

Advocates urge legislative panel to reject proposed landfill regulations

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The proposed rules – and the process surrounding them – have drawn steady criticism. (Dana Wormald | New Hampshire Bulletin)

North Country advocates are asking a legislative committee to object to the Department of Environmental Services' proposed updates to its landfill rules, arguing they aren't protective enough and were overly shaped by industry interests.

The Joint Legislative Committee on Administrative Rules will hear the proposed rules, among a number of other items, at a public meeting at 9 a.m. Thursday in rooms 210/211 of the Legislative Office Building in Concord. It will also be livestreamed on YouTube. The members will decide on a majority vote whether to issue an approval, conditional approval, or preliminary objection to the proposal.

The proposed rules – and the process surrounding them – have drawn criticism at several turns. They set minimum standards for where landfills can be put and how they're designed, built, managed, and closed, and must be updated every decade. The rules attracted special attention due to the pending permit applications from Casella Waste Systems to build a new landfill in the tiny northern town of Dalton, not far from the Vermont-based company's existing landfill in Bethlehem that racked up hundreds of permit violations within a year.

DES did not respond to requests for comment for this article, but it argued in documents submitted to JLCAR that the updated rules benefit the regulated industry by clarifying certain requirements, and the public and the environment by “enhancing the siting requirements for new landfills.” The agency pointed to new design requirements that it says will safeguard the environment from potential releases and make landfills “resilient to weather impacts from climate change.”

For months, DES and critics of its proposal have cast the updates in starkly different light. Critics have argued the proposed rules – even after tweaks following the department's review of public comments – are far too weak and that the solid waste industry had too much say in crafting them. Adam Finkel, a Dalton resident who

spent years as the chief rule writer at the Occupational Safety and Health Administration, urged JLCAR “in the strongest possible terms to return these rules to DES for a complete restart and rewrite.”

“The proposed-final NH DES landfill rules ...,” Finkel wrote in a letter, “offer the most unscientific, unprotective, biased, and ‘captured’ regulatory language I have seen in 37 years of writing federal and state environmental rules, advising more than a dozen state and local environmental agencies, and co-directing the largest study ever (at the University of Pennsylvania Law School) of how environmental agencies worldwide succeed or fail at the core tasks of ‘listening, learning, and leading.’”

He is not alone in his opposition. The citizen group North Country Alliance for Balanced Change, which has advocated against the new landfill and for more protective landfill standards, sent a 500-page letter to JLCAR outlining its critiques of the rules and asking the panel to object to them. Amy Manzelli, an attorney for the group with BCM Environmental & Land Law, wrote that the proposed rules “are not in the public interest because they ignore public comment without any countervailing, credible evidence.”

“They bucketed all the comments into 97 comments,” Manzelli said in an interview, describing the department’s response to public input. “However, 26 of them, the department made no change, and about 27 of them, they just made a clarifying change. And then many of them, actually, the change is to weaken the rule.”

Siting standards

Landfills are designed with the threat – or, many would argue, inevitability – of a leak in mind. That’s where redundant systems come in, like having a double-liner.

But part of that question, too – and one that has spurred conflict in this rulemaking process – is how protective the natural barrier of the earth a landfill is built atop should be. Leachate, the liquid pollution created when water mixes with waste, moves more easily through some materials, like gravel and coarse sand, than others, like clay and silt.

There is no standard in the state's existing regulations for something called "hydraulic conductivity," which essentially describes how easily liquid moves through the ground. 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. (The lower the rate, the slower pollution would move through the soil.)

Though the department strengthened that figure from the draft proposal the public made comments on to the final proposal it's presenting to JLCAR, advocates argue that improvement is not enough, and that it is dulled by the imported soil "loophole" added in the latest iteration of the proposal.

Finkel looked at more than two dozen other jurisdictions in the nation and around the world with standards for hydraulic conductivity, all of which were stricter than what is being proposed in New Hampshire. According to his 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, according to Finkel's math, pollution could travel through that 2-foot barrier in as fast as eight days in the event of a leak.

"You could find, you know, a ball pit at IKEA with giant gaps between the balls," Finkel said in an interview, "and as long as you put 24 inches of dirt over it, you can put it (a landfill) anywhere."

Manzelli, the attorney, raised similar concerns. While the proposal states a hydraulic conductivity standard, "the loophole effectively swallows the rule such that there really is no requirement to meet any hydraulic conductivity standard. This means landfills could be located anywhere, no matter what the in-situ (original) soil" as long as the other requirements are met.

Lack of clarity over where the idea for a 2-foot imported soil base came from also raised red flags. Manzelli cited it as another possible instance of the regulated industry playing an outsized role in drafting the rules.

“Interestingly, the concept of a 2-foot layer of imported base material does not appear in any version of the rules until the very last version, the Final Proposed Rules, and no comment suggested a 2-foot layer,” Manzelli wrote. “Upon information and belief, the Department met with waste industry representatives after June 5, 2024 and before the Final Proposed Rules were published, suggesting the possibility of another example of disproportionate influence of the waste industry in the rulemaking process.”

Finkel also argued the word “representative” – which replaced “average” in the previous version of the proposal – “has no fixed statistical meaning.”

What's ahead

JLCAR provides legislative oversight to the rulemaking process. It's made up of five members each from the Senate and the House (plus 10 alternates to fill in when there are absences).

If the panel approves the rules, the next step is adoption by the agency. But JLCAR may also conditionally approve the rules, in which case the agency would have to file an amendment, or issue a preliminary objection, which sets off a string of additional steps.

Regardless of the outcome Thursday, landfill standards are poised to come up in the next legislative session that kicks off early next year. Bill requests related to leachate management and pausing further landfill development have already been filed.

Though many solid waste proposals have gone to die in the Senate over the years, advocates hope the proposals will meet a different fate next year, when Kelly Ayotte, a Republican who has appeared more sympathetic to landfill concerns than Sununu, will be in office.