

August 25, 2022

Solid Waste Management Bureau
New Hampshire Department of Environmental Services
VIA E-MAIL

COMMENTS ON NEW HAMPSHIRE SOLID WASTE MANAGEMENT PLAN
(R-WMD-22-03) —DRAFT OF AUGUST 2022

Thank you for the opportunity to provide comments on this important document. I offer these comments in part as an expert in environmental health sciences (currently on the faculty at the University of Michigan, previously at Princeton, Penn, and Rutgers), but primarily as co-director of a wide-ranging project (sponsored by the government of Alberta, Canada) to study how the best environmental regulatory agencies around the world “listen, learn, and lead.”¹

General Problem With Goals:

At the outset, I realize that because this document is the first Solid Waste Plan to be published since 2003, it is future-oriented, organized around eight laudable goals and up to 18 specific actions DES or others could take to move towards each goal.

However, *none of the goals or actions are expressed with any quantitative, measurable targets!* “Reduce,” “Maximize,” “Ensure,” “Encourage,” “Develop.” All are “good verbs,” but none are fleshed out with *any* information about when each “goal” will have been reached or exceeded. “My diet has succeeded because I lost a milligram last week” is not the credible end of a weight-loss plan.

It is also extremely important to be honest with the public in cases where the “goal” turns out to be “we hope to move from terrible to mediocre,” as opposed to “move from good to excellent.” For one prominent and recent example, one prominent waste-disposal company recently put out a 16-page advertisement touting various “goals for 2030.” At least these had numerical information rather than completely vague verbiage, but as a former top official at OSHA, I was amazed that the company was promising to reduce its worker-injury rate, but didn’t reveal that its current

¹ I realize this is not a formal rulemaking docket, but please consider adding to the record for this report the following publications that provide information about “regulatory excellence”: (1) https://kleinmanenergy.upenn.edu/wp-content/uploads/2020/08/Listening-Learning-Leading_Coglianesse-1.pdf; and (2) <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1815&context=pehr> (this article discusses how the best environmental regulators worldwide use *detailed and ambitious* strategic planning reports to guide their activities).

rate is more than *twice* the industry average, and its “2030 goal” still exceeds *today’s* industry average! “Look at us! We hope to be merely awful sometime in the future!”

The Draft Plan is actually worse than this, because nowhere in the Draft does DES mention New Hampshire’s *recent progress* towards any of the eight goals, **or lack thereof**. For one important (missing) example, DES’s own 2019 Biennial Solid Waste Report reveals that between 2015 and 2018, the amount of MSW disposed of in NH actually **increased** by 21 percent, despite the goal of continuous reduction in this amount! So how will NH reach its ambitious—but absolutely worthwhile—goals of 25% reduction by 2030 and 45% by 2050, *against a trend that has been going in the wrong direction? What will you do differently starting tomorrow?*

The document simply must *ground the discussion of each goal and each action in the context of current trends, and the reasons for them*. If circumstances have been improving over the past few years (perhaps, for example, Action 1.1, where NGOs and companies have, I think, begun to make inroads in reducing single-use items), then DES should make clear that it is “jumping on a train going in the right direction.” But in cases (as in the total waste generation trend mentioned above) where DES has a (worthy) goal that *flies in the face of current motion in the wrong direction*, the public deserves to see that DES realizes that it’s not trying to “jump on a train,” but instead hoping (somehow) to pull the train in the opposite direction.

Emphasis on the Weight of, rather than the Risk of, Trash:

My major concern with the entire document is that with the exception of one short section (pp. 9-10), DES construes its entire ambition as reducing landfilling and other less-desirable technologies *per se*, rather than to reduce the HARMS of trash on public health and the environment. I realize that literally, the Legislature has set the tone for this by emphasizing reduction of waste generation and increasing of “diversion” (which equates to reducing landfill tonnage), but surely DES can do better, and interpret these instructions in a way that doesn’t treat each ton of waste exactly the same. *The reason landfilling is at the bottom of the hierarchy is because **poorly-sited and poorly-run landfills have harmed public health and the environment**, not because “landfilling is bad.” The NH Solid Waste Plan should have as its primary goal the reduction of RISK, not the reduction of WEIGHT!*

<p>It is the <i>toxicity</i> of some of what goes into landfills, and the <i>needless location</i> of some landfills in poor soils far too close to lakes, rivers, and drinking water wells, that is the problem. Indeed, I would argue that properly-segregated MSW, landfilled in a proper location such that contamination from the inevitable liner leaks will NEVER reach surface water or wells for at least (say) a century or more, is NOT an undesirable tier in the hierarchy!</p>
--

So DES needs to do *much* more to see to it that landfills are sited properly, and that they only accept waste that does not contain highly hazardous substances.

Goal 2, the only part of the Plan that treats a ton of dangerous waste as worse than a ton of innocuous waste, doesn't go nearly far enough. First, the Plan fails utterly to mention landfill location. And yet, the public benefit requirement DES must abide by (RSA 149-M:11) prominently instructs the Department to consider the “type, size, AND LOCATION” of any new landfill (emphasis added).

DES will never reduce RISKS (as opposed to, at best, merely reducing tonnage) if it flies a “Mission Accomplished” banner for managing to reduce tonnage, but allowing that tonnage to be buried in one or more of the worst possible locations in the state.

Obviously, the easiest way to fix this glaring problem is to support HB 1454, which takes a baby step towards bringing the DES landfill-location regulations partly in line with the sensible restrictions that other states imposed decades ago. But I know the score: DES management will no doubt consider this suggestion to be “outside the scope” of the new statute that required this document to be written. All I can say is that the Legislature said DES should “**at a minimum**” write about source reduction and diversion, and surely a Department trying to improve itself could go beyond the minimum.

So I assume the final draft will, sadly, say not one word about how pollution from landfills can migrate at inches per year, or feet per day, depending on how blind the operators and the Department are. But there is still much more DES could say about reducing the *portion* of the risk equation (risk equals toxicity times quantity times migration) that involves the inherent danger of the type of waste itself:

- Remove all references (e.g., page 6) to putting priority on “high-volume and weight materials.” This makes little sense. A pound of PCB-contaminated soil (I have seen written evidence that at least one NH landfill recently accepted such waste) will be MUCH more likely to harm public health and the environment than a ton of concrete or shredded paper.
- Admit that “hazardous waste” is both an EPA term of art and a way for sensible people to actually discriminate between more and less hazardous material. In the middle of page 4, you need to write “hazardous waste” *in quotes* (the EPA term of art)—this is obvious because several of the bulleted items defined above as “solid waste” (such as asbestos wastes, infectious wastes, fuel ash, and contaminated soils) are clearly MORE dangerous than some of the materials that will fail the EPA TCLP or other tests of “hazard”!
- Stop referring to “chemicals of emerging concern” as if they are the sole problem. Yes, we are all being sensitized to the mistakes made by landfilling PFAS-laden materials, and I suppose that could be considered “emerging” despite the long history of PFAS production and disposal, but *what of the*

“legacy” problems that DES also hasn’t begun to solve? A Department that still (apparently) allows operators to accept PCB-contaminated soil as “solid waste” ought not to claim victory over all but the “emerging” hazards.

- Stop blaming consumers for the existence of “household hazardous waste.” *These substances are found in households because they are SOLD to households.* Producers need to take more responsibility for what they sell. Likewise, landfill operators need to take **much** more responsibility for segregating HHW so that it does not end up in landfills.
- So as one example of changing Goal 2 from a “blame the consumer” section to one more even-handed, I urge DES to add an Action Item under #2.8; in addition to requiring operators to collect HHW one day per year, how about requiring them to inspect incoming waste and *identify* HHW that has not been collected? Repeated failure to do so could/should result in no further permits for expansion.

In sum, DES could rethink the entire document by determining that 149-M:11 can’t possibly mean “gross” public benefit, but must be interpreted as requiring NET public benefit. It was Ronald Reagan, 41 years ago, who issued the Executive Order requiring that all federal regulations provide benefits *in excess of their costs*, not merely “some benefit regardless of the cost.” An MSW landfill will always, because the definition is so vapid, provide some “gross” benefit (usually to the stockholders of the developer!) But EVERYTHING that DES does, or allows to be done, with respect to generation and disposal of MSW ought to provide NET public benefit—that is, benefits to the economy *of the state* that exceed the costs to the public health and environment of the state. **Merely announcing that DES will try really hard to reduce the tonnage of waste we landfill, with hardly a word about how to most efficiently and fairly reduce the hazards, risks, and harms of that waste,** is not a document worthy of the name “Solid Waste Management Plan.”

I do realize that (unfortunately), this is not a rulemaking process, and that DES has no legal obligation to consider or respond to public comments like this one. Please consider responding anyway, even if only to give credible reasons why you might reject one or all of these suggestions. Otherwise, the process will be farcical.

Thanks again for the opportunity to comment.



Adam M. Finkel, Sc.D., CIH

[Professor of Environmental Health Sciences, University of Michigan School of Public Health]