

Senate Energy and Natural Resources Committee

Max Taylor 271-1403

SB 227-FN, relative to site setbacks for landfills.

Hearing Date: February 18, 2025

Time Opened: 10:59 a.m.

Time Closed: 11:52 a.m.

Members of the Committee Present: Senators Avard, Pearl, McConkey, Watters and Rosenwald

Members of the Committee Absent : None

Bill Analysis: This bill requires certain tests and setbacks before the department of environmental services grants a landfill permit in New Hampshire.

Sponsors:

Sen. Rochefort

Sen. Fenton

Rep. Potenza

Rep. Wheeler

Rep. S. King

Who supports the bill: Senator David Rochefort (District 1), Wayne Morrison (North Country Alliance for Balanced Change), Tom Tower (North Country Alliance for Balanced Change), Mike Wright, Timothy Kopczynski (Northern Country Alliance for Balanced Change), Nancy Morrison

Who opposes the bill: Natch Greyes (Business & Industry Association), Henry Veilleux (Waste Management)

Who is neutral on the bill: Michael Wimsatt (NH Department of Environmental Services)

Summary of testimony presented in support:

Senator David Rochefort

Prime Sponsor, Senate District 1

- Senator Rochefort introduced SB 227-FN which requires certain tests and setbacks before the Department of Environmental Services can grant a landfill permit.
- This bill would set parameters to measure the flow of leachate after a landfill leak and examine how long it would take for it to travel a distance of time.
- Senator Rochefort emphasized the significance of these parameters as they would aid in preventing leachate from contaminating bodies of water that people use as their drinking supply.

- Senator Rochefort explained that certain landfill sites specifically those built on sand would result in leachate flow to travel far distances, but sites with the proper conditions and soil would make for more appropriate sites to place a landfill.
- This bill would measure the hydrogeologic conductivity when landfills leak.
- Senator Rochefort expressed that it was the position of the New Hampshire House of Representatives and of the New Hampshire Senate three years ago
- Senator Rochefort highlighted a drafting error on page two, line six stating that it should read “hydraulic conductivity of 1×10^{-6} centimeters per second”.
- Senator Watters asked about a drafting error on page 1 line 23 noting whether or not the default should be “500 feet” instead of “200 feet”.
 - Senator Rochefort agreed that it should read “500 feet”.

Wayne Morrison

North Country Alliance for Balanced Change

- Mr. Morrison testified in support of SB 227-FN.
- Mr. Morrison stated that he believes there should be personnel on the landfill sites 24/7 due to multiple instances of electronic monitoring systems failing, resulting in substantial leachate spills.
- Mr. Morrison expressed concern about the legitimacy of a section in the rules stating that water will not be contaminated as he is unsure if the details currently exist in the rules about how that would be avoided, margins of safety, etc.
- Mr. Morrison argued that site specific science-based setback distance that reflects a policy from the legislature is desired in order to ensure that there is an ample margin of safety rather than using arbitrary numbers.
- Mr. Morrison expressed that if there is not sufficient land mass in New Hampshire to build a landfill, other methods can be used, however, he believes there are ample places to build.
- Senator Avard asked if one of the spills Mr. Morrison previously mentioned was captured, went into some type of aquifer, or if there was a catch basin to recover?
 - Mr. Morrison stated that he does not know how much damage there was.

Timothy Kopczynski

Attorney, BCM Environmental and Land Law

- Mr. Kopczynski testified in support of SB 227-FN.
- Mr. Kopczynski stated that he believes it’s important to view SB 227-FN against the backdrop of RSA 149-M, which is to protect human health, preserve the natural environment, and to conserve precious and dwindling natural resources.
- Mr. Kopczynski expressed that SB 227-FN is needed because its purpose statement aligns with the current solid waste rules unlike the purpose statement in RSA 149-M.
- Mr. Kopczynski stated that the current solid waste rules are less protective than the prior version of the rules.

- Mr. Kopczynski discussed how scientific studies support having stricter requirements such as the setback requirements contained in this bill.
- Mr. Kopczynski detailed that New Hampshire's current rules are the least protective out of all of the New England states.
- Mr. Kopczynski asserted that SB 227-FN is a vital piece of legislation to strengthen New Hampshire standards and achieve equal footing with the neighboring states.

Tom Tower

North Country Alliance for Balanced Change

- Tom Tower testified in support of SB 227-FN.
- Mr. Tower asserted that this was a good bill due to its history with a similar bill (HB 1454-FN) being sponsored by a bipartisan group of both the House of Representatives and Senate members.
- Mr. Tower stated that HB 1454-FN was vetoed by the Governor, but it was the only bill that went through the process in the state of New Hampshire where a veto was overridden by the House of Representatives.
- Mr. Tower stated that this illustrates overwhelming support from the legislature regarding this bill.
- Mr. Tower asserted that this is a good bill because it addresses the necessary setbacks because whether or not you have a single liner, a double liner, a triple line, stuff happens.
- Mr. Tower stated that we need to identify, stop, and have time to remediate to prevent a potential catastrophic situation or a potential superfund site from occurring.
- Mr. Tower asserted that SB 227-FN ensures that projects are not poorly envisioned because it creates a buffer that is necessary to ensure that our environment and our water bodies are safe.

Mike Wright

- Mike Wright testified in support of SB 227-FN.
- Mr. Wright stated that 40% of the state of New Hampshire may be a minority, resulting in 4800 potential landfill sites.
- Mr. Wright explained that as a result of groundwater flow being preferential toward the coarser more permeable sediments, any calculations toward future potential impacts of a landfill should use the higher estimate of the hydraulic conductivity rather than the average.

Summary of testimony presented in opposition:

Henry Veilleux

Waste Management

- Mr. Veilleux testified in opposition to SB 227-FN stating that Waste Management has a number of issues with several sections in the bill.

- Mr. Veilleux highlighted the language found on page one lines 18-19 stating that “The maximum seepage velocity shall be the highest rate measured for any test site in the disposal area”.
- Mr. Veilleux described that the language in this bill says that one test site is going to be the maximum seepage velocity, but argues that it would be more representative to do an average to get a good idea of what a particular location is like.
- Mr. Veilleux called attention to Page 2, Section 7, Line 4 stated that basing the seepage velocity on the undisturbed soil is not as effective when it can be taken out and replaced with something engineered that can bring in other material.
- Mr. Veilleux requested that the language about aquifers be clarified otherwise any landfill in the state could be eliminated.
- Mr. Veilleux expressed that requiring an employee to be physically present on a landfill site 24/7 is not necessary when electronic monitoring systems will produce the best results.
- Senator Watters asked if the expansion of landfill sites would be governed by the current rules, meaning that SB 227-FN would not affect that.
 - Mr. Veilleux stated that for existing permitted capacity, they have until 2024 to where it would apply, however, for an expansion it is unclear and clarifying language would be helpful as it would not be an entirely new landfill.
- Senator Watters asked if Waste Management is going to build anything on sandy soil.
 - Mr. Veilleux stated that they are not.
- Senator Rosenwald asked whether their ability to expand will be hindered without more regulation.
 - Mr. Veilleux stated that he would talk to the legal department and get back to her.

Natch Greyes

Business and Industry Association

- Expressed the same concerns that Henry Veilleux and Michael Wimsatt shared.
- Mr. Greyes stated that SB 227-FN appears to be stricter than HB 1454-FN that was introduced a few years ago.
- Mr. Greyes stated that while HB 1454-FN set up a system where the Department of Environmental Services could, under certain circumstances, give operators credit so they would only have to have two years since they had a monitoring system in place which SB 227-FN does not provide.
- Mr. Greyes stated that if SB 227-FN were enacted into law, the BIA does not know where an available location to build a landfill would be found in New Hampshire.
- Mr. Greyes explained that some developments are denied permits because they have a contaminant nearby, but not directly under where their well as it can be caused by outside activities.

- Mr. Greyes stated that there have been instances of an initial contamination plume that has moved differently than anticipated with the best available science
- Mr. Greyes expressed concerns about how these factors are going to be evaluated in a manner that will still allow some portion of the state to create new landfills.

Neutral Information Presented:

Michael Wimsatt

Director of Waste Management Division, New Hampshire Department of Environmental Services

- Mr. Wimsatt stated that the New Hampshire Department of Environmental Services is neutral on SB 227-FN.
- Mr. Wimsatt reemphasized Senator Watters concern about the bill's language stating that landfills must be built 200 feet away from coastal water of New Hampshire.
- Mr. Wimsatt wants the "200 feet" to be changed to "500 feet".
- Mr. Wimsatt stated that rules were passed which created a default setback of landfills being 500 feet from surface waters and a setback stating that landfills cannot be sited in a location where the release of a contaminant from that footprint could get to a surface water before it could be detected, investigated, and remediated.
- Mr. Wimsatt questioned the details about how a maximum seepage velocity is determined, found on page one lines 15-19.
 - Mr. Wimsatt was unclear if it refers to a macroscale evaluation or a single location measurement.
 - Mr. Wimsatt states that the language suggests that it could be a single location measurement.
 - Mr. Wimsatt states that if the language is referencing a single location measurement, it could exclude nearly any site due to a relatively small area of soil that is neither contiguous in the formation nor representative of the macroscale of the aquifer in the area
 - Mr. Wimsatt states that that definition should be looked at carefully.
- Mr. Wimsatt states that it is unclear to the New Hampshire Department of Environmental Services why expansions of existing landfill facilities would be exempt from the siting criteria
- Mr. Wimsatt states that on page one line 30 the word "fully" should be removed from the language because no facility is ever fully permitted.
- Mr. Wimsatt stated that on page two lines one through two the statement "perennial waters water bodies traversing a footprint" should be removed from the language due to not understanding under what circumstances it would have any meaning.
- Senator Kevin Avarad asked if the current rules would already protect that.

- Mr. Wimsatt stated that a stream running through the middle of a landfill would be subject to all the part monitoring requirements
- Mr. Wimsatt stated that the language found on page two lines seven to twelve is confusing to the New Hampshire Department of Environmental Services and needs to be clarified.
- Mr. Wimsatt stated that on page two lines 13-15 it makes reference to requiring an “employee at the site 24 hours per day”.
 - Mr. Wimsatt stated that the New Hampshire Department of Environmental Services does not feel that that was a good use of resources
 - The department believes that a better use of resources would be to advance electronic monitoring systems that were capable of notifying personnel offsite if there was an issue.
 - Mr. Wimsatt states that the electronic monitoring systems will be more effective at determining if an overflow, failed pipe, failed valve, or failed switch occurs than someone working on the site 24/7.
- Senator Watters requested copies of the fiscal note for SB 227-FN
- Senator Watters asked if it would be correct to say that on the existing sites, an expansion would simply be governed by the 500-foot rule, no matter what the expansion is.
 - Mr. Wimsatt stated that that is correct and explained that the expansion of new facilities will be subject to the augmented set of standards for siting which are stated in the rules.
- Senator Watters asked if this bill was enacted, would it be possible to find a landfill site given the water in New Hampshire that could qualify into this.
 - Mr. Wimsatt stated that that was unclear to the department, and they are unsure how much of New Hampshire would be eliminated for building landfills if this bill were enacted.
- Senator Avard asked if the landfill in Bethlehem, New Hampshire, regarding the new rules, could be expanded.
 - Mr. Wimsatt stated that he has not evaluated that site with respect to the rules.
 - Mr. Wimsatt stated that the Bethlehem site is expected to close in 2026 because the local zoning does not allow expansion beyond the footprint they already occupy
- Senator Pearl asked if it would be possible for the community of Rochester to pass a zoning regulation between now and when they were going to expand the landfill site that would not allow for the expansion.
 - Mr. Wimsatt stated that he is not qualified to answer whether they could legally do that or not.
 - Mr. Wimsatt stated that the courts have held that solid waste facility regulation is primarily given to the state.
 - Mr. Wimsatt explained that local communities cannot enact much that would cross into the state regulatory authority.

- Mr. Wimsatt detailed that the courts have held that through dually enacted and properly enacted zoning a community can decide where in their community they want to allow a landfill to exist.
- Senator Rosenwald asked if there was an estimate on the electronic monitoring systems.
 - Mr. Wimsatt stated that he is unsure on the costs.
- Senator Rosenwald asked if the \$100,000 to \$500,000 annual cost in the fiscal note would be knocked out since certain staff positions would be unneeded.
 - Mr. Wimsatt stated that he does not believe the costs identified in the fiscal note are state costs, but largely are county and local costs.
- Senator Rosenwald asked if part of those costs is already going to be assessed on the localities based on the department's new rules, not because of section 19.
 - Mr. Wimsatt stated that to the extent that they would need to make improvements to their automated systems under the new rules it is correct that they would incur additional costs
- Senator Watters asked if Mr. Wimsatt would consider the rules that the Department of Environmental Services developed to be science based.
 - Mr. Wimsatt asserted that he does believe the rules to be science based.

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Date Hearing Report completed: February 26, 2025