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Residents Voice Concerns About New Proposed Landfill Rules

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Nov 21, 2024



Landfill opponents rally before a U.S. Army Corps of Engineers public meeting on Wednesday at Dalton Town Hall. (Photo by Robert Blechl)

As area residents and lawmakers opposed to a new landfill in the North Country tackle the issue through legislation, they are also voicing concerns about the administrative process, where they said the new final proposed rules regarding landfills favor the solid waste industry and aren't safe enough.

On Thursday morning, a public hearing is scheduled before the New Hampshire Joint Legislative Committee on Administrative Rules.

The rules that govern landfill siting and design are updated every ten years. After Thursday's hearing, the legislative committee can approve them, including approval with conditions, or vote to object.

Amy Manzelli, an attorney for the North Country Alliance for Balanced Change, weighed in with opposition on the eve of the hearing with an 11-page letter and nearly 500 pages of exhibits.

In sum, the proposed rules exceed the statutory authority of the New Hampshire Department of Environmental Services, are contrary to the intent of the Legislature, and "are not in the public interest because they ignore public comment without any countervailing, credible evidence," she said.

To date, the rule-making process has involved "inappropriately disproportionate influence of the waste industry, via private meetings with the Department and unbalanced membership on the Waste Management Council; the Department failing to address concerns and requests from the Department Rules Update Subcommittee of the House Environment and Agriculture Committee; lack of supporting evidence; and a steady weakening of the rules over several iterations," said Manzelli.

In addition, she said, "The process to date suggests the Department may be rewriting the rules to specifically favor permitting certain pending or anticipated landfill proposals."

A half decade ago, landfills and solid waste management captured the spotlight statewide following the proposal of a new commercial landfill in Dalton by Casella Waste Systems, which owns the NCES landfill in Bethlehem that is nearing closure and, according to NHDES records, has racked up hundreds of leachate management and other violations in the span of a year.

For the new rules, NHDES issued a draft on Oct. 18, 2023, followed by a three-week informal comment period.

“The Department adjusted the draft rules based on comments received during this time, particularly from members of the regulated industry that had met privately with the Department,” said Manzelli.

Based on her research and records requests, the private NHDES meetings included representatives from Waste Management, the municipally owned Androscoggin Valley Regional Refuse Disposal District, Resource Waste Services, and Casella.

Subcommittee members, after seeing the draft rules, introduced concerns about leachate management, PFAS management, and surface water setbacks and noted that the rules were lacking in certain areas, such as hydro-geological conditions (which include studies of soils beneath a landfill and the flow of groundwater beneath a landfill and how long it would take contaminants to reach aquifers and surface waters) and prohibited areas for landfills, she said.

“The Subcommittee communicated concerns with the regulated industry having privileged access to the rulemaking process and having an inappropriately disproportionate influence on the outcome of the rules,” said Manzelli. “The Subcommittee also worried the new proposed rules would make New Hampshire’s solid waste rules the weakest in New England.”

She said the subcommittee’s concerns persisted months later, even after the proposed rules underwent revisions.

In mid-2024, public comments from others “overwhelmingly urged the rules to be strengthened in favor of human health and environmental protection,” said Manzelli.

“Instead, the Final Proposed Rules were, once again, significantly weaker than the prior version, in favor of siting and expanding landfills,” she said.

Residents and local legislators have expressed concerns about a possible future leak at the proposed landfill in Dalton, the porous soil beneath it, and the fast-moving groundwater that would be beneath it.

“The Final Proposed Rules add a loophole that entirely undermines any hydraulic conductivity standard,” wrote Manzelli. “Proposed landfill locations whose in-situ soils [soil in its natural state] do not meet the hydraulic conductivity standard can simply import and install a two-foot deep base material that does meet it. So, while the Final Proposed Rules do state a hydraulic conductivity standard, the loophole effectively swallows the rule such that there really is no requirement to meet any hydraulic conductivity standard. This means landfills could be located anywhere, no matter what the in-situ soil.”

As for landfill liners, she cited the public record with NHDES and said liners “are only as reliable as the operators.”

“For example, North Country Environmental Services, a Casella subsidiary operating a landfill in Bethlehem, recently realized and disclosed that over ten years ago its consultants mistakenly drilled numerous holes through its overliner, and those holes have existed and been allowing penetration through the overliner for those ten years without anyone realizing,” said Manzelli. “While the operator is working with the Department to address this situation, it illustrates that relying solely on liners or two-foot bases of material disregards the public health purposes of the enabling statute.”

During the process, Mike Wimsatt, director of DES’s Solid Waste Bureau, testified before the subcommittee.

“Director Wimsatt testified ... that the Department weakened the rules because members of the regulated industries had expressed that ‘none of the facilities [they] are operating right now would ever be sited if these rules were in place ... and if these rules were in place, none of [their] facilities would be able to be expanded,’” said Manzelli.

“However, the purpose of the rules is not to ease the siting or expansion of landfill facilities,” she said. “The purpose of the rules is ‘to protect human health, to preserve the natural environment, and to conserve precious and dwindling natural resources through the proper and integrated management of solid waste.’ Though the Department iteratively weakened the draft rules, it provided no scientific, credible evidence either to the Subcommittee or to the public which supported the changes.”

Submitting comments opposing the proposed rules from October 2023 and seeking no further changes was Mike Skelton, president of the New Hampshire Business and Industry Association, who said, in the comments description provided, “Proposed changes will prevent any further siting of disposal capacity, resulting in a shortage of in-state disposal facilities which would increase costs for

business in every NH industry.”

The New Hampshire Waste Management Council objected to the February rule changes and urged NHDES to readopt the current rules.

Many local residents who submitted comments, however, said the standards should be stricter.

“NH regulations are much weaker than neighboring states, should be strengthened,” said Nancy Morrison, of Whitefield.

Gary Ghioto, of Lisbon, seeks stricter standards for hydraulic connectivity of pollutants.

“Proposed rules should at least match Maine standards,” he said. “Protect NH citizens from MA and CT waste.”

Andrea Bryant, of Bethlehem, said, “DES should protect environment and NH residents [and] should learn from neighboring state regulators.”

Adam Finkel, of Dalton, said, “DES has created the weakest locational criteria in the world, which would allow leachate to reach aquifer/groundwater within hours.”

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