

Lawmakers on rules panel approve controversial landfill regulations, block public testimony

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The Joint Legislative Committee on Administrative Rules did not take public testimony before approving hotly contested landfill rules. (Claire Sullivan | New Hampshire Bulletin)

Without hearing public testimony, a legislative oversight panel on Thursday approved hotly contested rules that will control how the state's landfills are sited, designed, built, and managed.

Members of the Joint Legislative Committee on Administrative Rules argued that the concerns about the regulations – namely that they weren't protective enough – fell outside the purview of their work. Weeks ago, after receiving hundreds of pages of public testimony in opposition to the rules, the committee issued a preliminary objection to the proposal from the Department of Environmental Services. On Thursday, they swiftly approved the rules – which were unchanged from the last time they had heard them – on a 9-1 vote.

Rep. Erica Layon, a Derry Republican who voted to approve the rules, said she didn't feel they were as protective as they should be. But, she argued in a point that was echoed by other members, those disagreements are policy issues that should be settled in the Legislature, not through JLCAR.

“Even though we may personally feel that we want to do something,” Layon said, “we need to act in our role as JLCAR, not as an advocate and not trying to push policy in this committee.”

Before lawmakers voted, DES repeated an argument it has made for months, and that advocates have contested for just as long: that the proposed rules are an improvement from the status quo. Adam Crepeau, the assistant commissioner of the department, told lawmakers the proposed rules were more protective in a number of ways and “in no case are less protective.”

“We believe that these rules are much more protective than the current existing rules,” Crepeau said. “And beyond that ... we believe that we also provided plenty of opportunity for public comment through the process” and “went above and beyond the required process for public comment when creating rules.”

Rep. Peter Schmidt, a Dover Democrat, was the lone vote against the motion to approve the rules. He said the argument from the agency that the new rules are better than the existing ones “is almost disrespectful to the amount of opposition that these rules have received from the public.”

“The fact that they may be better in a whole series of ways does not mean that better is good,” Schmidt said. “Better is not a sufficient response. These rules are not protective enough, and the fact that they may be better than the existing rules is very weak, in my opinion.”

Layon was joined in approving the rules by Rep. Carol McGuire, an Epsom Republican who raised the motion to approve them; Sen. Tim Lang, a Sanbornton Republican; Rep. Bob Lynn, a Windham Republican; Rep. Jaci Grote, a Rye Democrat; Sen. Kevin Avar, a Nashua Republican; Sen. Ruth Ward, a Stoddard Republican; Sen. Pat Long, a Manchester Democrat; and Sen. Daniel Innis, a Bradford Republican.

Avar is an alternate on the committee but was a voting member on Thursday. Earlier in the week, on his YouTube channel whose description says it aims to “give voice to the many individuals in NH who have been unjustly treated by NH State agencies,” Avar interviewed John Casella, CEO of Casella Waste Systems.

Casella’s company is trying to build a new landfill in Dalton half a mile from Forest Lake. The fact that DES has received applications for that landfill at the same time as crafting the rules has drawn increased attention and criticism to the regulations. DES has said the rulemaking and permitting review processes are separate, and that it has not yet begun its technical review of the proposed landfill. Casella’s existing landfill in Bethlehem has racked up hundreds of violations related to the management of leachate, the “trash juice” created when waste mixes with water.

Thursday’s vote was a blow to advocates and residents who have spent months raising red flags about the rules that they argue offer far too few protections to the environment and public health. Many of them traveled Thursday to Concord from as far as the North Country to make their voices heard before the committee. But

after sitting through hours of testimony on unrelated regulations the panel was considering, they weren't given the chance to speak.

"To not have that opportunity is extremely disappointing," said Tom Tower, vice president of the North Country Alliance for Balanced Change, in an interview after the vote.

His sentiment was echoed by others, some of whom had prepared pages of detailed testimony in anticipation of making their case before the committee. Lawmakers spent only a few minutes on the rules, with the chance for public testimony severed by an early motion from McGuire to approve the rules, which was seconded by Avard.

"After a motion is made, public testimony is generally not accepted in any public committee in the Legislature," said Lang, who was elected at the start of the meeting as the new chair of the committee. "It becomes a discussion on the motion in and of itself is what happens amongst the members of the committee."

Sarah Doucette, a Whitefield resident, shared her planned testimony with the Bulletin. In it, she said the Dec. 19 meeting was the fifth that she had attended on the rules. Doucette had planned to remind lawmakers that they are "tasked with doing the people's work," not "the work of the waste industry or the prevailing political machine or a state agency with an agenda apart from the people's work."

"Except for waste industry input, in the hundreds of pages of comments submitted on the rules update, I am not aware of anyone – not even one person – who endorsed the DES process or its outcome," Doucette wrote. "No[t] one citizen, not one independent professional consultant, not any legislator on the sub-committee that labored with rule-making reviews for months. The people are not behind the rules presented and endorsed by DES today. The people are aggrieved and they object to these rules."

Michael Wright, president of the Forest Lake Association, emailed his testimony to the committee members on Wednesday night and also shared it with the Bulletin on Thursday. In it, he said the proposed rules fell short

“of achieving the highest possible standards of environmental and public health protection.” Wright also asked lawmakers to delay the adoption of the rules “until these deficiencies are addressed.”

A major sticking point in the rules was where they would allow a landfill to be built. Some critics argued the standards were so relaxed that they would allow a landfill to be put virtually anywhere.

In the current rules, which are being updated after a decade as required, no standard exists for something called “hydraulic conductivity,” a figure that explains how fast liquid pollution would permeate through the earth under the landfill in the event of a leak. The new rules create a standard for this, but critics say it would make New Hampshire an outlier among jurisdictions that have rules around hydraulic conductivity.

The rules also would allow a 2-foot base of imported soil with hydraulic conductivity that pollution could travel through in as fast as eight days in the event of a leak, according to Adam Finkel, who spent years as the chief rule writer at the Occupational Safety and Health Administration.

Finkel, in an interview following the vote, called it “a dark day ... for a committee that needs some education.” He said he intends to challenge the rules in court but hopes the Legislature takes the step of strengthening them through law.

“I think if the Legislature does its job,” Finkel said, “and says there are half a dozen numerical fixes to these rules, they would put them in line with the rest of the world, protect our people, then, you know, that’s obviously a better way to do it, because it doesn’t rely on a subjective judgment of a judge.”

The new rules go into effect at 12:01 a.m. the day after the agency files them with the Office of Legislative Services, unless another day and time is identified in writing to the office’s director.