Dear NH House Environment and Agriculture Committee Members:

I am writing in support of HB1420, and would ask that you support this common-sense legislation.  It is crucial that we ensure that the New Hampshire Department of Environmental Services (NHDES) is in compliance with state statute regarding the issuance of permits for new landfills.  Under New Hampshire’s solid waste management law, RSA Chapter 149-M, NHDES is the state agency responsible for the management and regulation of solid waste, including developing and updating a state solid waste plan, reviewing and rendering decisions on permit applications for new landfills, as well as regulating those landfills relative to the collection, processing, treatment, recycling, re-use and disposal of solid waste in New Hampshire.  In 1996, the NH Legislature enacted the requirement that DES engage in statewide solid waste management planning, beginning on October 1, 1998, and that for every 6 years, the department was required to update the state’s solid waste plan, in accordance with RSA 149-M:29.  Currently, NHDES is in violation of that statutory mandate.  Why is this important?  It is also the duty of NHDES to rely on that solid waste plan in determining whether to grant permits for new landfills, as required by RSA 149-M: 11, III.  It should be noted that NHDES has been in violation of state statutory solid waste planning and regulatory requirements since 2009.

NHDES is authorized to approve a permit application for a new landfill “only if it determines that the facility or activity for which the permit is sought will comply with RSA 149-M and all rules adopted under it and be consistent with the provisions of the state solid waste plan (RSA 149-M:12, I(a), (b).)  DES is also required to determine that the landfill will assist the state in achieving the implementation of the state’s waste reduction goals, as set forth in RSA 149-M:2, and the solid waste management hierarchy, set forth in RSA 149-M:3. RSA 149-M:11, III(b).

Also, as part of its mandatory substantial-public-benefit determination, NHDES is required to determine that the proposed facility will assist in achieving the goals of the state solid waste management plan, as per RSA 149-M:11, III(c).  Despite the statutory mandate that it update the state solid waste plan every six years, NHDES has not updated or published a state solid waste plan since the 2003 State Waste Plan.  The failure of NHDES to comply with its mandatory duty to develop and issue state solid waste plans has deprived the state, DES, and the public of an important solid waste management tool, causing or contributing to the state’s failure to achieve the state waste reduction goals established more than twenty years ago in RSA 149-M:2.  The permitting of disposal capacity by NHDES, in the absence of a current and updated solid waste plan, has resulted in NH landfill capacity being consumed at rates of nearly 50 percent by out-of-state waste since at least 2015.  If NHDES has not updated the state solid waste plan since 2003, it can safely be assumed that they really have no idea whether or not a new landfill will help the state with achieving waste reduction goals.  In fact, it can be safely assumed that just the opposite will occur, as that is what has happened in New Hampshire over the past 19 or so years. There is no incentive for the private, for-profit, solid waste companies to be accommodating to state waste reduction goals as that would mean less profit.

Please note this quote from Director Wimsatt, as reported by InDepthNH on December 12, 2021:

*"Wimsatt noted that the original goal was to reach a 40 percent reduction by 2000, but he said they had not been able to achieve that goal because there was no standard reporting procedure to determine the amount of waste. The state has relied on individual haulers or communities to report their tonnage, but those figures could not be verified."*<http://indepthnh.org/2021/12/21/n-h-focusing-on-front-end-solutions-for-solid-waste/>

Currently, a private landfill company from Vermont, Casella Waste Systems, has submitted a solid waste application to NHDES to construct and operate a new landfill in Dalton, New Hampshire. Based on publicly available documents, this proposed new landfill in Dalton would be approximately 180 acres in size, have a disposal capacity of 23 million cubic yards of waste, with up to 49% originating from out-of-state, and will operate for at least 38 years.  Being that NHDES does not have a legally valid, updated state solid waste plan, to guide its determination whether this proposed new landfill in Dalton will provide a substantial public benefit by assisting in achieving the goals of the state solid waste management plan, as per RSA 149-M:11,III, how can NHDES be allowed to legally issue a permit when they themselves are not in compliance with state statutes?

In 2021, HB413 was signed into law, which established a NH Solid Waste Working Group, to assist NHDES with planning for New Hampshire's solid waste future, and thus, bring them into compliance with the statutory solid waste plan requirement.  That is a good thing, as it is well known that NHDES is under-budgeted and under-staffed.  According to 149-M:29 State Solid Waste Plan and Report. – I. “Beginning October 1, 2022, in accordance with the state waste planning update schedule requirements of this section dating to October 1, 1998, and every 10 years thereafter, the department shall update the state's solid waste plan, which shall be made available for public review and comment **before final publication”**.  Also, according to a report from NRRA on the NH Solid Waste Working Group, at the bottom of the page, under Working Group Responsibilities, it is stated: *"The working group will****submit an initial report on November 30, 2022****and a final report on November 1, 2026."*

<https://www.nrrarecycles.org/news/nh-solid-waste-working-group-first-meeting-scheduled>

Director Wimsatt himself even confirms this, as quoted in this October 6, 2021 report on the NH SWWG in the Caledonian-Record:  *“It’s important to understand that a bill in the House this past session* **(HB413)***established a solid waste working group,” said Mike Wimsatt, Director of DES’s Solid Waste Management Division. “It will have its first meeting in October. It will exist for four years and****will work on our efforts to update our solid waste management plan by the fall of next year****.”*

<https://www.caledonianrecord.com/news/local/new-group-to-update-state-s-solid-waste-management-plan/article_a21a998e-b00e-5f5a-93a7-b3e92db57e66.html>

An "initial report" is NOT the same as having an updated solid waste plan by the end of 2022.  RSA 149-M:29 I. requires a “final publication”, which will seemingly come to fruition by the end of the NH SWWG's work, at or around November, 2026.  Until that happens, and NHDES actually puts forth an actual, updated and current solid waste plan for the state, is it unreasonable to prohibit NHDES from issuing a permit for a new landfill that may be contrary to a new, updated and current state solid waste plan?  In fact, it was reported by NHDES Director Wimsatt himself, at the December meeting of the NH Solid Waste Working Group, that the 2021 NHDES Solid Waste Biennial Report, due in October 2021, will be LATE.  In other words, it is now 2022 and it has NOT been released.  Thus, we cannot simply hope NHDES meets its intended due date, whether it's 2022 or 2026, for an updated solid waste plan.  In fact, I’ve attended both meetings of the NH SWWG, due to meet again in February, 2022, and every month thereafter, and while there have been some great discussions relative to solid waste matters in NH, I fear that there will be nothing truly substantive to come from this group anytime soon, and especially by November 30, 2022, other than a report.  How long thereafter, will it take NHDES to take the recommendations of the NH SWWG and publish an updated, current state solid waste plan?

Thus, absent a valid, updated, and current state solid waste plan, NHDES cannot lawfully or reasonably render a substantial-public-benefit determination and, therefore, cannot lawfully and reasonably issue permits for a new landfill.  That is the heart of HB1420, to ensure that state solid waste reduction goals are met, that solid waste management hierarchy is followed, and that there is a proper determination made relative to public benefit for permitting any new landfills in New Hampshire, whether in Dalton or anywhere else.

P.S.  As you can see from the attached text of the bill, OLS or NHDES has altered the intent of the bill.  HB1420 was submitted to prevent NHDES from permitting any **new landfills** that could negatively impact future state waste reduction efforts.  By no means did HB1420 use "new facility", and NHDES, via its methodology, has further altered the intent of the bill by including expansions of existing landfills.  Thus, as you can see from my edits, we will be including "excluding expansions of existing landfills" in the language of the bill.  We are working with the bill's sponsor, Rep. Linda Massimilla, to have this corrected and clarified.  I hope you will support our efforts and will vote "Ought To Pass, As Amended".

Thank You,

Jon Swan

Dalton, NH

Founder, Save Forest Lake