



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

January 18, 2022

The Honorable Howard Pearl
Chairman, House Environment & Agriculture Committee
Legislative Office Building, Room 303
Concord, NH 03301

RE: HB 1454-FN, An Act relative to permits for the siting of new landfills

Dear Chairman Pearl and Members of the Committee:

Thank you for the opportunity to testify on HB 1454-FN. This bill would prohibit the siting of a new solid waste landfill within a proscribed distance from public waters. The New Hampshire Department of Environmental Services (NHDES) is not taking a position on this bill, but does have concerns about several provisions of the bill.

First, the bill would prohibit NHDES from issuing any permit for the siting of a new landfill if groundwater migrating from the landfill site could reach "any perennial river, lake or coastal water of New Hampshire, as defined in RSA 483-B:4, XVI.," within five years. In order to determine this distance for a given site, the bill requires the applicant to hire an independent hydrogeologist to perform field testing and estimate groundwater velocities in both shallow and deep groundwater. NHDES is concerned that, given the heterogeneous and complex nature of New Hampshire's geology and aquifers, the bill may underestimate the complexity and nature of the work required to complete such an analysis. Further, the required field testing would need to be conducted on properties that may not be owned by the applicant, which may present access problems.

Second, the bill would require that when a permit is granted for a landfill site, one or more networks of monitoring wells must be established at a distance equal to the determined five-year travel distance from each water body. NHDES believes that such networks would not add to the protectiveness already provided by currently existing monitoring requirements. Under current rules, NHDES monitors groundwater quality around landfills using a "Groundwater Release Detection Permit." The permittee conducts "detection monitoring" under the permit, periodically sampling and analyzing a network of monitoring wells for a specified set of parameters. These well networks are located in close proximity to the landfill footprint. If a contaminant is detected above the background value at any down-gradient well, the permittee must begin "assessment monitoring," which entails enhanced monitoring for a larger panel of contaminants. If assessment monitoring confirms the exceedance, a Corrective Action Plan must be submitted and implemented. If successful, then the permittee can eventually return to regular detection monitoring. However, if the problem cannot be rectified, then under existing rules, the permittee must submit a schedule of activities to implement facility closure. Given that this system is

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designed and intended to provide for prompt detection and remedial action on the site proper, it is not clear to NHDES how a monitoring well network that is located further afield from the landfill would enhance protection. In addition, NHDES is also concerned that the monitoring wells for the networks required by the bill would need to be located on properties that may not be owned by the applicant, again creating access challenges.

Third, the bill requires that if any contaminant is detected above baseline concentrations in the newly required monitoring well networks, landfilling at the facility shall immediately cease until the plume is remediated. NHDES is concerned that this provision appears to presume that any detection above background in any well has occurred as a result of a release from the landfill. Given that the required networks may be located a significant distance from the landfill, such a presumption may be in error, with the contaminant being sourced from some other off-site source. In addition to the obvious issue of fairness, NHDES is concerned that this could needlessly cause a sudden disposal capacity crisis and market disruption.

Thank you again for the opportunity to comment on HB 1454-FN. Should you have questions or need additional information, please feel free to contact Michael Wimsatt, Waste Management Division Director (michael.wimsatt@des.nh.gov, 271-1997).

Sincerely,



Robert R. Scott
Commissioner

ec: Sponsors of HB 1454: Representatives Tucker, Thompson, Massimilla, Egan, Hatch, Merner, Laflamme, Myler, Deshaies; Senators Hennessey and Sherman