services should request delegation of the National Pollutant Discharge Elimination System (NPDES) from the Environmental Protection Agency. The commission met three times from September through October, hearing from state and federal agencies as well as the industries and municipalities that would be affected by delegation. The findings and recommendations bellow seek to serve as guidance for future legislation surrounding delegated authority of the National Pollutant Discharge Elimination System.

**Charge of the Committee and Organization:**

RSA 483-B:7-a,

IV: The commission shall determine if the department of environmental services should request delegation of the National Pollutant Discharge Elimination System from the Environmental Protection Agency, and if so, to recommend a fee structure that would pay for the department to hire the required number of employees to manage the issuance of permits.

## **Meeting Summaries**

September 14<sup>th</sup>, 2017

Senator Bradley opened the first meeting of the commission and was unanimously elected chair. Representative Vose was elected clerk of the commission. Senator Bradley gave an overview of the National Pollutant Discharge Elimination System (NPDES) and explained how the delegation is an all or nothing process. Senator Bradley asked the commission to come up with a plan going forward for future meetings. The department of Environmental Services spoke to the commission, explaining that seeking delegation is a multiyear process and would have significant upfront costs and additional staffing needs to work through the application process.

The commission decided that they would find it helpful to have a presentation from DES about what the delegation process would look like and what it could cost. The commission also asked if they could hear from the EPA Region 1 office about their thoughts on the process. It was decided that DES would give a presentation and would coordinate with the EPA Region 1 office to have them attend as well.

October 4<sup>th</sup>, 2017

The commission first heard a presentation from the NH Department of Environmental Services on what a delegated process would look like. A significant increase in staffing and operating budget would be needed at the department and there would most likely be a need for another attorney at the AG's in order to assume delegation. There would also need to be a startup phase with an appropriation for the department to hire a consultant to identify required statute changes, personnel requirements and other resource needs in order to develop a memorandum of understanding with EPA and the application. The commission discussed the potential benefits of a properly funded program as; faster permit times, better knowledge of the state and its needs, better communication between the department and municipalities.

The commission also heard from EPA Region 1. They are completely neutral on states applying for delegated authority. They support states that are in the process of seeking delegation by making sure they have all the necessary information. The EPA will still have oversight authority after delegation is

complete. The EPA also stated that the funding provided by the Clean Water Act is already set and delegation would not increase current funding. Full delegation can be phased in over a five year period but once the delegation begins the state must take over the entire program.

The commission was split on where to go following the presentation so they decided it would be best to hear from many of the industries that would be affected by delegation.

October 25<sup>th</sup>, 2017

The commission lined up multiple organization and industries to hear from those that would be affected by delegation of the NPDES program. The commission first heard from Brian Kavanah from the State of Maine's Bureau of Water Quality. Mr. Kavanah oversees the MS4 program for the State of Maine and offered to provide background on the delegation process that Maine went through. Delegation took about 5 years to complete and costs approximately \$3-4 Million per year to run. The costs are split between grants, general fund, permit fees and SRF fees. The program runs customer service surveys to all permit holders periodically and the response is always positive. The permit fee structure in Maine was a very complicate process that has evolved as the program continues.

Bill Smagula from Eversource testified that they would support delegation. They would like to see timely turnaround of permits and they feel that working with state agencies rather than the regional office would provide benefits for all involved. Bill Boyd from the Town of Merrimack would support Delegation. The MS4 Coalition testified in favor of delegation, stating that giving the discretion provided in the clean water act to DES would be a better option for town and industries in the State. Multiple municipalities testified in favor of Delegation. The Granite State Hydropower Association testified against delegation because the permit fees would be detrimental to small Hydropower Facilities. The Business and Industry Association testified that more time is needed to work through the complex issues and questions that still exist. Garry Abbott from the Association of General Contractors testified that he does not see any real benefit to delegation at this time and that there is still a need for much more information before and decision can be made.

## **Recommendations**

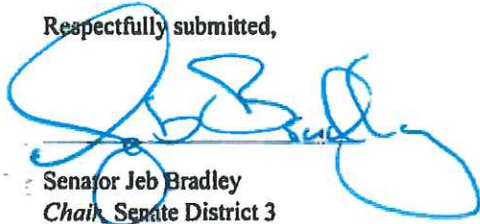
1. Legislation should be submitted by Senator Bradley and Representative Vose for the 2018 session.
2. This legislation should create a special advisory group to assist the Department of Environmental Services in evaluating the merits of seeking delegation of the NPDES Program to the Department of Environmental Services as opposed to the current Environmental Protection Agency authority.
3. Members of the Advisory Commission shall be:
  - a. One member of affected nuclear facilities – appointed by Governor
  - b. Two members of the BIA appointed by the Association
  - c. One member representing the NH Rivers Council and NH Lakes Association
  - d. Three members representing affected water and sewer facilities appointed by NH Municipal Association
  - e. One member of the NH Hydro Association appointed by the Association
  - f. One member of the NH Association of Realtors appointed by the Association
  - g. One member of the Association of General Contractors appointed by the Association
  - h. One member of the NH Water Pollution Control Association appointed by the Association
  - i. One member representing affected public utilities appointed by the Governor
  - j. One member representing an affected Regional Planning Commission appointed by the Governor
  - k. One member of the public representing environmental organizations that would be impacted by potential delegated authority, appointed by the Governor.
4. The Department of Environmental Services shall with the concurrence of the Advisory Committee file a report to the Governor, Speaker of the House and Senate President. If the Department of Environmental Services and the advisory committee determine that delegation has merits, such report shall include a proposal for future legislation to request delegation of the National

Pollutant Discharge Elimination System from the Environmental Protection Agency to the New Hampshire Department of Environmental Services.

5. The report shall consist of the following:
  - a. Scope and cost of an authorized NPDES program – Analyzing the costs of personnel for permit writing, outreach, science, compliance and enforcement.
  - b. Revenue sources – Examining the alternatives for funding, including fee analysis to understand how fees might be allocated (eg. discharge volume, quality, frequency, etc.) and the impacts to individual households, communities and businesses.
  - c. Statutory requirements – NH statutes and administrative rules need to be compared to EPA NPDES program requirements to determine changes that are needed. Legislation would need to be written as well as content and a schedule of administrative rule changes.
  - d. Water quality science needs – The desire for better permits is largely fulfilled by access to better science. An analysis of current monitoring, analysis, TMDL and data management requirements in needed.
  - e. Skills and training – Analysis of the level of skills needed and training, both initial and ongoing, for staff (permitting, compliance and enforcement).
  - f. Outreach and public information – Given that delegation would be a major change for applicants and the public, outreach would be necessary. In addition, an analysis of the current outreach deficiencies would help to create a better program.
  - g. Planning, management and oversight – The expansion of staff requires a plan to organize the activities, staffing and supervision. The may necessitate reorganizations of some organizational units.
  - h. Transition process – Given the numbers and complexity of permits, an orderly transition approach and timeline would need to be established.
  - i. Data Management – The cost and requirements of data management
  - j. Any other pertinent subject.

6. It is the recommendation of the commission for the Legislature to appropriate dollars to the Department of Environmental Services in order to hire a consultant to assist the department and the advisory committee to examine and consider the merits and complete the work established in Recommendation 5.
  
7. Date: The report shall be filed by November 1, 2019

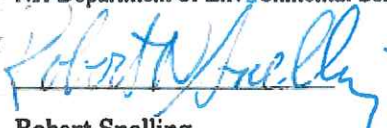
Respectfully submitted,



Senator Jeb Bradley  
Chair, Senate District 3



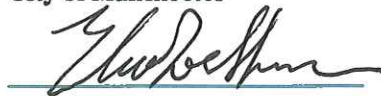
Eugene Forbes  
NH Department of Environmental Services




Robert Snelling  
NH Rivers Council




Fred McNeill  
City of Manchester



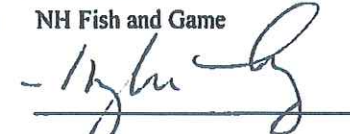
Elvis Dhima  
Town of Hudson



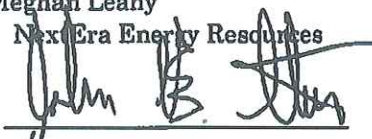
Representative Michael Vose  
Rockingham, 9




Jason Smith  
NH Fish and Game



Meghan Leahy  
Next Era Energy Resources



John Storer  
City of Dover



Jeff Mathis  
Business and Industry Association