



The State of New Hampshire  
**Department of Environmental Services**



**Robert R. Scott, Commissioner**

January 24, 2023

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

**RE: SB 61, AN ACT relative to surface water setbacks for landfills.**

Dear Chair Avard and Members of the Committee:

Thank you for the opportunity to testify on SB 61. This bill would amend RSA 149-M to direct the New Hampshire Department of Environmental Services (NHDES) to adopt rules relative to surface water setbacks for landfills. NHDES is not taking a position on this bill, but does have two specific concerns relative to its applicability and the time allotted for completing the required rulemaking.

This bill requires NHDES to undertake complex rulemaking that would establish criteria for determination of site-specific setbacks of landfill cells from perennial surface water bodies. The bill provides that those criteria must take into account a host of site-specific hydrogeologic characteristics and conditions. The bill directs NHDES to also take into account, in formulating site-specific setbacks, at least eight measures that may be proposed by permit applicants that would provide additional protection of surface water. The bill directs NHDES to adopt these rules within one year of the bill's effective date. It also contains specific provisions relative to the applicability of the required rules to newly-sited facilities.

While NHDES is not taking a position on this bill, it has identified two concerns with the bill's provisions that should be noted. First, the meaning of the language regarding the bill's applicability beginning on page 3, line 27 is unclear. This provision states that, provided that NHDES adopts the required rules by the specified one-year deadline, "[a]ny newly-sited landfill that receives a standard permit from [NHDES] after the effective date of [the] act must meet the newly adopted setback rules..." There are several ways that this language could be interpreted. It appears to state that a landfill that receives a permit anytime after the effective date of the act must meet the setback rules, even if the permit issues before the rules are adopted. It is unclear to NHDES how the agency or an applicant could ensure compliance with rules that have not yet been adopted.

Second, NHDES believes that the timeline for adopting rules, i.e., "within one year of [the act's] effective date," is not achievable. The complexity of the contemplated rules will require detailed and careful research and analysis by NHDES staff, and will likely be accompanied by robust public review and comment. In addition, NHDES is aware of potential proposed legislation, currently identified as

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LSR 2023-0966, that would call for an assessment of solid waste facility setback requirements. If this LSR were to be introduced as a bill and pass, NHDES believes that it would be important to consider the results of such an assessment in drafting the rules contemplated by SB 61. In consideration of the time that would be required for such an assessment to be completed and reviewed, and the need for NHDES to complete its own careful research and analysis, we believe that an achievable rulemaking deadline would require NHDES to file an initial rulemaking proposal by July 1, 2025.

Thank you again for the opportunity to comment on SB 61. Should you have questions or need additional information, please feel free to contact either Mike Wimsatt, Waste Management Division Director, at [michael.j.wimsatt@des.nh.gov](mailto:michael.j.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 61: Senators Avard, Lang, Ward, Watters, and Carson