

# Senate Energy and Natural Resources Committee

*Daley Frenette 271-3042*

**HB 1420-FN**, prohibiting the issuance of new landfill permits until the state's solid waste plan is updated.

**Hearing Date:** March 22, 2022

**Members of the Committee Present:** Senators Avard, Gray, Watters and Perkins Kwoka

**Members of the Committee Absent :** Senator Giuda

**Bill Analysis:** This bill prohibits the issuance of new landfill permits under the state's solid waste plan is updated.

This bill also prospectively repeals the prohibition when the final updated solid waste plan is published.

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**Sponsors:**

Rep. Massimilla

Rep. Thompson

Rep. Burroughs

Rep. Theberge

Sen. Hennessey

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**Who supports the bill:** 210 People Signed in Support. Sign-in sheets are available upon request.

**Who opposes the bill:** Kimberley Johnson, Kevin Moroney.

**Who is neutral on the bill:** None.

**Summary of testimony presented:**

Representative Massimilla, Grafton-District 1

- HB 1420-FN passed committee with a vote of 17-0 ought to pass as amended. It passed the House of Representatives on the consent calendar.
- The bill would prohibit DES from issuing permits for the construction of a new landfill unless the department makes a positive determination that the permit application is consistent a solid waste plan that reflects current realities. The states solid waste plan has not been updated since 2003, despite the requirement that it be updated every 6 years. The plan should have been updated in 2009. This means the department has been using outdated information when issuing new permits. The bill does not look backward to try

and figure out what happened that lead to this point, but it looks forward to ensure that whatever mistakes were made with the outdated information stop happening in the future.

- Times have changed as well as landfill technology. We now understand the dangers of PFAS and other landfill hazards. We also now know that there are other economically viable options besides landfills that have emerged. New Hampshire has also not come close to its goals of reducing the amount of solid waste that ends up in landfills. Every state in New England except New Hampshire has been through law and regulation rethinking and revising how they deal with the sold waste generated within their state.
- Representative Massimilla gave three examples of the department's failure to timely update its solid waste plan has hurt New Hampshire:
- Firstly, a year ago there was a massive leachate spill at the NCES landfill in Bethlehem. The landfill operator did soil testing around the area of the spill, but did not test for PFAS. They did not test for PFAS because it was not required to under the permits issued by the department.
- Secondly, the most recent proposal for a new landfill in NH would generate some 8 thousand gallons of leachate per day. This leachate, full of PFAS, would be transported by tanker to the wastewater treatment plants in Franklin and in Concord, where it would be mixed with municipal wastewater, and then released into the Merrimack River. The state's solid waste plan is essentially silent on the costs of this means of leachate disposal.
- Thirdly, in New England, Maine and Vermont are at the forefront of reserving in-state landfill capacity for solid waste generated within their state. In contrast, the most recent permit applicant for a new landfill in NH would allow up to half of all solid waste to come from out-of-state. These other states are figuring out how to not be overrun by solid waste from Massachusetts. It is time for NH to do the same.
- Director Wimsatt has informed the Legislature on several recent occasions that the department is currently at work on an updated solid waste plan. There will be a lot of sources for the department to draw on as it undertakes its internal review of the solid waste plan, solicits public comment on the draft, and ultimately publishes a final solid waste plan. One important source is the solid waste plan, solicits public comment on the draft, and ultimately publishes a final Solid Waste Working Group, helmed by Representative Ebel, the work of which is ongoing. Another important source is the legislative debate which has taken place this year on several bills related to landfill permitting specifically and sold waste planning in general. There is the possibility that in this session, bills will be enacted to form study committees on a variety of relevant issues.
- Representative Massimilla hopes that the bill will have bipartisan support in the Senate and the Senate Energy and Natural Resources Committee. The bill sends a signal to DES and more generally to all executive functions, that the

Legislature will hold them accountable to do those things which are required under New Hampshire Law.

- Senator Watters asked what the intent for the final publication is along with the significance of the dates regarding how the 10-year plan is structured. He asked what Representative Massimilla's intent is regarding that issue. Representative Massimilla intent for the October 1<sup>st</sup>, 2022, deadline is to give DES enough time to formulate what they want to include in the updated plan. The October 1<sup>st</sup>, 2022, deadline is intended to be a preliminary publication of what the 10-year plan will look like, but DES could release the full plan on October 1<sup>st</sup> if they wanted to.
- Senator Avard asked if the bill prevents Vermont, Maine, and Massachusetts from putting into New Hampshire landfills. Representative Massimilla stated that it does not prevent them from doing so.
- Senator Avard asked if the bill allows existing landfills to be augmented. Representative Massimilla stated that they could still be augmented.
- Senator Avard asked what the costs will be if the landfills get overrun by other states using our landfills, given that NH landfills lifespans are diminishing. Representative Massimilla stated that Turnkey said it will be fine until 2036, so there will be some windows of opportunity to decide on what to do about costs if they arise. Currently, there is no costs.
- Representative Massimilla stated there is a typo in the amended analysis of the bill. It should read, "...new landfill permits until the states solid waste plan is updated".
- Senator Avard asked if the bill would affect the one application that is currently underway. Representative Massimilla stated that it would affect the current applicant. Senator Avard asked if this bill moves the goalposts for that applicant who has already invested a significant amount of money in their permit and whether this sends a bad message to businesses that want to invest in NH. Representative Massimilla stated that to her understanding, the private applicant has since stopped pursuing the permit. As for the message we are sending businesses, it depends on what applicants are applying for.

#### Representative Bixby, Strafford-District 17

- Representative Bixby serves on the House Environment and Agriculture Committee. The bill came to his committee without a sunset. They felt that the sunset would be necessary because it is impossible to predict what the environmental and solid waste situations will look like in 2032 when the solid waste plan comes up for renewal again.

- Representative Bixby hopes that DES will be able to meet the October deadline, but in case they do not, the sunset is for when the report is published and not the October deadline.
- Senator Watters asked for clarification on when the final publication date is. Representative Bixby stated that it is October 1<sup>st</sup>, 2022, and he will accept any amended language that may clarify that.
- Senator Watters asked if Representative Bixby would like to include the expansion of landfills in the bill. Representative Bixby stated that he thinks that would not be appropriate. The intent of the bill is to make sure that landfills that are being proposed and not yet on the ground be consistent with the updated solid waste plan that is being developed. There is no need to slow down any expansion at this point. If there is a new landfill permit it must be in alignment with current technology and environmental understanding.

Fred Anderson, Resident of Whitefield

- Mr. Anderson encouraged the committee to vote in favor of HB 1420-FN.
- DES is working with very outdated information and protocols. He compared the situation to trying to treat COVID-19 with medical treatment protocols that are 19 years out of date.
- The company did not follow up with the leachate spill in Bethlehem because it was not required to be statute.
- HB 1420-FN will not incumber the states waste management needs or the folks at DES. It will not affect capacity or waste disposal costs. The bill has nothing to do with the existing landfills as we do not want to pull the rug out from under those existing operations.
- The bill ensures that state solid waste needs are met, solid waste hierarchy is followed, proper determination is made relative to public benefit for permitting new landfills in NH, and criteria for siting new landfills is based on scientific evidence and method rather than the dangerous method used by DES today.

Representative Perez, Hillsborough-District 23

- Representative Perez spoke in favor of HB 1420-FN and is a member of the House Environment and Agriculture Committee. She stated that we are living in a critical time for the environment. We see contamination in the water, land and air and it is our responsibility to protect it.
- We already have a water contamination issue in Merrimack, and it is beginning to spill over into Milford as well. Representative Perez stated that we must protect human health along with the environment. It is critical for

Representative Perez that we have clean water and address the solid waste that is coming in from out of state.

Heidi Trimarco, CLF

- CLF supports the bill as ought to pass with amendment. They submitted their own amendment language for consideration. However, they would like to see a few more changes. There are two important changes they would like to see.
- The current plan is from 2003 and needs to be updated. They have continued to issue permits and expansions despite this.
- CLF supports the notion of halting new permits until the plan is updated, but they would like to include expansions of existing landfills too. The majority of landfill permitting is done through expansions. What we consider a new landfill is permitted as an expansion to an existing landfill. The business plan is to expand in phases. We see this with the landfills across the state including the Mount Carberry, Turnkey, Bethlehem, and the proposed new landfill in Dalton.
- CLF would like the sunset provision removed from the bill. The sunset provision would make it so that DES would only have to update the plan once and therefore undermine the purpose of the bill.
- Senator Watters asked if the new 10-year plan will envision a solid waste management plan that will ensure that any permitting will be in accordance with the goals of the plan. Mrs. Trimarco agreed with Senator Watters and stated that the planning is an integral part of the solid waste management system which the purpose is to protect the environment and the people by providing a public benefit. Updating the plan every 10 years will ensure that the permitting stays abreast of any changes and reflects what would be best at that time for the NH public.
- Senator Watters asked if it is necessary for this to be permanent if it will eventually be incorporated into the plan as it emerges and the rules that follow from it. Mrs. Trimarco stated that to her understanding the permanent aspect of the bill is that it will require DES to not issue any new permits until they update the plan and ensure that it is updated every 10 years.
- Senator Watters asked why it will need to have this separate statute once the plan is operational. Mrs. Trimarco stated that the reason why we need HB 1420 is because DES continues to issue permits relying on the outdated plan.

Jon Swan, Save Forest Lake

- Save forest lake has been working to defeat the proposed landfill in Dalton.
- Mr. Swan was not planning to speak but wanted to address the comments made about pulling the rug out from under current permits.

- Mr. Swan noted that the current permitting process for the Dalton landfill is in shambles. It has been 6 months since the company in question has had any contact with DES on the permitting process. They withdrew their wetland permit application in the Fall and their solid waste application has been deemed incomplete. There are also issues with DOT driveway permit because of the landfill traffic impacts to the North Country in the towns of Bethlehem, Littleton, and Whitefield in particular.
- Mr. Swan acknowledged being fair to existing permits in process. However, he stated that due to the overwhelming opposition Dalton, it is unlikely that the landfill project will happen.
- Mr. Swan stated that he is concerned that it seems the Senate is more interested in protecting the interests of a private-commercial out of state company that seeks to do something in NH that is not needed.
- Mr. Swan also stated that New Hampshire does not have a capacity crisis. Mr. Swan stated that in the House Environment and Agriculture, Director Wimsatt mentioned that Mount Carberry Phase 3:A permit application for expansion under review after the public hearing in the Fall which gives that landfill capacity out to 2041 with Phase 3:B capacity out to 2049. Mr. Swan Stated that Director Wimsatt mentioned in the House Environment and Agriculture that while Turnkey is permitted out to 2034 and that there may be plans to expand on it after that. Mr. Swan stated that these are two large and unrestricted landfills that could easily handle the waste generated by NH. The NCS landfill in Bethlehem is currently at minimum intake. The NCS landfill is going to close in the next few years. There is no need for another commercial landfill.
- Out of state waste being sent to NH landfills is a big concern for NH citizens. Mr. Swan hopes that the Senate takes into account what is good for New Hampshire and our economy, especially by protecting the tourism and outdoor recreation industry. The Senate should not be overly concerned with one permit that is in disarray for a development that is not wanted, not needed, and will be in contrast to what the state represents.
- Senator Avard asked what is going to prevent the 9 million tons from going into Turnkey. Mr. Swan stated that it depends on Turnkey since it is a private entity. Part of that waste is under contract with Casella Waste Systems which means it may be brought to New York State.
- Senator Avard asked if the bill prevents other states like Massachusetts from bringing their waste to NH. Mr. Swan stated that the solid waste plan is a guide for solid waste policy and practice in New Hampshire. The plan is expired and needs to be updated. We have not updated policies and practice. He does not want to see New Hampshire become New England's dumping ground.

Mike Wimsatt, DES

- DES takes no position on the bill. DES understands that they need to have a solid waste plan by October 1 and they fully intend to do so. The solid waste working group has met a few times and they will be establishing subcommittees to work on specific issues. Those subcommittees will report back to the group and provide guidance to DES.
- There is one application for a landfill in the state. The application is incomplete. There is a deadline for the applicant to submit information to complete the application in June. Assuming that the application is completed, it appears that the decision for that application would be made following the October 1 deadline. HB 1420-FN would not cause a situation where DES would not be able to make a decision on that permit.
- Senator Avard asked Mr. Wimsatt if there is a capacity crisis. Mr. Wimsatt stated that there has been a narrative that there is always a solid waste capacity crisis. This is because DES posts diagrams that show the current permitted capacity and when it ceases. This tends to show a drop off that people refer to as the cliff that seems to point to a looming capacity crisis. In reality, the permits are done in phases and applicants will apply for another permit to expand which extends the time until that metaphorical cliff is met. Overall, Mr. Wimsatt does not view the situation as a crisis.
- There does appear to be a regional crisis as states in southern New England have had difficult permitting for capacity for disposal or incineration even for their own waste. This leads to these states exporting the waste to other states. In the foreseeable future, it appears that these states will continue to send their waste to other states.
- Senator Avard asked if New England still sends some of its waste to China. Mr. Wimsatt stated that New England used to send primarily recyclables. However, these markets have run into roadblocks.
- Senator Avard asked if New Hampshire has a materials recovery facility. Mr. Wimsatt stated that New Hampshire does not have a materials recovery facility. Many towns operate transfer stations that include sorting systems for recyclables.
- Senator Avard asked if there is any cost to municipalities for these facilities. Mr. Wimsatt stated that the facilities make money on the recyclables, and they are able to market those materials in-state and out-of-state.
- Senator Avard asked if the current landfill application is really in shambles. Mr. Wimsatt did not wish to apply an adjective to the situation. The solid waste application is currently incomplete, and they are waiting on additional information to make it complete. The wetlands permit application has been withdrawn. If the solid waste application is completed it will have the opportunity to go forward. They would need to have a wetland application in addition to the other necessary environmental certifications.
- Senator Avard asked if the report will be ready for the October 1 deadline and if there any significant changes DES could highlight, or would they need to wait

for the report. Mr. Wimsatt stated that the report will be ready for October 1. He also stated that he cannot assume the impact of the report. There are 28 people on the solid waste working group, and they will work together to provide meaningful guidance to DES on this issue.

- Senator Watters asked for clarification on the final publication of the report. He asked if the committee should remove the word final. Mr. Wimsatt stated that he expects to have the report filed on October 1.
- Senator Watters asked if this situation is more due to a solid waste problem rather than a solid waste disposal problem. Mr. Wimsatt stated that New Hampshire has not made enough progress on reduction, diversion, and alternative management of solid waste. DES hopes that the plan will help bring about better results in the future.
- Mr. Wimsatt clarified that the sunset provision of the bill will not end the requirement to update the plan every 10 years.

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Date Hearing Report completed: March 28, 2022