The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner

March 14, 2007

The Honorable Susan W. Almy, Chairman
House Ways and Means Committee
Room 202
Legislative Office Building
Concord, New Hampshire 03301

SUBJECT: Proposed amendment 0446h to HB 884-FN-A, revising the laboratory fee schedule for environmental tests

Dear Chairman Almy:

Thank you for the opportunity to testify on amendment 0446h to HB 884-FN-A, which would revise RSA 131:3-a, the statute that sets the fees charged by the Department of Environmental Services (DES) for laboratory tests. The DES lab is staffed by 23 permanent employees and receives an average of 35,000 samples per year from public water supply systems, private homeowners and other government programs or agencies. It performs over 90,000 analytical tests on those samples. DES has proposed new and higher laboratory test fees because many of its fees are below its costs to conduct the tests, and they are below the fees charged by private sector laboratories for the same services.

In Fiscal Year 2006, the actual expense to operate the DES laboratory was $1,903,892. Laboratory test fees generated approximately $1.3 Million in revenues, of which approximately $900,000 came from non-governmental customers. Pursuant to RSA 131:3-a, II, fifty percent of the $900,000 in revenue was deposited as unrestricted general fund revenue and fifty percent was deposited in a special non-lapsing equipment replacement account. The remaining $400,000 in revenues were generated by intra-agency charges, which was budgeted to offset general fund support for the DES laboratory program.

In FY 2008, the Governor's recommended authorization for the DES laboratory program is $2,382,583. Potential revenue from the current fee schedule in RSA 131:3-a is estimated to be $1,482,000. The fees proposed in 0446h would raise approximately $579,000 in new revenue.

The DES laboratory attempts to balance its environmental and public health mission with good business practices as it offers its clients accurate and affordable analytical services. DES is aware that this work sometimes seems to put the laboratory in conflict with municipalities trying to keep their costs in check and with the private commercial laboratory sector trying to make a profit.

RSA 131:3-a sets the schedule of tests and fees the DES laboratory is allowed to charge for both the analyses required by the Safe Drinking Water Act and all other tests offered to the lab's

public and governmental customers. The statute has not been amended since 1999. The statute does not allow DES to add new tests or delete tests from the schedule nor does it allow for price changes without legislative approval. It is outdated in a number of ways. For example:

1. The homeowner "Standard Analysis" package that included 11 individual tests was priced at $65 in the 1999 update to RSA 131:3-a. Since that time, the state recognized that corrosivity, arsenic and uranium are prevalent contaminants in New Hampshire's waters. This finding prompted the laboratory to add 4 additional tests to the "Standard Analysis" without increasing the cost to homeowners. The actual cost to perform this new suite of analyses is $127.
2. Public water systems that use surface waters as a drinking water source are required to test for haloacetic acids. The laboratory offers this test to public water systems; however, this test is not currently included on the fee schedule.
3. The Inorganic chemicals (IOC) package is currently listed on the fee schedule as $250/$300, depending on whether it is for a new or existing water system. Recently, DES updated the state rules regarding the requirements of an IOC; 4 tests may be removed from the list, thus reducing the actual cost of the package.

Since 2004, DES has worked with legislative committees to update RSA 131:3-a and to provide DES some flexibility in maintaining the schedule and setting fees. After several bills failed to pass, DES formed a laboratory study committee, including members from DES accounting, lab and program staff, and members from private commercial laboratories. As one of its goals, the committee compared market rates with DES actual costs per test. A price survey was sent out to 57 private, municipal and state laboratories; 31 responses were received back. Obtaining pricing information from the private laboratories proved very difficult; it is for this reason that the survey has not been repeated.

An updated spreadsheet comparing private and public sector lab prices with current DES prices and costs is included as Attachment A. Information from this spreadsheet was used to prepare the fee changes as proposed in amendment 0446h.

Setting a list price for any test is more of an art than a science, and requires professional judgment as well as background and financial information. The more tests the lab performs for any parameter, the lower the cost per test becomes. Conversely, the fewer the number of tests analyzed, the higher the actual cost per test. Another factor to consider is that new tests are initially more expensive, as staff learn to implement the method or technology. Until a lab has performed a test for a year or two, it really does not know what the real costs are.

The following are a few samples to show the reasoning behind the proposed prices found on the attached spreadsheet:

	Private Lab[1] Average Price	State Labs[2] Average Price	All Labs Average Price	DES Actual Cost 2 Yr Average (FYs 04 & 05)	DES Current Price	DES Proposed Price	Number of Tests Analyzed FY2006
Ammonia	$22.5	$5	$21	$47.1	$30	$30	366

Although it appears the proposed price of $30 is below the actual cost ($47.10), the lab knows the DES prices were calculated at a time when the lab was changing methods to include a new external distillation. This test is performed mostly for DES programs; an elevated price does not affect public water systems nor is there any competition for clients with the private labs. The proposed price is a compromise between that charged by the private labs and the state labs.

	Private Lab[1] Average Price	State Labs[2] Average Price	All Labs Average Price	DES Actual Cost 2 Yr Average (FYs 04 & 05)	DES Current Price	DES Proposed Price	Number of Tests Analyzed FY2006
Individual metals (each)	$17.93	13.01	15.69	13.68	10	15	39,408

The FY2006 number of tests analyzed is actually the number of individual metals requested by clients. The lab has two metals analysis instruments, each of which can analyze several elements simultaneously. Although the technology is expensive, the large number of tests performed brings down the overall cost per test.

	Private Lab[1] Average Price	State Labs[2] Average Price	All Labs Average Price	DES Actual Cost 2 Yr Average (FYs 04 & 05)	DES Current Price	DES Proposed Price	Number of Tests Analyzed FY2006
Turbidity	$14.92	12	13.46	49.77	10	12	31

It appears that the lab does not analyze many samples for turbidity and that the actual cost per test is high. In actuality, the lab checks the turbidity on every sample requesting a metals analysis (a requirement to avoid a metals digestion step), but these check samples are not recorded in the database. Staff still attribute their time and the cost of supplies to the overall calculation of the cost per test for turbidity. DES chose the state lab average price as the proposed price.

	Private Lab[1] Average Price	State Labs[2] Average Price	All Labs Average Price	DES Actual Cost 2 Yr Average (FYs 04 & 05)	DES Current Price	DES Proposed Price	Number of Tests Analyzed FY2006
Volatile Organic Chemicals	$153.75	118	140	62.98	100	120	2,026

The proposed price for Volatile Chemical Organics (VOCs) exceeds the actual cost and is much lower than the private lab's list price. The private labs offer volume discounts to their regular clients, a practice not followed by the state labs. The DES actual cost reflects the volume of samples performed and the fact that the analysts multitask and are responsible for at least one other analysis. The elevated price on VOCs allows the State to recoup some of the losses on tests with small volumes.

Although RSA131:3-a sets the fee schedule for the lab's public clients, fees charged to DES programs and other state agencies are calculated on an annual basis, using an in-house cost allocation procedure. This method, though very precise by accounting standards, is out of touch with the reality that staff multitask, technology sometimes allows several related tests to be performed simultaneously, consumables can be used for multiple tests and staff are not always precise in recording their time spent on each test. DES has begun the process to develop a new way to calculate a cost per test.

In its last audit of DES accounting practices, the Legislative Budget Assistant (LBA) made a finding that the laboratory did not have the authority to maintain separate fee schedules for the public versus other program clients. DES attempted to rectify this finding by adding those tests offered to the Department and other state agencies to the fee schedule proposed in amendment 0446h.

We appreciate the opportunity to testify on this bill. If you have any questions regarding this matter, please do not hesitate to call me at 271-2958 or Assistant Commissioner Michael Walls at 271-8806.

Sincerely,

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Thomas S. Burack
Commissioner

Attachment

cc: Members of the Ways and Means Committee

ATTACHMENT A

Department of Environmental Services
Comparison of Current Fees and Proposed New Lab Fees

January 12, 2007

TESTS	Private Lab[1] Average Price	State Labs[2] Average Price	All Labs Average Price	DES Actual Cost 2 Yr Average (FYs 04 & 05)	DES Current Price	DES Proposed Price	Number of Tests Analyzed FY2006
	per December 2004 survey						
Alkalinity	18.33	12.6	15.73	21.75	10	15	442
Ammonia	22.5	15	21	47.1	30	30	366
Biosuitability	N/A	135	135	164.13	135	145	47
Biochemical Oxygen Dema	35	48.5	38	44.49	35	35	219
Carbamates	150	149	149.29	145.74*	75	120	358
Chloride	15	9	12.6	8.55	7	12	3,059
Chlorine Residual	18.33	11.33	16	77.04	7	16	22
Chlorophenoxy Herbicides	190	194	192.5	145.74*	75	130	417
Cyanide	42.5	35.75	39.13	83.14	30	35	346
Diquat	156.67	191.67	174.17	N/A	75	125	7
E.coli cts/100mL	40	15.33	29.43	17.19	13	20	4,340
E.coli MPN	61.67	18.33	40	32.61	15	30	12
E.coli P/A	27	13.83	19.82	16.74	10	15	12,523
EDB/DBCP	80	71.67	75.83	145.74*	75	75	411
Enterococci	N/A	18	18	17.19	18	20	913
Fecal coliform MPN	45	N/A	45	32.61	N/A	30	408
Fecal coliform MTEC	N/A	N/A	N/A	17.19	18	20	119
Fluoride	16.33	11	13.91	8.55	7	12	3,372
Glyphosate	120	175	153	145.74*	75	100	427
Gross Alpha	65	52.5	55	92.61	50	60	501
Haloacetic Acids	168.33	124	140.63	64.73	75	100	407
Heterotropic Plate Count	30.75	19.33	25.86	37.91	20	25	127
Individual metals (each)	17.93	13.01	15.69	13.68	10	15	39,408
Iron Bacteria	50	20	35	8.52	10	15	13
Metals Preparation Charge	17.5	N/A	17.5	N/A	50	20	4
Methyl-tert-butyl ether	95.63	50	90.56	N/A	50	75	1,316
Nitrate-N, Nitrite-N	23	12.8	18.36	8.55	7	12	3,937
Oil & Grease (HEM)	62.5	50	58.33	N/A	50	60	19
pH	9.53	8.8	9.25	13.15	6	9	1,926
Phosphorus, Ortho	18.6	15	18	17	15	20	358
Phosphorus, Total	24.5	29	25.4	17	15	20	3,080
Radium 226	125	92	103	N/A	150	150	2
Radon	55	22.5	38.75	29.96	20	25	668
Semivolatiles	300	197.5	231.67	145.74*	150	225	547
Specific Conductance	10.4	11	10.73	16.82	8	10	525
Sulfate	15.5	18.33	16.44	25.01	22	20	610
Total coliform cts/100mL	31.25	15.5	26	17.19	13	20	1,346

Total coliform MPN	45	17.33	31.17	32.61	15	30	4
Total coliform P/A	28.33	13.43	20.31	16.74	10	15	11,587
Total Dissolved Solids	16.67	36	19.43	48.7	30	30	25
Total Kjeldahl Nitrogen	32.5	25	31	39.65	25	25	585
Total Organic Carbon	40	37.5	38.75	89.04	25	40	431
TPH (GRO)	75	60	67.5	N/A	120	125	21
Total Solids	20	24	21.33	48.7	30	30	65
Total Suspended Solids	15.33	29	17.29	48.7	30	30	332
Total Trihalomethanes	90	76	84.17	N/A	75	75	286
Turbidity	14.92	12	13.46	49.77	10	12	31
Uranium (mass)	18.5	12.5	15.5	13.68	10	15	575
Uranium (natural)	85	99	94.33	N/A	150	150	3
UV-254	36.67	25	33.75	3.2	25	30	2
Volatile Organic Chemicals	153.75	118	140	62.98	100	120	2,026

N/A Not Available
* Analyte is part of a Group Test, this is total cost of group

[1] Private Labs include: ELAB, Florida; Severn Trent, Vermont; Environmental Health Lab, Indiana; Analytics, NH; Chemserve, NH; Granite State Analytical, NH; Aquarion, NH; Eastern Analytical, NH; EAI, NH; OMI, NH.

2 State Labs include: Maine Health and Environmental Testing Lab; Oklahoma Dept. of Env.Quality; Michigan Dept.of Env.Quality; Vermont Dept.of Env.Conservation; Vermont Dept. of Health; NH Dept. of Env. Services.