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## Lawmakers send DES back to work on update to New Hampshire landfill regulations

By: [Claire Sullivan](#) - November 21, 2024 11:36 am



Advocates have argued that the proposed landfill rules are not adequately protective. (Avelino Gomez G via iStock | Getty Images Plus)

In a unanimous decision, a legislative panel issued a preliminary objection Thursday to the Department of Environmental Services' proposed updates to its landfill regulations, planning to bring the agency back for consideration next month.

Advocates and residents had raised concerns that the proposed regulations – which are being updated, as required, after 10 years – had been overly molded by industry, and that they were not adequately protective.

Rep. Erica Layon, a Derry Republican who raised the motion to object, said the Joint Legislative Committee on Administrative Rules had received “a very, very large amount of testimony raising questions with this rule.” When the panel, which provides legislative oversight to rulemaking, convened in Concord at 9 a.m., most seats in the audience were full.

Carol McGuire, the Epsom Republican who chairs JLCAR, expressed concerns about delaying the rulemaking process but supported the preliminary objection. She said by having DES return to JLCAR in December, the agency could “come back with some answers” about the rules, the committee members could read more of the public testimony, and “we could give it a fair shot.”

“We have heard enough of the public testimony to be concerned about the rules,” McGuire said, “and that’s why we’re objecting.”

Tom Tower, vice president of North Country Alliance for Balanced Change, a citizen group that submitted hundreds of pages to the committee outlining objections to the rules, said JLCAR made the right choice.

“The implications of this are far-reaching for generations to come,” Tower said in an interview after the vote. “So, I think they did the right thing by postponing and making sure we get this right.”

Part of the reason the proposed regulations have attracted attention is because of the pending applications Casella Waste Systems has with the state to build a new landfill in Dalton, a tiny northern town near the Vermont-based company's existing landfill in Bethlehem, which violated its permit hundreds of times within a year.

McGuire said that by delaying the process of getting updated rules on the books, there was a risk that pending landfill permits “might be approved on the 10-year-old rules, rather than the new rules, which are more protective.” She also said that “it didn’t seem to me that many of the commenters who came back and complained about the rule really understood ... how the comments were actually addressed.”

Adam Finkel, a Dalton resident who spent years as the chief rule writer at the Occupational Safety and Health Administration, said DES needs “to get these rules into the mainstream of planet Earth.” He was among those that had urged the panel to object to them.

“On behalf of those of us who have objected to the actual content of the rules, we don’t think that the problem has anything to do with bad explanations of good rules,” Finkel said after the vote. “We understand every word of the response document (from DES). ... It’s the weakest rule on the planet, and a better explanation is not going to change that fact.”

The standard in the proposed rules for how protective the barrier of soil under the landfill must be is a point that has drawn criticism. No standard exists in the current rules for something called “hydraulic conductivity,” a figure that explains how fast liquid pollution would permeate through the earth under the landfill footprint in the event of a leak.

Finkel looked at more than two dozen other jurisdictions in the nation and around the world with standards for hydraulic conductivity, and all of them were stricter than what is being proposed in New Hampshire.

Under the department’s final proposal, landfills could be built on land where the original soil, going down 5 feet in depth, has “representative saturated hydraulic conductivity” of 0.001 centimeters per second or less. Or, the landfill can import a 2-foot base of soil with a hydraulic conductivity of 0.0001 centimeters per second or less if other requirements are met. (The lower the rate, the slower pollution would move through the soil.) This second option appeared in the final iteration of the proposed rules, with critics raising concerns about a lack of clarity around where the idea originated and calling it a “loophole.”

According to Finkel’s analysis, “every other jurisdiction on Earth requires imported soil to be 10 to 1,000 times more resistant to pollutant flow than DES prefers.” In other words, he said, pollution could travel through that 2-foot barrier in as fast as eight days in the event of a leak.

Layon said the panel had received concerns about how these rules compared to others globally and about “how public input has or has not been listened to.” She raised her objection “on the condition of this being contrary to the public interest” and on the basis that the proposed rules went against legislative intent.

“I believe that there needs to be some more work to make sure that all of the concerned voices are heard,” Layon said, “and that we understand exactly what this rule change will mean, not just for our landfills, but for the people of New Hampshire.”

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