The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner
February 17, 2011

The Honorable Stephen Stepanek, Chairman
House Ways and Means Committee
Room 202, Legislative Office Building
Concord, NH 03301

Subject: HB 645, eliminating various taxes and fees and tax and fee increases enacted in fiscal years 2007 through 2010

Dear Chairman Stepanek:

Thank you for the opportunity to comment on HB 645, which would repeal certain fee increases. With the exceptions noted below, the Department of Environmental Services (DES) opposes the sections of this bill that would cause reductions in program revenue that would eliminate or significantly reduce the agency's ability to perform its environmental and public health protection responsibilities in many important areas. DES estimates that the proposed fee roll backs would reduce total environmental program revenues by over $7.7 million in FY 2012 out of total estimated fee revenue of $15.3 million. We also estimate that these revenue reductions would cause the elimination of 35 filled positions to adjust projected expenditures to the proposed reduced revenue levels.

A summary of the impacts to specific environmental programs (by bill section) is presented below:

Section 2 - Hazardous Waste Operator Permit Fee (Estimated FY 2012 Impacts: Indeterminable; none if no applications are received.)

The hazardous waste operator permit fee program provides for permitting of commercial hazardous waste treatment, storage or disposal facilities (TSDFs). The original permitting program was established in 1981. During the 2007 session, the permit fee was increased from $5,000 to $7,500, and the ability to recover DES costs to review, implement and enforce the permit was removed. This legislation proposes to move the fee back to $5,000, and restore the authority to recover state costs exceeding the fee by charging the applicant on a monthly basis. DES would not oppose this change.

The complex nature of a TSDF permit, and the significant oversight responsibilities that are imposed upon DES when such a permit is issued, result in costs to the state over time that could well exceed the current or proposed fee. Currently, there are no TSDFs operating in the state and none are anticipated. However, in the event that a TSDF application were received, Section 2 of this legislation would provide a sustainable fee structure that would allow the state to recover from the applicant the full cost to review, implement and enforce the permit.

Section 3 - Small Quantity Hazardous Waste Generator Fee (Estimated FY 2012 Impacts: Revenue reductions of $58,260)

The small quantity hazardous waste generator (SQG) self-certification program is funded by a $90 per year fee that is charged to businesses that generate less than 220 pounds of hazardous

waste per month. SQGs are required to comply with basic handling and management standards and to properly dispose of their hazardous chemical wastes. Every three years, SQGs are required to self-certify to DES that they are in compliance with these requirements, and submit the appropriate fee. The original program and fee structure were enacted during the 2003 session. During the 2007 session, the fee was increased from $60 annually to $90. By statute, the revenues are deposited to the non-lapsing Hazardous Waste Cleanup Fund, and are used to cover expenses to hire program staff to administer the self-certification program. The original legislation directed the hiring of two staff to run the program, provide training and outreach to SQGs, and to perform compliance inspections. However, revenues have been insufficient to fully support two positions, and only one position has been filled since the program's inception. Consequently, DES conducts only a nominal amount of outreach and training for SQGs and has little to no inspection presence. Repeal of the fee increase would only worsen this condition and further reduce DES's ability to provide outreach and training to businesses that handle small quantities of hazardous wastes. Failure to adequately fund this program will result in releases of hazardous wastes to the environment, thus endangering public health and the environment. Accordingly, DES opposes this proposed fee reduction.

Section 4 - Initial Waste Activity Notification Fee (Estimated FY 2012 Impacts: Revenue reduction of $2,500)

The hazardous waste activity initial notification program requires businesses that generate or otherwise manage hazardous wastes to notify DES of their activities and to pay an initial notification fee. The fees are deposited into the state's Hazardous Waste Clean-Up fund and are dedicated per RSA 147-B:6,I-g for use in managing the small quantity generator self-certification program, providing technical training and assistance to hazardous waste generators, hiring personnel, and paying administrative costs. The original program requiring notification was enacted in 1981. During the 2003 session, an initial notification fee of $100 was established. During the 2007 session, the fee was increased to $150. This legislation seeks to return the fee to its 2003 level ($100). As DES receives approximately 50 initial hazardous waste generator notifications annually, the estimated impact is a $2500 reduction in revenue. The reduction in revenue will negatively impact the Department's ability to provide technical training and assistance to hazardous waste generators, by an amount commensurate with the reduction in revenue. Failure to adequately fund this program will result in releases of hazardous wastes to the environment, thus endangering public health and the environment. Accordingly, DES opposes this proposed fee reduction.

Sections 5 and 6 - Brownfields Program Fees (Estimated FY 2012 Impacts: Revenue reduction of $750)

The Brownfields Covenant Program under RSA 147-F is a voluntary program that provides environmental liability protection for participants who agree to investigate and develop cleanup plans for contaminated sites ("brownfields"). The program, which was established during the 1996 session, has encouraged the investigation and cleanup of over 50 contaminated sites. Originally, the law provided for a $250 application fee, and a participation fee of $3500. The law further provided that DES costs exceeding the participation fee are recoverable and would be billed bi-monthly to the applicant. These fees and recovered costs are deposited to the Hazardous Waste Cleanup Fund, and

used to administer the program. During the 2007 session, the application fee was increased to $500, and the participation fee to $5,000.

On average, there are three new brownfields covenant program applications each year. The proposed change in the application fee would reduce annual revenues by $750. DES costs to administer the covenant program for a participating site that exceed the participation fee would continue to be recoverable from the participant. Reduction of the participation fee could encourage initial entry into the voluntary program for some parties. Accordingly, DES would not oppose the fee reduction in Section 6 of the bill.

Section 10 -Terrain Alteration Permit Fees (Estimated FY 2012 Impacts: Revenue reductions of $368,000, 4 layoffs, and a cost to the general fund of $189,000 to fund the layoffs)

Terrain alteration permits from DES are required by RSA 485-A:17 whenever a project is proposed that will disturb more than 100,000 square feet of contiguous terrain (50,000 square feet, if any portion of the project is within the protected shoreland), or an area having a grade of 25 percent or greater within 50 feet of any surface water. This program regulates erosion control and stormwater impacts at major earth moving operations, such as industrial, commercial, and residential developments as well as sand pits, gravel pits, and rock quarries. The existing terrain alteration permit application fee structure and several other related changes, including the establishment of the Terrain Alteration Fund, a non-lapsing dedicated fund, were enacted during the 2007 session (chapter 263, section 30) effective July 1, 2007. Also, at that time, a statutory review deadline of 50 days for permit applications was established, and DES has continuously met this deadline. It should be understood that Alteration of Terrain permit applications are complex technical sets of documents that must be prepared by licensed professional engineers, and that require considerable DES staff review time to ensure that all legal requirements will be satisfied for protection of water quality and prevention of harm from runoff to the state's waterways or neighboring properties. Prior to July 1, 2007, the Terrain Alteration Program was supported completely by the state general funds with fees deposited into the general fund. General fund expenditures typically exceeded application fee revenues by over $200,000, resulting in a net annual loss to the general fund.

In contrast, after the fee increase and creation of the dedicated fund, the Terrain Alteration Fund ended each of Fiscal Years 2008, 2009 and 2010 with a positive balance. There is currently a deficit for FY 2011 that is being addressed by various means, including temporary staff transfers and vacancies. The change in 2007 to a dedicated fee account had the expected positive impact on the state general fund. If Section 10 were enacted, DES would not be able to retain the engineering personnel needed to process the permits and it would not be able to meet its obligations to process permit applications within the statutory timeframes. Furthermore, the U. S. Environmental Protection Agency (EPA) would no longer be able to rely on DES compliance inspections as a means to help them ensure compliance for projects also covered by the EPA National Pollutant Discharge Elimination System (NPDES) Stormwater Construction General Permit Program (which applies to most construction sites in NH). Typically, EPA fines are also substantially higher for contractors and project owners than those imposed by DES. Reductions in the state terrain alteration program would likely result in higher overall compliance costs for New Hampshire contractors and project owners. Finally, if this fee reduction were enacted, DES would likely have to layoff up to four (4) personnel, resulting in a cost to the general fund of approximately $189,000

because the Terrain Alteration Fund lacks adequate funds to cover such layoff expenses. For all of these reasons, DES opposes the fee reduction proposed in Section 10 of this bill.

Section 11 - Excavating and Dredging Permit Fees (Estimated FY 2012 impacts: Revenue reductions of $555,000, 6 layoffs, and a cost to the general fund of $257,000)

The DES Wetlands Program issues permits primarily for dredge and fill impacts to wetlands that are regulated at both the state and federal levels. Section 11 proposes to cut wetlands program application fees by 50%. In 2007, wetlands permit application fees were increased to the current levels to better support Wetlands Bureau permitting functions and to address long term revenue shortfalls. Statutory permit review deadlines were also established. As with the Alteration of Terrain Program, many of the projects requiring wetlands permits are complex and involve a great deal of technical issues, all of which must be carefully reviewed by DES staff to ensure that all applicable requirements of state and federal law will be met. Simpler categories of projects such as permits for timber harvesting operations require less staff review time and, pursuant to statute, are processed under shorter timeframes than the more complex projects. The reductions in staffing levels that would be required by the proposed fee reductions would mean that the agency would not be able to meet statutory mandates for permit review times, especially as the economy improves and permit activity picks up. This would likely cause the invalidation of the U.S. Army Corps of Engineers State Programmatic General Permit (SPGP) for most projects because the Army Corps of Engineers does not recognize a "deemed approved" permit (i.e., a permit that is issued automatically if DES fails to meet its statutory review timeframes) as compliant with the SPGP. The SPGP is a permit issued by the US Army Corps of Engineers to the State of New Hampshire to enable streamlined permitting processes. Under the SPGP, DES performs reviews for most projects with wetlands impacts of less than three acres and then issues permits that cover both the state and federal requirements. If the state program could not meet its obligations under the SPGP, individual permit applications to the Corps of Engineers would be required for all proposed impacts in federally-regulated wetlands (which constitute the vast majority of wetlands in New Hampshire). This would result in substantial costs and delays (often 6 to 9 months) for applicants to receive federal wetlands permits. In addition, if this reduction were enacted, DES would likely have to lay off up to five (5) personnel resulting in a cost to the General Fund of approximately $210,000 because the wetlands program lacks adequate funds to cover such layoff expenses. For all of these reasons, DES opposes the fee reduction proposed in Section 10 of this bill.

Section 16 - Water Supplies - Laboratory Testing Fees (Estimated FY 2012 impacts: Revenue reductions of $422,873)

The fees charged for water quality tests by the DES Water Quality Laboratory are individually established in RSA 131:3-a. The fees were raised in 2007 to more nearly reflect the costs of performing the tests, and to respond to complaints from private sector laboratories that the state laboratory fees were artificially lower than the private sector for comparable tests. Fifty percent of the fees collected from non-state agency customers is deposited in the general fund as unrestricted revenue and fifty percent is deposited into a laboratory equipment replacement fund. Reductions in these laboratory fees would result in decreased revenues and a commensurate increase in costs to the general fund to offset the lost revenues. For these reasons, DES opposes the fee reductions proposed in Section 16 of this bill.

Sections 17 and 18 - Dam Registration and Reconstruction Fees (Estimated FY 2012 impacts: Revenue reduction of $391,000 and 4 layoffs)

New Hampshire's Dam Safety Program is responsible for ensuring that all 3,068 regulated dams in the state are constructed, operated and maintained in accordance dam safety regulations. As part of that responsibility, the DES Dam Bureau: reviews and approves the plans and specifications for the construction and reconstruction of all dams in the state through its permitting program; inspects, on a schedule based on hazard classification, the 839 dams that could cause loss of life or property damage if they were to fail; institutes enforcement actions to correct deficiencies identified in the inspections; and inspects the downstream areas of the remaining 2,229 non menace dams to ensure that their hazard classifications have not changed because of downstream development. RSA 482 also requires DES to review applications and issue permits for the construction and reconstruction of dams, also based on fees established in 2007 based on a cost analysis that took into consideration the required level of effort. This work is funded partially through dam registration and permitting fees and partially through the General Fund. Existing fees were first introduced in 1990, then increased in 1997 and 2007, respectively, to cover program costs and to reduce the portion of the program funded by the general fund. The fees established in 2007 were based on the costs of performing inspections of existing hazardous dams (Section 17) and reviewing and approving plans and specification for the construction or reconstruction of dams in the state (Section 18). If these fees were reduced, 4 layoffs would be required and as a result DES would be unable to inspect New Hampshire's dams for safety concerns at an acceptable frequency, based on national dam industry criteria, thus reducing the level of assurance to New Hampshire's citizens that regulated dams are safe. Because one of DES's most important responsibilities is to ensure public safety with respect to the impoundment of water by dams, and for all of the other reasons stated above, DES opposes these proposed fee reductions.

Section 33 - Clean Water SRF and Drinking Water SRF Loan Management (Estimated FY 2012 impacts: Revenue reduction of $3.3 million and 16 layoffs)

The Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) programs are federal programs which provide low interest loans to municipalities and public water supplies for drinking water and wastewater system improvements. All loan repayments occur over loan lives of between 5 to 20 years, and include principal, interest and an administrative fee. Pursuant to Federal law, all repaid funds must be dedicated to this program and are subject to federal audit. Section 33 proposes to reduce the administrative fees paid into the CWSRF and DWSRF accounts back to 1% from 2%, as enacted effective July 1, 2009. These fees are drawn from the interest paid by the borrowers, but do not result in any increase in the rate of interest that they pay or the total cost of their loan. If Section 33 were enacted, DES estimates that the reduced revenues would require reductions of 16 staff positions by layoff, at a cost of $743,000. This would cause wholesale reductions in technical assistance by DES to municipalities to help with the planning, design, operation and funding of New Hampshire's water and wastewater infrastructure, at a time when there is an estimated $2.4 billion in identified 10-year water infrastructure needs in New Hampshire. The fee increase approved in 2009 did not result in any additional costs to municipalities or other users of the State Revolving Funds, and is consistent with provisions of Federal law. Reversion to the earlier fee level would effectively eliminate DES's

ability to provide timely assistance to communities in addressing their wastewater and drinking water needs, and would place additional and otherwise avoidable costs and burdens on our communities. For all of these reasons, DES opposes this proposed fee reduction.

Section 34 - Sewage Disposal and Subdivision Plan Fees (Estimated FY 2012 impacts: $1.47 million in reduced revenues and 8 layoffs with costs to the general fund of $348,000 for these layoffs)

The DES Subsurface System Program implements New Hampshire's septic system program as authorized by RSA 485-A. Program activities include septic system and subdivision plan reviews, new system inspections, designer and installer permitting, and compliance activities to ensure that systems are installed properly and that failed systems that create public health and environmental problems are replaced. Permitting and inspection functions must be performed under strict statutory time frames. Section 34 proposes to reduce Subsurface Systems Program fees back to pre-July 1, 2009 levels, when the program was taken off of the general fund with the establishment of the Subsurface Systems Fund, a non-lapsing dedicated account. The 2009 changes resulted in substantial savings to the state general fund. Section 34 would result in a funding shortfall that would require 8 layoffs -- just under half of the filled positions in the program. Currently, only 17 of 24 full time staff positions (70 %) in the Subsurface Systems Bureau are filled. At this current staffing level, the program is meeting its statutory obligations under RSA 485-A, because the number of permit applications has been depressed by the slump in new housing construction. Should the application fees be cut in half in FY 2012 as proposed by this legislation, the program would be unable to meet statutory deadlines in the current economy, much less when permitting activity increases as the economy improves and housing construction activity increases. Moreover, the magnitude of the necessary layoffs would far exceed the resources of the Subsurface Systems Fund, resulting in a cost to the general fund of $348,000. For these reasons, DES opposes this proposed fee reduction.

Section 35 - Inspection Sticker Fees (Estimated FY 2012 Impacts: Revenue reduction of $350,000, 3 layoffs, and a cost to the general fund of $102,225 to fund the layoffs)

The Motor Vehicle Air Pollution Abatement Fund established under RSA 125-S receives $0.25 for each vehicle inspection sticker furnished at an approved inspection station. The funds collected are to be used for the purpose of funding department activities related to the prevention and abatement of air emissions from motor vehicles. Air emissions from motor vehicles (i.e., mobile sources) represent the largest single category (mobile, stationary or area sources) of emissions in the state, accounting for over 50% of some regulated pollutants. Programs and emission reduction efforts supported by these funds include inspection and maintenance (On-Board Diagnostics – OBD), gasoline vapor recovery systems, diesel idling and emission reduction programs, transportation conformity (a required part of the New Hampshire Department of Transportation (DOT) 10-year plans) and new vehicle standards. In addition, the Department is required to submit a number of plans, reports and program findings to EPA, including periodic emission inventories, summary results of the OBD program and State Implementation Plans to ensure federal enforceability of required state programs. Prior to the enactment of this fund on July 1, 2009, the Department supported these efforts by using a very limited federal grant, which has

been essentially level-funded for over ten years. Where this federal grant once supported a mobile source staff of three persons ten years ago, due to inflation and increasing costs today it supports one and a half positions. As a result, prior to the enactment of this fund, Department efforts in mobile source programs had been inadequate to meet state goals and objectives for controlling emissions from this sector and to ensure timely compliance with federal requirements. If the proposed change were enacted, the Department would again be faced with an inadequate mobile source program. The failure of the state to develop and maintain an effective mobile source emissions reduction program would have a significant undesirable impact on other air emission sources, in particular, stationary sources. These sources include industrial and manufacturing facilities, large and small electric power producers and numerous other commercial operations. For the state to meet federal air quality standards under the Clean Air Act without demonstrating control of emissions from mobile sources would require that these other emission sources further reduce emissions at a potentially significant cost, thereby putting New Hampshire's businesses at a competitive disadvantage. For all of these reasons, DES opposes this proposed fee reduction.

Sections 41, 42 and 43 - Lake Restoration Fund (Estimated FY 2012 impacts: $240,000 in reduced revenues available for exotic species control grants to local entities)

Sections 41 through 43 would reduce boat registration fees by $2.50, thereby reducing program revenues to the Lake Restoration and Preservation Fund by an estimated $240,000 (assuming 96,000 boats are registered per year.) New Hampshire currently has 83 known infestations of exotic aquatic plants (primarily milfoil) in 72 waterbodies, up from fewer than ten prior to 1980. Strong local action through active lake associations and municipalities is a key to controlling the further spread of exotic species and controlling or potentially eradicating existing infestations. These municipalities and associations receive grants from the fund to support volunteer "host" programs, under which boat launch sites are staffed during the summer months to ensure the removal and disposal of aquatic plants from boats and trailers before they enter the water, as well as to undertake the control of milfoil in infested areas by a number of means, including herbicides, suction dredging and hand pulling. A portion of the Fund also supports research to evaluate potential new methods to eradicate or control exotic aquatic plants. Passage of Sections 41-43 would significantly reduce the ability of DES, municipalities and lake associations to prevent the spread of exotic aquatic plants, control existing infestations, and research ways to better manage this problem in the future. Control of exotic aquatic plants is critically important to ensuring the health of our lakes, which is a direct contributor to economic activity that generates tax revenue and helps to maintain and enhance property values. Reductions in funding for exotic aquatic plant control would hurt both New Hampshire's quality of life as well as our economy. Accordingly, DES opposes this proposed fee reduction.

Section 70 - Fuel Import Fees (Estimated FY 2012 Impacts: Revenue reductions of $559,651, approximately 30 fewer oil spill sites cleaned up, mostly at residential properties and small businesses)

Under RSA 146-E, enacted in 1993, licensed fuel oil distributors pay a per gallon fee on all fuel oil imported into the state. The revenues are deposited to the Fuel Oil Discharge Cleanup (FOD) Fund. The majority of fund revenues are passed through as state aid to homeowners for

payment of cleanup costs when fuel oil storage tanks leak, and for low-income homeowners to repair storage tanks to prevent leaks. Businesses, state agencies, counties and local governments are also eligible for reimbursement of cleanup costs. In the 2009 session, the fee was increased to $.0125 per gallon, in order to meet demand for these important cleanup funds. Section 70 of this legislation would return the fee to $.01 per gallon.

In recent years, demand for the fund has remained steady while revenues have dropped off, due to declining import volumes. The decline in import volumes is attributed to generally warmer winters, and increased use of alternative supplemental fuels (e.g., wood or wood pellets). Unfortunately, while import volumes are lower, the total number of tanks in service has remained essentially unchanged. Hence, the risk of releases and the associated demand on the funds remain steady. If the fee were reduced, the estimated annual impact would be a $560,000 reduction in revenues. This would necessitate a corresponding decrease in prevention, response and cleanup work, would adversely impact homeowners and businesses, prevent timely cleanup of fuel oil contamination, and put drinking water supplies at risk. For all of these reasons, DES opposes this proposed fee reduction.

Section 78 - Late Renewal Fees for Registration of Septic System Designers and Installers (Estimated 2012 impacts: Revenue decrease of $29,840)

The DES Subsurface Systems Bureau manages a certification and re-certification program for septic system designers and installers. Designer and installer certifications are reissued every two years. In 2009, RSA 485-A:35 was amended to specify that an additional fee of $80 would be required if a renewal application were filed late. Section 78 of this bill proposes to eliminate this penalty. The last round of renewal applications was due by December 31, 2010. Approximately 90% of the 3,600 applicants for renewal made timely filings. The Department believes the legislature appropriately determined that the late renewal fees provide a reasonable and appropriate incentive for septic system designers and installers to renew their licenses in a timely manner, thus ensuring homeowners and businesses who rely on these professionals that they are in good standing when performing work that provides vital protection of the environment and public health in New Hampshire. For these reasons, DES opposes this proposed fee reduction.

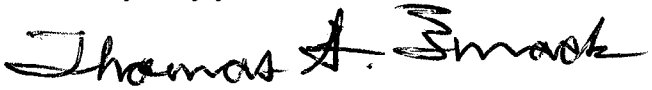
Conclusion

Most of the environmental fees that are proposed to be reduced by HB 645 are paid to dedicated non-lapsing accounts that do not directly raise general fund revenues. Nevertheless, the reduction of these fees would negatively affect the general fund. The proposed revenue reductions will cost the general fund about $400,000 in FY 2012 in forgone revenues generated by laboratory fees. DES estimates that total general fund costs of about $889,000 will be incurred in 2012 for layoffs due to inadequate funds to pay for employee termination costs in four programs (Terrain Alteration, Wetlands, Subsurface and Motor Vehicle Air Pollution Abatement).

As described above, the impacts of the fee reductions proposed by HB 645 on the services that DES provides to the public and regulated community would be severe. They would substantially impair the agency's ability to protect the environment public health, and they would act to disadvantage New Hampshire businesses and municipalities. For these reasons, the Department of Environmental Services opposes the passage of HB 645.

Thank you for the opportunity to comment on this bill. Please do not hesitate to call me at 271-2958, if you have any questions or need additional information.

Very truly yours,



Thomas S. Burack,
Commissioner

cc: Representative Hess
Representative Chandler
Representative Tamburello