



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

February 6, 2023

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

RE: SB 267, AN ACT relative to rulemaking for advanced recycling facilities.

Dear Chair Avard and Members of the Committee:

Thank you for the opportunity to testify on SB 267. This bill would amend RSA 149-M to direct the New Hampshire Department of Environmental Services (NHDES) to adopt rules regulating advanced recycling facilities. NHDES opposes this bill as existing regulatory authorities would already address impacts of such facilities and has identified a number of technical flaws with the text as introduced.

This bill would require NHDES to undertake complex rulemaking pertaining to air emissions, effluent discharges and solid or hazardous wastes generated by advanced recycling facilities. Such rules would also establish standards to assess cumulative impacts of advanced recycling facilities, ensuring that they pose no “undue risk of harm,” as defined in the bill. Given the complexity and scope of the rules envisioned in this bill, NHDES assumes that the Department would need to devote significant resources to the rulemaking process and that at least one additional full-time staff person would be necessary to research appropriate regulatory approaches and coordinate rule writing across relevant programs within the agency. As outlined in the bill, NHDES would be required to initiate the formal rulemaking process by November 1, 2023. This timeline would not be achievable given the time necessary to establish and fill a position and conduct the required research and analysis.

Additionally, the bill is inconsistent with several aspects of New Hampshire’s existing statutory framework for regulation of environmental media. For example, the bill requires adoption of air pollution rules under the authority of RSA 149-M. However, rulemaking authority for air pollution requirements is granted to the commissioner under RSAs 125-C and 125-I. Similarly, this bill requires the adoption of rules relative to discharge of wastewater to surface water and groundwater under the authority of RSA 149-M, but rulemaking authority for such requirements is granted to the commissioner under RSA 485-A and also separately regulated by the US EPA under the federal Clean Water Act.

Furthermore, this bill requires the adoption of air pollution control rules requiring the utilization of best available control technology (BACT) for various pollutants and to additionally ensure no “undue risk of harm” to public health and the environment. The definition of “undue risk of harm” in this bill is unclear and confusing with regard to existing applicable statutes, including RSA 125-I, RSA 125-C:10, RSA 485-A, and RSA 485-C. The term “undue risk of harm,” as defined, includes six additional criteria that delineate risk levels, but it is unclear if all six apply across all media (air, water, etc.). Additionally, the terms “cancer risk greater than

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the state average cancer risk of 25 per 1 million people” and “risk of acute and chronic illnesses, including asthma, childhood lead poisoning, and other health conditions known to be sensitive to pollution, greater than the state or national average” are vague and unclearly defined criteria for evaluating air emission levels from a facility. The existing risk assessment methodologies prescribed for development of ambient air limits under RSA 125-I are potentially more restrictive than the undefined “cancer risk” cited in the bill. The definition of “undue risk of harm” appears to broaden the requirement to install BACT to a larger range of pollutants, potentially in conflict with existing requirements under RSA 125-C:10 for BACT determination. It is unclear whether the six criteria per the definition of “undue risk of harm” are intended to be considered in the determination of BACT.

The bill requires continuous monitoring of emissions for specifically identified pollutants. Currently, there are no known continuous emission monitors that are available for monitoring these pollutants including “particulate matter in the 1–10-micron range.”

In addition, provisions in paragraph 5 of this bill relative to issuance of permits conflicts with current law. This section (page 3, lines 9-15) prohibits NHDES from issuing permits for advanced recycling facilities until the Department has adopted final rules. While this section specifically exempts NHDES from acting on such permit applications in accordance with the application review timeframes proscribed in RSA 149-M, it does not reconcile conflicts with similar timeframes for air permitting in RSA 125-C and for water permitting in RSA 541-A.

Lastly, it is worth noting that the rulemaking envisioned in this bill would appear to conflict with prior amendments to RSA 149-M. The statute was previously amended in 2022 (via SB 367) to largely exempt advanced recycling and the plastic materials that it utilizes from regulation under that statute, pursuant to RSA 149-M:62, and amendments to the definition of “solid waste” in RSA 149-M:4, XXII. HB 267 does not propose changes to these provisions of RSA 149-M, but directs NHDES to conduct rulemaking for advanced recycling under the same statute. When taken in context with existing provisions in RSA 149-M, this bill appears to create a fundamental contradiction within the statute relative to NHDES’ role in regulation of advanced recycling.

Thank you again for the opportunity to comment on SB 267. 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 Mike Fitzgerald, Air Resources Division Assistant Director, at william.fitzgerald@des.nh.gov or (603) 271-6390.

Sincerely,



Robert R. Scott, Commissioner

cc: Sponsors of SB 267: Senators Altschiller and Watters; Representatives McWilliams, Caplan, N. Murphy, and M. Paige