

Transparency issues arise on landfill setback bill



A proposed landfill itself would largely be off to the left of the picture, but very near the marshy area on the left edge, about 2800 feet west of Forest Lake which can be seen at the top of the photo.

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Published: 6/28/2023 6:00:45 PM

As the legislative session approaches its end, a bill focusing on landfill setbacks is facing growing discontent following the public release of email exchanges between the state's Department of Environmental Services and representatives of Casella, a solid waste company trying to expand its operations in the North Country.

Emails obtained through a right-to-know request, filed by Jon Swan, an environmental activist opposed to the proposal to build a new Casella Waste Systems landfill in the town of Dalton disclosed the involvement of Bryan Gould, a lawyer and previously a lobbyist for Casella, in Senate Bill 61's revisions.

Michael Wimsatt, the Waste Management Division Director at DES, and Mark Sanborn, the Assistant Commissioner at DES, consulted with Gould on edits being made to the bill language, the emails showed.

SB 61 directs the NHDES to conduct a comprehensive review of its current regulations pertaining to setbacks for newly sited landfills in relation to surface water bodies. The bill would also allocate funds to the department to hire an external consultant to conduct a study on landfill siting standards.

Wimsatt said it's not uncommon for the agency to work with all stakeholders and legislators to work on the content of the legislation.

“I don’t know how it’s an ethical issue for the agency; I think we have a role in answering people’s requests for technical assistance, trying to understand bills, it’s very common for legislators to be working with a number of parties, including lobbyist on the content of legislation,” explained Wimsatt. “We, in fact, exchanged ideas and had things run by us from all the parties that have an interest in this particular bill and on all sides of the issue.”

While the bill’s intent to expand set-back requirements and measures to avoid conflicts of interest during contractor selection, has drawn attention, concern has grown about how the revisions were carried out.

“I corresponded with industry lobbyists hundreds of times; there’s absolutely nothing wrong with that, although we tried to give equal access to citizens, which DES clearly fails utterly to do,” said Adam Finkel, an environmental scientist who has worked as a regulatory official in the federal government for 12 years. “But never, ever, did I ask a lobbyist’s permission to write or alter a word or sentence in a regulation or piece of legislation. That is beyond the pale and should never happen again.”

Representative Kelley Potenza, a Strafford Republican, expressed her strong disapproval of the bill’s amendment process, asserting that it is fundamentally and ethically wrong. She also intends to file an ethics complaint with the Senate, House and the Department of Justice.

“It’s not for the good of anything except for what’s lining their pockets. I don’t care what side of the aisle you’re on. I just don’t think that’s the way it should work at all,” said Rep. Potenza, who added she was upset by the extent of lobbying and how lobbyists and interest groups have been involved in drafting legislation.

The Department of Environmental Services (DES) expressed approval of the bill’s amendments in the conference committee report delivered last week which will be voted on by both chambers on Thursday.

The bill calls for a two-year moratorium on the permitting of new landfills in New Hampshire, with the option of a 90-day extension if the regulations are not revised within the specified timeframe.

In addition, the bill allocates \$200,000, which marks a \$50,000 increase in funding for a study to determine the safe distance between landfills and bodies of water.

The DES has already started updating its solid waste rules, which are set to expire in July 2024, by involving the public in the rule-making process through public hearings.

“The weirdest thing about this whole six months of discussion ending with this bill is that DES had to revise their rules anyway because they are expiring,” Finkel pointed out, underscoring the need to revise rules irrespective of the legislature’s involvement.

While Nora Bosworth, Staff Attorney for Conservation Law Foundation’s Zero Waste Project, acknowledged the bill’s potential ambiguities and stated that CLF would closely monitor DES’s contractor selection, Rep. Potenza firmly believes that the bill should be eliminated in the current legislative session.

“Killing this bill is better than having the bill,” said Potenza, claiming that once a private consultant is hired to conduct a study, the report goes directly to DES and cuts the legislature out of the process, leaving no room for oversight.