

# **Bill elevates soil type in debate over how far NH landfills should be from water sources**

BY: **CLAIRE SULLIVAN** - FEBRUARY 5, 2025 12:42 PM



Rochester Republican Rep. Kelley Potenza, right, presents her bill to establish site-specific setback requirements for landfills. (Photo by Claire Sullivan/New Hampshire Bulletin)

Concerned advocates and lawmakers have said the state's recently updated regulations would allow a landfill to be built almost anywhere in the state. A bipartisan bill is trying to change that.

House Bill 707, led by Rochester Republican Rep. Kelley Potenza, is based on a simple idea: Different types of soil are more permeable than others. For that reason, proponents of the bill argue, how close a landfill can be built to a water source should be based on the specific characteristics of that site, not one fixed distance that is applied to all facilities.

A landfill must be a set minimum distance from certain types of water sources under the state's regulations. For wetlands and certain types of streams, it can be no closer than 200 feet; for others, it's 500 feet. It also cannot be within 1,000 feet of a "surface water reservoir or intake used for a community drinking water supply."

This legislation would base a landfill's setback from water on time, not distance. It would make it so new landfills are sited only in areas where it would take at least five years for pollution, in the event of a leak, to reach a water source. It also strengthens a number of other requirements related to permitting landfills in the state.

"The real New Hampshire advantage is to have clean drinking water and wonderful, clean spaces," Potenza told her fellow lawmakers on the House Environment and Agriculture Committee at a hearing Tuesday. "We have nothing if we don't have that."

The bill is a response to the recently approved updates to the state's landfill regulations – which Potenza described as, "from one criteria alone, the weakest rules in the world." A legislative panel greenlit those rules for adoption in December. Though lawmakers on the committee expressed concerns that the rules were not

adequately protective, all but one voted in favor of approving them, arguing the critiques were policy issues for the Legislature to take up and outside the purview of the oversight panel.

The action comes as one crucial landfill battle in the state appears close to an end. Gov. Kelly Ayotte said in her inaugural address last month that a new landfill proposed by the Vermont-based company Casella Waste Systems in the tiny, northern town of Dalton near Forest Lake would not go forward. But, as a host of landfill bills up for debate this legislative session signal, the yearslong fight of advocates and lawmakers dedicated to waste issues doesn't end with the Dalton landfill.

“It's not about one project,” Potenza said. “Right now, the rules will allow a landfill to be put pretty much anywhere. So if the rules are not rewritten, some company could come in – could come to Nashua, could come to Keene, Concord, wherever – and find another terrible tract of land and claim that the rules entitle them to build there.”

Her bill aims to change that. It would require the Department of Environmental Services to establish a site-specific setback distance for new landfills, which must “be sufficient to prevent any contaminated groundwater at any part of the landfill footprint or leachate storage or piping infrastructure from reaching any perennial river, lake, or coastal water of New Hampshire within 5 years.”

It would require permit applicants, at their own expense, to hire a hydrogeologist – one that “has never worked with or been contracted through a third party with any applicant's current or previous projects” – to help assess the site. The bill provides a method for calculating the five-year setback distance.

It also seeks to address another point of contention in the rules: the standard for “hydraulic conductivity,” which essentially describes the rate at which pollution would move through the ground in the event of a leak.

The state's regulations require that the soil 5 feet below the footprint of a landfill have a representative saturated hydraulic conductivity of 0.001 centimeters per second or less. Alternatively, it can import a 2-foot base of soil that could be permeable enough that pollution could pass through it in just eight days.

Amy Manzelli, an attorney with BCM Environmental & Land Law representing the citizen group North Country Alliance for Balanced Change, called the imported soil rule “a loophole so big you can drive a Mack truck through it.” She told lawmakers, in response to a question, that she believes it effectively allows a landfill to be sited anywhere in the state.

The bill would ax the imported soil loophole and provide a stricter hydraulic conductivity standard of 0.00001 centimeters per second or less. (The slower the rate, the slower the pollution moves through the ground in the event of a leak.) That would apply to soils 20 feet below the landfill footprint, as well as underneath “all leachate storage and transfer infrastructure.”

It would also require landfill permit applicants to plan for 200-year storm events “in relation to design, maintenance, leachate management, etc.,” a more serious weather event than the regulations currently require they prepare for.

There were a few parts of the bill where Potenza said she “got a little aggressive, and those are up for some changes.”

She pointed to a part of the bill that would prohibit the department from issuing a permit to operate a landfill “to any applicant who has been found in violation of any federal, state, or local environmental laws, regulations, or permit conditions anywhere in the United States.” Perhaps, she suggested, this could be changed to repeated violations.

She also suggested changing part of the legislation that would prevent a landfill from being permitted within 10 miles of another landfill or a “groundwater contamination active Superfund site.”

Both those requirements would pose practical challenges, said Michael Wimsatt, director of the solid waste management division of DES. He said, because of the number of landfill requirements, “there’s always going to be violations.” And because of the state’s 22 Superfund sites, its number of active landfills, and its 300



unlined landfills, he said he wasn't sure "any of the state would be left" if a 10-mile radius was drawn around each of those facilities.

Wimsatt also raised the question of whether the bill should include expansions of existing facilities. "It's not clear to the department why the members of a community where the facility exists deserve less protective conditions than the members of a community where a new facility is being proposed," he said.

Wimsatt made a number of other technical comments on the bill, on which he said the department was taking no position. He said the agency would be available to assist the committee as it did further work on the bill.

Wayne Morrison, the president of the North Country Alliance for Balanced Change, a solid waste advocacy group run by volunteers, said the site-specific setback for landfills would be essential in buying time to protect water sources in case of an accident.

"We should assume at some point the landfill is going to fail," Morrison told lawmakers. "And when it does, the only thing protecting us is that siting criteria that sets it back far enough to prevent the problem from becoming irreversible."