



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

February 21, 2023

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

RE: HB 602, an act relative to landfill siting.

Dear Chair Aron and Members of the Committee:

Thank you for the opportunity to testify on HB 602. This bill requires the New Hampshire Department of Environmental Services (NHDES) to establish a site-specific setback distance for a landfill from sensitive receptors, which are broadly defined to include certain aquifers, water supplies, sand and gravel deposits, and perennial surface waters, and specifies a method for calculating that distance. The bill also sets out a host of additional prescribed numerical setback distances and requirements. NHDES has concerns relative to specific provisions of the bill and how this bill would be implemented.

HB 602 requires NHDES to establish a site-specific setback distance for any proposed new landfill from “sensitive receptors,” which are defined to include “...public and private water supply aquifers and wellhead protection zones; public and private drinking water supplies; significant groundwater aquifers and primary sand and gravel recharge areas; sand and gravel deposits; and any perennial river, lake, or coastal water...” The bill provides that the “time-of-travel” from the landfill to any sensitive receptors shall be greater than five years, and from any leachate storage structures or pump stations shall be greater than three 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.

The bill further specifies that the landfill shall not overlie or be within 300 feet of a “significant sand and gravel aquifer,” and that all soils on the property must have an undisturbed hydraulic conductivity of less than or equal to 1×10^{-5} cm/sec. The bill also specifies a host of specific minimum numerical setback distances from roads, residences, property boundaries, wells, springs, sand and gravel deposits, and wildlife habitats.

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NHDES has many concerns with the provisions of the bill. 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. 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 landfill site to sensitive receptors. 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. Some provisions of the bill would likely eliminate any future site from eligibility for use as a landfill. For example, the requirement that all soils on a property be of low permeability is unrealistic. Also, including “sand and gravel deposits” (though undefined) as sensitive receptors, would likely eliminate all future potential sites.

NHDES is following a more focused bill, SB 61, which would direct NHDES to undertake rulemaking to establish criteria for setting site-specific surface water setbacks for landfills. We understand that efforts are under consideration to combine SB 61 with SB 227, a bill that 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 combining the bills could be an effective means of addressing the topic of landfill siting.

Thank you again for the opportunity to comment on HB 602. 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,

A handwritten signature in black ink, appearing to read "Robert R. Scott", with a stylized flourish at the end.

Robert R. Scott
Commissioner

ec: Sponsors of HB 602: Representatives Simon, Mooney, Rung, Rochefort