



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

February 15, 2023

The Honorable Howard Pearl, Chair
Senate Executive Departments and Administration Committee
State House, Room 103
Concord, NH 03301

RE: SB 211, AN ACT relative to background investigations of solid waste and hazardous waste facility permit applicants.

Dear Chair Pearl and Members of the Committee:

Thank you for the opportunity to testify on SB 211. This bill would amend the language of the state's solid and hazardous waste management statutes to correct deficiencies in the law related to the performance of background investigations of permit applicants. This bill is a request of the New Hampshire Department of Environmental Services (NHDES). Since its introduction, NHDES has listened to the concerns of stakeholders and has worked with the sponsor on a proposed amendment to address those concerns. NHDES strongly supports this bill and the anticipated proposed amendment.

For many years, the state statutes governing solid and hazardous waste management, RSA 149-M and RSA 147-A, respectively, have directed NHDES to conduct background investigations of applicants for solid and hazardous waste facility permits. Both laws provide that applications must include a performance history of the applicant and of its officers and directors relative to the operation, financial security, and ownership of all facilities owned or operated by the applicant. Further, the law provides that NHDES may deny a permit application to any person who has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the previous five years. To implement this provision, NHDES is directed to request that the Office of the Attorney General conduct a background investigation of the applicant's performance history and criminal record.

In consultation with the NH Department of Justice (NHDOJ), it has come to our attention that the current language in these laws does not outline the procedures necessary to conduct multi-state criminal history records checks. Such checks, which are commonly conducted for a variety of occupations, are implemented through the NH State Police, who conducts a fingerprint-based criminal history records check through its records and through the Federal Bureau of Investigation. In order to access this system, very specific language is required to be contained in the enabling law. NHDES has worked closely with NHDOJ in crafting the language in this bill to ensure that it meets those criteria. Without the addition of this language, national criminal history records checks will not be possible.

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After the introduction of this bill, members of the regulated community contacted NHDES to express concerns about certain provisions of the bill that would expand the criminal background investigation to “persons or business entities holding 10 percent or more of [the applicant’s] equity or debt liability.” While this was originally included in the bill in an attempt to provide for a more comprehensive background investigation, it became clear to NHDES after consultation with stakeholders that such a provision would be difficult and impracticable to implement, without providing any significant additional protections. Consequently, NHDES assisted in preparing a proposed amendment that would remove this language. NHDES supports this anticipated amendment.

Thank you again for the opportunity to provide testimony in support of SB 211. 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 long horizontal flourish extending to the right.

Robert R. Scott
Commissioner

ec: Sponsors of SB 211: Senators Pearl, Lang