



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



**Robert R. Scott, Commissioner**

April 14, 2019

The Honorable Martha Fuller Clark  
Chair, Senate Energy and Natural Resources Committee  
State House, Room 103  
Concord, New Hampshire 03301

**RE: HB 494, An Act relative to removal or containment of contaminants from the Coakley Landfill**

Dear Chair Fuller Clark and Members of the Committee:

Thank you for the opportunity to provide testimony on HB 494. This bill would require the New Hampshire Department of Environmental Services (NHDES) to pursue a remedy, under the applicable consent decree governing work at the Coakley Landfill, to provide additional removal or containment of the contaminants entering Berrys Brook from the landfill. Failing that, the bill would require NHDES to "...file a petition for such a remedy through the available administrative or legal process with the highest likelihood of success...." NHDES opposes this bill.

The Coakley Landfill site is a federal Superfund site located in Greenland and North Hampton that was discovered to have impacted nearby drinking water wells in the early 1980s. It was listed as a federal National Priorities List (NPL) Superfund site in 1986. Following that listing, investigations were made to characterize the contamination and evaluate options for cleaning it up. By the early 1990s, remedies were selected and implemented. The remedies were embodied in court-ordered consent decrees, which govern the work at the site. The landfill wastes were consolidated and covered with an engineered cap, and groundwater quality has been monitored since that time to document the reduction in the concentration and extent of contamination with metals and volatile organic compounds. In 2016, sampling of monitoring wells at the site indicated the presence of per- and polyfluoroalkyl substances (PFAS) in groundwater at the site. Subsequent sampling determined that PFAS compounds were also detected in surface waters that drain the site, including Berrys Brook.

As a federal Superfund NPL site, authority over site management rests primarily with the U.S. Environmental Protection Agency (EPA). NHDES serves in an active support role to EPA to ensure that the responsible parties comply with the legal agreements governing investigation, remediation, and overall management of the site, and has done so since the site's initial discovery and listing. NHDES is well aware of and understands the concerns of the bill sponsors relative to the groundwater and surface water impacts caused by this facility. NHDES shares those concerns, and has been working together with EPA and the responsible parties to determine the extent and nature of the PFAS contamination discovered in groundwater and surface water near the facility, evaluate whether it puts nearby drinking water wells and community members at risk, and to determine whether additional remedial measures are necessary to manage the hazards associated with these contaminants. If determined to be necessary to protect human and ecological health, additional remedial measures will be designed and implemented. Until that time, local drinking water wells and surface waters will continue to be monitored to ensure their quality and safety.

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HB 494 would declare that an imminent hazard (under RSA 147-A:13) exists at the Coakley Landfill site, and direct NHDES to compel the responsible parties (the Coakley Landfill Group or "CLG") to implement a surface water remedial option for Berrys Brook. NHDES must oppose this bill for the following reasons.

First, NHDES disagrees that an imminent hazard under RSA 147-A:13 exists at the site, as is declared in Section 2 of the bill. If the Department believed that were true, it would have already worked with EPA to order immediate mitigation of the hazard. While all parties share concerns regarding the presence of PFAS, NHDES is unaware of any exposures to groundwater or surface water that pose an "imminent and substantial hazard to human health or to the environment," which is the standard outlined under RSA 147-A:13.

Second, Section 3 of the bill would direct NHDES to compel the CLG to implement a surface water remedy for the site to provide additional removal or containment of contamination to Berrys Brook. As a partner in Superfund oversight, NHDES is a signatory to the past court-ordered consent decrees with EPA and the CLG. These documents govern the work at the site. While NHDES has gone on record stating it believes that actions need to be implemented to address surface water impacts, it is bound to work with its federal partners pursuant to the consent decrees, using federal Superfund authorities or applicable state standards as a basis for compelling such actions. As we understand it, the actions that NHDES would be directed to take unilaterally under Section 3 of the bill would circumvent the provisions of those decrees.

Finally, the interference with existing legal agreements raises a broader concern regarding the bill's potential impact on NHDES's work on sites in the federal Superfund program. Coakley is one of twenty-one (21) federal Superfund NPL sites in our state. They are all subject to the federal Comprehensive Environmental Response, Compensation and Liability Act (commonly known as "CERCLA"), and EPA is the lead agency on each of these sites. Legally binding documents (like the above-described Coakley consent decrees) govern the work at these sites. NHDES believes that passage of this bill would disrupt the confidence of site owners and responsible parties who negotiate these agreements, and potentially have a chilling effect on our ability to secure agreements with such parties at any Superfund sites. Responsible parties are often required to make significant long-term financial commitments to investigation, remediation, and long-term care and maintenance of sites and their remedial systems. Under the Superfund program, parties are able to make these difficult commitments in part because they have the benefit of legal constraints on the manner in which they may be required to undertake these activities and expend funds. If these parties come to expect that all of that may be upended or overturned by a single piece of state legislation targeted at their facility, there would be little incentive to cooperate.

For these reasons, NHDES cannot support this bill, and recommends that the important ongoing work at the site be allowed to proceed, so that any hazards can be fully characterized, and protective solutions developed.

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Thank you again for the opportunity to provide testimony on HB 494. Should you have further questions or need additional information, please feel free to contact Mike Wimsatt, Director, Waste Management Division, at 271-1997, or via email at [Michael.Wimsatt@des.nh.gov](mailto:Michael.Wimsatt@des.nh.gov).

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert R. Scott", with a long horizontal flourish extending to the right.

Robert R. Scott  
Commissioner

cc: Sponsors of HB 494: Representatives Cushing, Edgar, Loughman, Bushway, Janvrin, Le, Malloy, Grote, Altschiller, Meuse, Senator Sherman

