



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

April 3, 2023

The Honorable Kevin Avard, Chair
Senate Energy and Natural Resources Committee
State House, Room 103
Concord, NH 03301

RE: HB 56 as amended by the House, relative to permits for the siting of new landfills.

Dear Chair Avard and Members of the Committee:

Thank you for the opportunity to testify on HB 56 as amended by the House. This bill establishes certain prohibitions relative to landfill siting, requires the New Hampshire Department of Environmental Services (NHDES) to establish a site-specific setback distance for a landfill from perennial surface waters, and specifies a method for calculating the setback distance. NHDES has concerns relative to specific provisions of the bill and how this bill would be implemented. We believe that SB 61 as amended would be a more effective way of addressing concerns relative to landfill siting.

HB 56, as amended, requires NHDES to establish a site-specific setback distance for any proposed new landfill from any perennial river, lake, or coastal water, and prohibits permitting of any facility that overlies a “significant sand and gravel aquifer.” The bill provides that the setback distance shall be sufficient to prevent any groundwater contaminated by the landfill from reaching surface water within five years. The setback distance is to be determined by an independent hydrogeologist based upon on-site testing to estimate groundwater seepage velocity. The bill provides that “[t]he maximum seepage velocity shall be the highest rate estimated for any test site in the disposal area.” The five-year travel distance estimate shall then be calculated using this maximum seepage velocity. The bill also gives NHDES the authority to adopt rules to establish “project improvement allowances,” each of which can add one year of travel time credit (to effectively reduce the five-year period). Up to three such allowances could be applied to a given project. The allowances, while not specified in the bill, include “additional control technologies, monitoring programs, or funding guarantees” that may increase the safety of the project. No allowances are allowed for a site where “any measurement made of in-situ soils within the property has an undisturbed hydraulic conductivity greater than or equal to 1×10^{-5} centimeters per second.”

NHDES has several concerns with the provisions of the bill. First, it is not clear to NHDES how the five-year travel distance has been determined to be the appropriate standard, and what impact this may have on the future availability of landfill sites in the state. Second, the provision requiring the use of the highest rate estimated “for any test site” is somewhat unclear but would appear to potentially result in erroneously high estimates of overall groundwater seepage velocities from the

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landfill site to surface waters. Third, the term “significant sand and gravel aquifer” is undefined, making it unclear how the related siting prohibition would be enforced. Lastly, there is little detail in the bill relative to the nature of the “project improvement allowances” that it envisions. It is unclear to NHDES what specific actions or improvements are intended. In addition, the provision prohibiting the use of allowances for sites “where any measurement” of soils has a hydraulic conductivity at or above 1×10^{-5} centimeters per second ignores the significant variability typical of soils on a given site and is likely unnecessarily restrictive.

NHDES is following a somewhat similar bill, SB 61 as amended by the Senate, which would direct NHDES to undertake rulemaking to establish criteria for setting site-specific surface water setbacks for landfills and would direct NHDES to use a contractor to conduct a critical assessment of current setback requirements. NHDES believes that such an assessment would be of great value and would assist us in future efforts to review and revise our current rules to ensure adequate protection of surface waters. NHDES believes that SB 61 as amended would be an effective means of addressing this topic.

Thank you again for the opportunity to comment on HB 56. 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), or me.

Sincerely,



Robert R. Scott
Commissioner

cc: Sponsors of HB 56: Representatives M. Murray, Massimilla, Almy, Petrigno, Hamer, Stapleton, Simpson, Senator Watters