

**UNCATEGORIZED**

# New Solid Waste Plan Does Not Satisfy DES Skeptics

By THOMAS CALDWELL 20 hours ago



*Courtesy photo*

Jon Swan, president of Save Forest Lake, is pictured in front of the State House.

By THOMAS CALDWELL, InDepthNH.org

CONCORD — The state's newly released 10-year solid waste management plan — the first update since 2003 — appears not to have swayed the opinions of those who submitted testimony disparaging an early draft of the plan released last May.

During the public comment period ending Aug. 26, the state received submissions from 74 individuals and organizations, resulting in nearly 400 pages of testimony.

The final plan, released on Sept. 30, noted, “A number of comments called for more specificity in the plan, but in many cases, specificity will only be possible after completing other actions included in the plan.”

The cover letter from Department of Environmental Services Commissioner Robert Scott illustrated that problem with the example of “completion of waste characterization and generation studies, Action 4.5 of the plan.” Those studies, Scott said, “are foundational to many of the other actions in the plan. Only after analyzing the data from these studies can details be provided for actions such as identifying which waste types should be prioritized for waste reduction and diversion, and what facility infrastructure will be necessary to facilitate diversion.”

Adam Finkel of Dalton said that information should already be available.

“If they really do need to have data collection to know where they are, and they really don’t want to apologize for not having done that for 20 years, OK,” Finkel said, “but then they really ought to say the first phase of the plan is going to be intense data-collection so that we can then issue a set of goals in, let’s say, 2024 that we pledge to meet by 2030. It doesn’t sound like that.”

Indeed, the new plan cites the goals already embedded in the law that the state has failed to make much progress in meeting: reducing the disposal of municipal solid waste and construction and demolition debris by 25% by 2030 and by 45% by 2050, based on 2018 numbers.

“This overarching goal applies to all MSW and C&D disposed of in New Hampshire’s landfills and incinerators, regardless of the source or state of origin,” the plan notes, going on to say later that “Achieving these targets will require robust efforts to simultaneously reduce the quantities of waste generated while also maximizing diversion from disposal.... Although RSA 149-M:2 discourages the disposal of recyclable materials, it does not establish recycling, composting, or other forms of waste diversion as mandatory. Meeting plan goals will require the voluntary participation of New Hampshire citizens, public and private entities, and other stakeholders.”

That passive role is one of the problems mentioned in the public comments and among members of the Solid Waste Working Group that is assisting the state in its efforts to update its policies.

However, Rep. Karen Ebel, D-New London, chair of the working group, offered some context for the state’s position.

“The state’s needs are great because we have not meaningfully focused on our solid waste issues for so long. In many ways, compared to our neighboring states, we are starting from the ground up. Given the enormity of the work to be done and our starting point, great specificity, such as timeframes, in a plan like this is a challenge, especially because so many of the goals are interrelated,” Ebel said.

“The plan does a great job of laying out our challenges and, as required, our goals, strategies, and action opportunities,” she said. “These can evolve. Ten years is a long time.”

Dalton resident Jon Swan, president of Save Forest Lake and a critic of the DES response to Casella Waste Systems’ proposal to create a landfill near the Forest Lake State Park, said in an email that he has mixed feelings about the final plan, “particularly since the Solid Waste Working Group (SWWG) did not have the opportunity to weigh in on the final draft, following the public comment period. [Seventy-four] people and 393 pages of ideas and suggestions were seemingly brushed aside in the rush to publish a final plan by the Oct. 1 deadline.”

Swan continued, “If I were to summarize those 393 pages of commentary from the very-nuanced 74 contributors, the underlying themes were a shared concern about out-of-state trash, establishing a funding source for the plan’s initiatives via a 10-cent container deposit bill, and lastly, including some kind of metrics to assess progress in achieving the stated waste-reduction goals.”

In addressing the impact of out-of-state trash, the report states, “The vast majority of the out-of-state waste disposed of in New Hampshire is received by the three commercial landfills. Commercial disposal facilities in New Hampshire are permitted to receive waste from both in-state and out-of-state sources. The Commerce Clause of the U.S. Constitution has commonly been interpreted to preempt a state from explicitly prohibiting or adopting policies that would restrict a commercial solid waste facility from accepting and disposing of out-of-state waste.”

Swan offered a rebuttal: “Regardless of how successful the implementation of this new plan is in reducing waste that is generated within the state, the continued presence of private, unrestricted service area landfills in N.H. will ensure that any waste reduction goals achieved will merely result in ‘backfilling’ of any extra, permitted landfill capacity by, you guessed it, more out-of-state trash hauled into N.H. by Casella and Waste Management! The 900K TON elephant in the landfill cannot be brushed aside, as the plan does ever-so-briefly on page 6, citing the private waste industry’s favorite defense of the status quo, the Interstate Commerce Clause (ICC). However, there are numerous ways to deal with this most critical issue, and the N.H. Attorney General’s Office even addressed this during a December 10, [2021] presentation to the SWWG.”

### **Procedural Concerns**

Adam Finkel, a former director at the Occupational Safety and Health Administration, said the state’s response to public testimony is at odds with procedures in place since the 1940s within the federal system.

“You have to write up what the themes were [in the testimony] and how you can reconcile them with what you did or didn’t do,” he said. “So if one or more people say you should have studied this or written about that, you have to say as the agency, ‘We thought about that, and we did it or didn’t do it for this reason.’ ... There’s just no such thing at the federal level of soliciting public comment and then just putting it in a drawer.”

Paraphrasing, he said, “[DES] cover notes say some weird things. ‘People said we should commit to implementing new policies that are not authorized in law.’

“You know,” he continued, “not yet authorized in law could mean the opposite of what the law says, but it probably means just go ahead and do something that makes sense, even if you’ve not been told to do it. It’s pretty disingenuous to say, ‘We can’t do things that are not authorized in law.’ There are plenty of smart things that you could do that are not prohibited and not specifically required.”

His biggest concern, Finkel said, is that the plan does not even address where new landfills should be located.

“It’s hard to imagine a statewide solid waste plan that doesn’t have a single word about ‘are we going to put landfills where they belong?’”

Finkel had assisted in the drafting of House Bill 1454, which would have used hydrology to determine how close landfills could be to significant water bodies — requiring that they be sited in locations where polluted groundwater would take five years to reach those water bodies, providing time to address the problem — but although it passed both bodies of the New Hampshire Legislature, Gov. Chris Sununu vetoed the bill. His veto was sustained when it got back to the Senate.

Finkel noted that Waste Management Division Director Michael Wimsatt had said the DES would not take a position for or against the bill, but in Sununu's veto message, he said the DES had concerns about it.

"That to me is pretty much sabotaging the bill," Finkel said.

Asked whether there was anything about the new plan that he liked, Finkel said, "They have always been correct — and they're not the only ones to say this — that landfilling is the least preferable, and we want to move ... to safer and more sustainable ways of doing it, and if they're really pledging to do a lot more of that, and they're going to report back on that in a timely way, then that's all good."

He added that there are some "terrific" people at DES, and his personal experience in trying to get permits for a woodshed and a grandfathered boathouse went well.

"They've been tough on me but helpful, and then there are the lakes people: They come out and sample our lake and write these brilliant reports about what we found and how it stacks up with other lakes."

Fellow Dalton resident Jon Swan acknowledged, "I am encouraged by the amount of interest in solid waste matters and the collaborative effort put forth by the volunteer members serving on the SWWG. I am thrilled by the reduction goals of 25% by 2030 and 45% by 2050, as set forth in the new plan. These goals serve to further underscore the fact that there is and will be absolutely no need, nor justification, for permitting the Casella-proposed landfill project in Dalton, next to Forest Lake. For NHDES to do so would fly in the face of the goals of this new, solid waste management plan."

He added, "Any new, future landfills, when and if needed, should be either state or municipally owned, with a "restricted" service area, as our neighbors in Maine have done. We can also mimic what Vermont has done to stop the flow of out-of-state waste into its borders by requiring Solid Waste Implementation Plans (SWIPs) from any municipality that wishes to utilize any landfill in the state. I hope this most important topic is brought up by the SWWG at its next meeting on Oct. 28."

Karen Ebel said, "I am thrilled that, after all this time, [the plan] has been issued. It provides a great roadmap for us to start the work that needs to be done."

She added, "No plan can be perfect, and there are some points on which I wish it was more assertive, such as the DES's legislative goals and specific priorities, but overall the plan gives us a terrific roadmap to start our work on this enormously complex issue. I believe it is a stronger document than the draft based on the input of the SWWG at our last meeting, the public comments, and the staff."

She noted, "The critical need for the Department is financial support to pursue planning and achievement of the identified plan goals, including better recycling and composting opportunities, public education, infrastructure development, and innovative source reduction methods. The plan states as one of the goals [is] the identification of sustainable source(s) of funding. We can't just rely on federal grant funding that we may or may not get. State-dedicated funding will be necessary to get us where we need to be. We have a lot of ground to make up to be where we need to be."

The Solid Waste Working Group will be assisting the DES going forward on the implementation of the plan, and Ebel said it "can certainly weigh in then on priorities and timelines relying on the group's expertise. In addition, pursuant to statute, the SWWG will be issuing an interim report by Nov. 30, 2022, so any additional concerns and comments will be shared at that time."

Other legislators were more reluctant to comment on the plan, with Rep. Edith Tucker, D-Randolph, noting, "As a potential member of the Senate, I am trying not to have an adversarial relationship with this very important agency. Ordinarily, however, master plans

are useful only if they include benchmarks and measurable goals.”

Sen. James Gray, R-Rochester, who serves on the Solid Waste Working Group, said simply, “I do not believe it would be appropriate for me to comment.”

---