



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

February 14, 2023

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

RE: SB 159, AN ACT relative to permits for siting of new landfills.

Dear Chair Avard and Members of the Committee:

Thank you for the opportunity to testify on SB 159. This bill would amend RSA 149-M to prohibit the New Hampshire Department of Environmental Services (NHDES) from issuing a permit for the construction of an “unrestricted landfill” unless a certain condition is met. NHDES has several concerns with the bill and opposes its passage.

This bill seeks to amend RSA 149-M:9, V-a in order to prohibit NHDES from issuing a permit for construction of an “unrestricted landfill” unless it first determines that the permit application is consistent with the state’s solid waste plan. NHDES has identified a technical flaw and two additional concerns with the bill as introduced.

First, the bill seeks to amend a section of law that has been repealed. In accordance with Chapter 199:2 of the laws of 2022, the repeal of RSA 149-M:9, Section V-a. was effective when, on January, 17, 2023, the Commissioner of NHDES certified to the Office of Legislative Services and the Secretary of State that the update to the state solid waste plan was published on September 30, 2022 in accordance with RSA 149-M:29. Second, criteria in existing law already directs NHDES to consider, as part of its determination of public benefit, “...the ability of the proposed facility to assist in achieving the goals of the state solid waste management plan...” If this bill were to pass, the statute would contain two similar but differently-worded instructions on the same topic, making the law less clear. Finally, the term “unrestricted landfill” is not defined in the bill, and also is not defined in the statute it seeks to amend. In the absence of a definition for this term, the intent of the bill is uncertain.

It is the understanding of NHDES that the bill sponsor seeks to ensure, perhaps through amendment of the bill, that any new landfill facilities permitted in New Hampshire have a limited service area. NHDES understands this to mean that any such facility would be authorized to accept waste only from certain specified geographic areas. It is unclear to NHDES how such a requirement would be

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implemented or enforced. NHDES also believes that such a requirement would need to be evaluated for consistency with the Commerce Clause of the U.S. Constitution.

Thank you again for the opportunity to comment on SB 159. Should you have questions or need additional information, please feel free to contact either Mike Wimsatt, Waste Management Division Director, at michael.wimsatt@des.nh.gov or (603) 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 SB 159: Senators Fenton, Altschiller, Watters, Representatives N. Murphy, Read, Bouldin, Fedolfi