



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

February 11, 2019

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

RE: SB 163 An Act relative to permits for operation of solid waste management facilities

Dear Chair Fuller Clark and Members of the Committee:

Thank you for the opportunity to testify on SB 163. This bill would amend RSA 149-M, New Hampshire's solid waste management law, to require the New Hampshire Department of Environmental Services (NHDES) to act upon a permit application for a solid waste management facility within 180 days after the application is deemed complete, and allow for additional time with the consent of the applicant. The bill is a request of NHDES. We believe its passage is vital to ensuring the public's confidence in the State's permitting process for these important facilities, and that the state's solid waste management needs are being met in a responsible manner that is fully protective of human health and the environment.

Pursuant to RSA 149-M, NHDES regulates the construction, operation and closure of solid waste management facilities, including landfills, waste-to-energy facilities, and commercial and municipal waste transfer stations through a permitting system. That system, as prescribed in law and implemented through the NH Solid Waste Rules, requires that solid waste facilities apply for a permit to site and operate a facility, and also submit applications for permit modification when the size, scope, or manner of operation are proposed for change or expansion. Prior to the 2018 legislative session, application review timeframes for these facilities were as outlined in rule based upon RSA 541-A:29. That is, applications received had to be reviewed for completeness within 60 days, and a decision on the application was to be issued within 120 days of receipt of a complete application. For many applications, these timeframes were achievable. However, for more complex applications, such as a major expansion of a landfill, considerably more time was required.

During the 2018 legislative session, HB 1104 modified RSA 541-A:29 by reducing the time for completeness review from 60 to 30 days, and reducing the time to issue a decision from 120 to 60 days from receipt of a complete application. For many state permitting programs, this was a change that was achievable and was welcomed by the regulated community. However, in the case of solid waste facility permitting, this change further compressed a permit review schedule that for many applications was already extremely challenging. The facilities that are subject to these permits, when properly designed and operated, can responsibly and safely manage hundreds of thousands of tons of solid waste each year, but when design or operation are deficient, can significantly threaten the human health and the environment. These new timeframes compromise NHDES's ability to

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The Honorable Martha Fuller Clark
Chair, Senate Energy & Natural Resources Committee
February 11, 2019
Page 2

complete a competent, professional review of what are often voluminous, technically complex applications.

The more complex solid waste facility applications require hundreds of hours of design review by licensed NHDES engineers; communications with the applicant, other NHDES regulatory programs, and other state agencies; holding a public hearing and public comment period, careful and detailed review of public comment, and careful drafting of a permit and permit decision documents. The current deadlines do not allow sufficient time for this process to be properly completed. In addition to potentially threatening human health and the environment, adherence to these deadlines potentially disadvantages all stakeholders in the permitting process. When NHDES is unable to do a workmanlike job in its review and action on an application, it may wrongly approve or deny the application; or, an approval or denial may not be properly documented; making the decision vulnerable to appeals by either the applicant or opponents of the application. This undermines both the public's and the applicants' confidence in the State's regulation of these vital facilities.

SB 163 will provide a more realistic timeframe for the careful application review and action that NH citizens expect and deserve. As written, the bill establishes the review times as "the time periods specified in (the) rules....but no later than 180 days after the department determines the permit application is complete." This means that upon taking effect, the bill would restore the permit review times to those contained in the current rules, namely 60 days to determine completeness, and 120 days from receipt of a completed application or 30 days following a public hearing (whichever is later) to issue a decision. Under the bill, this latter period could not exceed 180 days, except with the written consent of the applicant. This change would help to ensure that NHDES executes its important permitting review functions in a manner that best serves the public and our regulated community alike.

Thank you again for the opportunity to testify in support of SB 163. Should you have further questions or need additional information, please feel free to contact either Pamela Hoyt-Denison, Administrator of Waste Programs (Pamela.hoyt-denison@des.nh.gov, 271-2945), or Mike Wimsatt, Waste Management Division Director (Michael.wimsatt@des.nh.gov, 271-1997).

Sincerely,



Robert R. Scott
Commissioner

cc: Sponsors of SB 163: Senators Carson, Bradley, Feltes; Representatives Renzullo, S. Beaudoin, McGuire