



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

January 28, 2010

Representative Tara Sad, Chairman
Environment and Agriculture Committee
Legislative Office Building, Room 303
Concord, NH 03301

SUBJECT: HB 1575, An act relative to commercial composting.

Dear Chairman Sad and Members of the Committee:

Thank you for the opportunity to provide testimony on HB 1575. This bill establishes a permitting program for commercial solid waste composting operations and sets forth specific requirements related thereto. The New Hampshire Department of Environmental Services (Department) has concerns about this bill, which it shared with the prime sponsor and others at a meeting on January 12, 2010. As a result of that meeting, we understand that some of our concerns are related to unintended consequences of the bill's current wording, and that the sponsors may ask this committee to amend the bill. The Department does not support the bill as currently written, and offers the following testimony.

In the hierarchy of preferred solid waste management methods established by the legislature in RSA 149-M:3, composting is among the most preferred methods. In fact, composting is subordinate only to source reduction and recycling, and is preferentially positioned ahead of waste to energy, incineration and landfilling. This is significant to our analysis of this bill because, in its current form, this legislation will impair the future of composting in New Hampshire and limit the state's ability to reduce its waste disposal needs by using composting technologies to manage organic waste, which currently comprises 27% of our waste stream.

Our specific concerns are summarized below:

Existing permitting program:

The Department already has a permitting program for solid waste composting facilities, including commercial operations. The program is established under the authority of RSA 149-M through adoption of the NH Administrative Rules for Solid Waste Management, Env-Sw 100 - 2000 (SW Rules). The permitting procedures and facility standards are specifically contained in Env-Sw 300 and Env-Sw 600. Therefore, HB 1575 is at best duplicative of the existing program, and at worst replaces the existing program and leaves out important requirements of RSA 149-M.

All solid waste composting facilities, including commercial facilities, are required to comply with the applicable provisions of the statute and the SW rules. It is not clear whether the bill, if enacted, would supercede those existing requirements or run parallel to them. If the bill's provisions supercede the current standards, significant existing requirements will no longer apply. Such requirements include financial assurance, applicant background checks, demonstration of public benefit, public hearing, notifications, operator training and certification, and permit application fees. If the bill's provisions run parallel to the existing permitting program, it is unclear as to how the Department would administer conflicting, overlapping, and differing provisions. Many of the requirements of the bill are already contained in the SW Rules. Further, the SW Rules contain standards that are performance-based to allow flexibility in operations. The bill as proposed would remove that flexibility.

Level of detail in bill:

The Department is concerned about the level of detail this bill would set into statute. The bill provides a level of detail that the Department believes is best left to rulemaking. As written, the bill would discourage innovation, would not allow industry or the Department to adapt to changes in technology associated with composting, and would impair the Department's ability to ensure the best achievable environmental protection. The technology in this field is continually evolving, resulting in frequent modifications to best management practices applicable to the process. Setting very specific, detailed requirements in statute will prevent the Department from requiring facilities to apply best management practices and state-of-the-art technologies and methodologies without first going through the legislative process.

In addition, this bill requires permit applicants to submit very detailed information in the application, but in several instances does not state what the Department is to do with the information. Other required information appears difficult or impossible for the applicant to obtain, such as identifying all the generators of source separated organic waste (SSOW) and their methods of generation, and each user of finished product.

Lastly, the Department is concerned that the detailed requirements of this bill will effectively discourage composting in New Hampshire. In particular, we are concerned that simple leaf and yard waste composting, which currently does not require a permit, will be adversely affected.

Local ordinances:

The bill requires the Department to consider local ordinances in its permitting decisions, which runs counter to important provisions in RSA 149-M that have existed since 1996. RSA 149-M:9, VII states, "The issuance of a facility permit by the Department shall not affect any obligation to obtain local approvals required under all applicable, lawful local ordinances, codes, and regulations not inconsistent with this chapter. Local land use regulation of facility location shall be presumed lawful if administered in good faith, but such presumption shall not be conclusive." This provision sets local approvals as a parallel process that applicants must pursue. Disputes

disputes over the meaning of local zoning laws and whether or not local decisions are valid is the function of the courts and not the Department.

Biosolids composting:

The bill excludes biosolids, sludge and septage from the definition of SSOW. However, the bill prohibits the inclusion of biosolids, sludge and septage in the compost feedstock. Composting of biosolids, sludge and septage is currently regulated under RSA 485-A, which allows SSOW to be included in the feedstock. It is not clear whether this bill intends to outlaw composting of biosolids, sludge and septage, or prevent the inclusion of SSOW in the feedstock at facilities that compost biosolids, sludge and septage under the authority of RSA 485-A. The Department notes that inclusion of SSOW in biosolids, sludge and septage composting is, in most cases, a necessary and important step.

In summary, the Department does not support this bill. The Department believes that the bill will discourage composting operations and impair the Department's ability to properly administer the state's solid waste permitting program. The effect of this bill is a reversal of historic legislative support for composting as a preferred waste management method. As noted earlier, we understand that this bill was not intended to have that effect. We believe that the existing statute provides an adequate framework for regulating commercial composting activities. However, we recognize that our current rules applicable to composting facilities might benefit from review and possible updating.

Thank you for the opportunity to comment on this legislation. If you have any questions or need additional information, please contact Mike Guilfooy, Administrator of the Solid Waste Management Bureau, at 271-6467, or Mike Wimsatt at 271-2905.

Sincerely,



Thomas Burack
Commissioner

cc: Michael J. Wimsatt, P.G., Director, Waste Management Division

