

# Senate Energy and Natural Resources Committee

*Max Taylor 271-1403*

**HB 707**, requiring the department of environmental services to revise the rules for proposed new landfills.

**Hearing Date:** April 15, 2025

**Time Opened:** 10:11 a.m.

**Time Closed:** 10:43 a.m.

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

**Members of the Committee Absent :** None

**Bill Analysis:** The bill requires the department to modify rules to avoid significant harms to human health and the environment, and changes the enabling statute of the department of environmental services solid waste division to require the department to consider health and the environment when making future rules.

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**Sponsors:**

Rep. Potenza

Rep. B. Boyd

Rep. N. Germana

Rep. Haskins

Rep. S. King

Rep. J. Aron

Rep. Noble

Rep. Burroughs

Rep. Gruber

Rep. Schmidt

Sen. Fenton

Sen. Ricciardi

Sen. Rochefort

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**Who supports the bill:** Representative Kelly Potenza (Strafford County District 19), Representative Linda Haskins (Rockingham County District 11), Representative James Gruber (Cheshire County District 16), Representative Judy Aron (Sullivan County District 4), Representative Timothy Horrigan (Strafford County District 10), (Wayne Morrison (NCABC), Muriel Robinette (NCABC), Matt Leahy (NH Forest Society), Sarah Doucette, Nancy Morrison, John Tuthill

**Who opposes the bill:** Eric Steinhauser (Sanborn Head & Associates), Shaun Mulholland (City of Lebanon),

**Who is neutral on the bill:** Representative Nicholas Germana (Cheshire County District 15), (Henry Veilleux (Waste Management)

**Summary of testimony presented in support:**

**Representative Kelly Potenza**

## Prime Sponsor, Strafford County District 19

- Representative Potenza introduced HB 707, which she explained is intended to reform outdated landfill siting rules and bring them into alignment with scientific standards and public health protections. She emphasized that the bill reflects over a year of bipartisan work and input from stakeholders and experts.
- She explained HB 707 addresses seven to eight sections of New Hampshire's Chapter 800 landfill siting rules, which span 55 pages. The bill would replace the current arbitrary 500-foot setback with a science-based standard, including a five-year time-of-travel requirement for groundwater contamination, which reflects how fast pollutants can move through local soils and bedrock.
- She noted the Joint Legislative Committee on Administrative Rules (JCLAR) objected to the Department of Environmental Services (DES) rules in November 2024, citing they were contrary to legislative intent and public interest, and overly prioritized administrative convenience over public safety.
- Representative Potenza explained HB 707 modernizes siting rules, directs the DES to develop rules that explicitly protect human health and the environment, and strengthens the statute by changing the authority of DES from "may" to "shall" deny permits under certain conditions.
- She explained HB 707 includes several major policy reforms, such as establishing the five-year pollutant travel distance standard, requiring hydrogeological investigations, mandating a 24/7 on-site guard at landfills, and sets soil conductivity at  $1 \times 10^{-4}$  cm/sec for the first 20 feet.
- Additionally, she explained the bill would prohibit the use of imported soil to artificially meet setback requirements, increase the minimum setback from 500 feet to 1,500 feet from water bodies or wells, account for 100-year storm events with a 50% safety margin, and changes statutory language to ensure environmental protection is a required consideration in DES rulemaking.
- She emphasized that New Hampshire currently has among the weakest landfill siting rules in the country and that HB 707 corrects this by providing clear, enforceable standards.
- Representative Potenza noted that while her original draft had even stronger protections, such as a 3,000-foot setback, she revised the bill to 1,500 feet and a conductivity standard of  $1 \times 10^{-4}$  cm/sec to gain broader support.
- She stated New Hampshire does not currently have a landfill capacity crisis and only needs one new landfill over the next 100 years, requiring about 500 acres, 0.008% of New Hampshire's land.
- Senator Rosenwald asked whether Representative Potenza agreed that the public health protection purpose of RSA 149-M:1 is still relevant.
  - Representative Potenza affirmed that public health remains a paramount concern.

- Senator Rosenwald asked if, when an agency adopts rules inconsistent with legislative intent, the proper remedy is to change statute to restore legislative control over policy.
  - Representative Potenza agreed, stating HB 707 is precisely the type of statutory correction and reflected guidance from JCLAR.
- Senator Rosenwald referenced Appendix A of the current rules and asked for confirmation that they allow up to three feet of leachate travel per day.
  - Representative Potenza confirmed the current rule permits a conductivity of  $1 \times 10^{-3}$  cm/sec, equivalent to three feet of pollutant movement per day, far less protective than other states such as Illinois and Texas which use  $1 \times 10^{-7}$  or  $1 \times 10^{-6}$ .

## **Wayne Morrison**

### **North Country Alliance for Balance Change (NCABC)**

- Mr. Morrison testified in support of HB 707, stating that while the DES rules have been updated following a comprehensive review, his organization disagrees with the policy direction those rules ultimately took. He emphasized that NCABC provided feedback throughout the rulemaking process, but the final outcome did not reflect their recommendations.
- He referenced prior bipartisan support for HB 1454, a bill that would have implemented site-specific setbacks based on time of contaminant travel.
- Mr. Morrison stated that although HB 1454 was vetoed, the concept remains sound and is carried forward in HB 707.
- Mr. Morrison acknowledged the complexity of the science involved, such as interpreting  $10^{-3}$  conductivity values, but stated that from a broader perspective, it is common sense to base landfill setbacks on site-specific geology, which can vary dramatically across New Hampshire.
- He criticized current rule language that requires applicants to avoid pollution as being too vague, lacking enforceable strength. He argued that HB 707 provides a clearer and more measurable standard through the use of site-specific time-of-travel calculations and a strengthened setback.
- Senator Rosenwald pointed to Page 2, Lines 6 and 7, which state there is a choice between 1,500 feet and a five-year distance of travel estimate. She asked for clarification if there is a strict 1,500-foot setback requirement.
  - Mr. Morrison confirmed that HB 707 does not mandate a strict 1,500-foot setback. Rather, it allows for site-specific calculation based on soil testing, with the 1,500 feet serving as a minimum floor to ensure protection even in faster-draining soils.

## **Representative Linda Haskins**

### **Rockingham County District 11**

- Representative Haskins described HB 707 as a vital part of the Governor's strategic plan to modernize New Hampshire's solid waste management system.
- She stated she was described at how much time the Environment and Agriculture Committee has had to dedicate to landfill issues, but said that was necessary due to serious concerns about landfill siting raised during an ongoing application process.
- She emphasized that the House has been leading efforts over the past six years to improve landfill regulations and that no one on the committee seeks to be adversarial toward DES. However, she and others believe the current DES rules are insufficiently protective, noting that the differences between the November and December rule versions were not meaningful enough to justify approval after an initial denial.
- Representative Haskins stated that JLCAR was clear in telling the legislature it must set policy, not JLCAR or DES, and that HB 707 reflect the legislature fulfilling that responsibility.
- She explained that site-specific, science-based setbacks are critical to preventing groundwater contamination. The bill's five-year contaminant travel time requirement gives time to detect and respond to pollution before it causes lasting harm.
- She stressed that expert testimony has confirmed all landfills eventually leak, making it essential to have both on-site 24/7 personnel and technological monitoring in place. She stated that while either may fail on its own, using both offers better protection.
- Representative Haskins concluded by warning that a 500-foot setback, as currently permitted, could provide either decades or only months of protection depending on the site's geology.

## **Representative James Gruber**

### **Cheshire County District 16**

- Representative Gruber testified in support of HB 707, citing his decades of experience in solid waste management.
- He emphasized the bill is focused on establishing site-specific setback distances for proposed new landfills to better protect groundwater, drinking water, rivers, lakes, and coastal waters.

- He noted that the bill's provisions, specifically the five-year contaminant travel time and hydraulic conductivity threshold of  $1 \times 10^{-4}$  cm/sec, are consistent with common standards used in neighboring states and many countries. He stated these thresholds help determine how long it would take for leachate from a landfill to reach surface or groundwater and based on soil permeability.
- Representative Gruber explained that the  $1 \times 10^{-4}$  cm/sec value is widely used in engineering, including for pond and contaminant systems, and typically reflects very fine silts and clay soils that slow the spread of contaminants. He stated the five-year travel time standard is both reasonable and scientifically sound.
- He highlighted that the bill provides flexibility, allowing for either a five-year travel time calculation or a minimum 1,500-foot setback, depending on site conditions. The inclusion of a 1,500-foot buffer also helps mitigate risks from increased storm intensity, which may carry surface runoff containing contaminants.
- Representative Gruber acknowledged that he was uncertain how the bill's requirement for landfills to withstand 100-year storms with a 50% safety margin translates mathematically but supports including a buffer for extreme weather events.
- While HB 707 focuses on new landfills, he acknowledged concerns raised by others about how the bill could impact the expansion of existing landfills and recommended that issue be addressed through amendments.
- Representative Gruber concluded by emphasizing that adopting standards in line with other states is crucial to protect public health and prevent New Hampshire from becoming a dumping ground for out-of-state waste simply because it has weaker regulations or lower disposal costs.

## **Sarah Doucette**

### **Resident of Whitefield**

- Ms. Doucette highlighted the years of public engagement and bipartisan support for HB 707.
- She emphasized that, as a resident of a small state, all Senate decisions impact every citizen, and she asked to be heard as a constituent with a meaningful stake in the outcome.
- She noted that the push for stronger landfill siting regulations began in 2019, and HB 707 reflects the refinement of several past proposals, incorporating input from legislators, state agencies, and the public.
- She described the bill as the culmination of years of work to protect New Hampshire's water, environment, and public health.

- Ms. Doucette criticized narratives she believes are misleading, stating that experts in economics, law, and waste management have rebutted claims that the bill would drastically raise disposal costs, reduce industry leaders, and the Department of Justice affirming that limiting-out-of-state trash and updating regulations are both feasible and reasonable.
- Ms. Doucette explained that JLCAR's approval of DES's landfill rules in December 2024 was not endorsement of their quality. The committee explicitly stated that the legislature must lead in strengthening environmental protections.

## **Muriel Robinette**

### **North Country Alliance for Balanced Change (NCABC)**

- Ms. Robinette explained that she is a hydrogeologist with over 40 years of experience.
- She clarified that while New Hampshire's newly updated solid waste rules are detailed and strong in terms of engineering and design, the bill focuses on where landfills should be built to best protect water resources.
- She explained that every landfill she has worked on in 11 states has had some level of groundwater contamination, making site selection critical. She stressed that hydraulic conductivity is key.
- She explained slower-moving groundwater allows more time to detect and stop contamination before it reaches surface waters, unlike fast soils such as sand, where pollutants could travel 3-5 feet per day, making the existing 500-foot setback insufficient.
- Ms. Robinette noted that HB 707 proposed standards, including the  $1 \times 10^{-4}$  cm/sec threshold and the five-year travel time requirement, are not overly restrictive. She stated about 80% of New Hampshire's land area is covered in glacial till, which could meet this standard, and other states, such as Maine, already require even stricter clay-based standards.
- Senator Rosenwald asked if landfill leakage is influenced by outside factors.
  - Ms. Robinette stated there are many factors that contribute to landfill leakage, including site handling practices, infrastructure complexity, and the kind of waste.
  - She stated his reinforce the need to prioritize site location and soil characteristics in landfill planning.
- Senator Avard asked whether the bill applies to existing landfills and their expansions.
  - Ms. Robinette stated her understanding was the HB 707 is intended to apply only to new landfills, not to current operations or expansions.

## **Nancy Morrison**

- Ms. Morrison encouraged the committee to “ride the wave” of growing momentum for waste management reform in New Hampshire.
- She emphasized that New Hampshire does not have a landfill capacity issue in the near term, and warned that the long-term consequences of siting a new landfill are serious and far-reaching. When a new landfill is eventually needed, location will be critical to protecting public health and the environment.
- Ms. Morrison explained that HB 707 introduces science-based, site-specific setback criteria, grounded in soil testing to determine how long contaminants would take to reach water sources. This approach ensures landfills are sited far enough from water bodies based on actual soil composition.
- She cautioned that even the best landfill designs and multi-layer liners cannot fully prevent contamination, referencing past incidents of liner punctures and leachate spills in New Hampshire. She argued that understanding the time-of-travel for contaminants is more crucial than relying solely on engineering solutions.
- Ms. Morrison described HB 707 as thoroughly studied and science-based.

## **Summary of testimony presented in opposition:**

### **Shaun Mulholland**

#### **City Manager for the City of Lebanon**

- Mr. Mulholland stated the city of Lebanon currently operates a municipal landfill with approximately five years of capacity remaining. He expressed concerns about how HB 707 could affect the city’s plans to expand into Phase 3 of the city’s five-year plan, which includes removing waste from the leaking, unlined Phase 1 landfill and transferring it to the lined Phase 2 landfill to reduce environmental harm.
- He highlighted issues that uniquely affect municipal operations, including the requirement in Section 19 for 24/7 on-site coverage. He explained that, unlike large private companies, Lebanon lacks the budget and labor capacity to hire around-the-clock landfill staff, especially given current hiring challenges.
- He argued that remote monitoring technologies, such as sensors and video surveillance, would be more practical and effective for small municipalities. He expressed skepticism about the usefulness of requiring a person to be physically

present at the landfill during overnight hours, when staffing would be difficult and vigilance unlikely.

- Mr. Mulholland also raised concerns about the bill's airport proximity provisions, noting that many landfills in New Hampshire are located near airports, including Lebanon's. He stated that while federal law includes waivers and exemptions for such cases, HB 707 does not clarify how those would apply, potentially leading to conflicts between state and federal regulations.

## **Eric Steinhauser**

### **Sanborn Head & Associates**

- Mr. Steinhauser explained that he is a licensed and professional engineer with 40 years of experience in landfills and site remediation. He clarified that his testimony was his own and not on behalf of any clients, councils, or agencies, despite serving on both the Waste Management and the Solid Waste Working Group.
- He expressed concern that codifying siting and design standards into statute rather than rules would reduce flexibility. He stated that under current DES rulemaking, waivers are no longer an option, which could create unintended roadblocks for responsible landfill development and management.
- He stated that HB 707 requires a minimum setback of 1,500 feet or a five-year contaminant travel time, whichever is greater, and explained that calculating travel time involves many site-specific factors, such as groundwater gradients and hydrogeology. A one-size-fits-all minimum may not accurately reflect the risk at any given site.
- Mr. Steinhauser argued that many of HB 707's provisions appear to be solutions in search of a problem. As an example, he pointed out that there is no documented groundwater contamination from lined landfills built under New Hampshire's current standards. Most contamination issues stem from older, unlined landfills, such as Lebanon's Phase 1, which is being excavated and moved into a safer, lined cell.
- He opposed the bill's requirement for 24/7 on-site staffing, noting that leaks typically wouldn't be detected by someone monitoring the site overnight and that existing systems already operate with on-site staff during active hours and remote monitoring when closed.
- Mr. Steinhauser also took issue with the proposed ban on imported fill material, arguing it could contradict existing federal and state liner design standards. Under current rules, engineered fill is used in landfill construction to meet protective permeability thresholds. Mr. Steinhauser noted that federal rules require a geomembrane over a  $10^{-7}$  cm/sec soil layer, and New Hampshire's

design goes beyond that with dual liners, leak detection, and thicker soil layers, often using engineered fill to achieve required standards.

- Senator McConkey asked whether banning imported fill was a reasonable standard, given that technology allows materials to be engineered and compacted safely, especially in regions where natural soil conditions are not ideal.
  - Mr. Steinhauser agreed, stating that imported fill can be carefully controlled and tested, and is already used effectively in liner construction. He explained that prohibiting its use could create inconsistencies and interfere with established engineering practices and existing regulatory requirements.

### **Neutral Information Presented:**

#### **Mike Wimsatt**

#### **New Hampshire Department of Environmental Services, Directory of the Waste Management Division**

- Mr. Wimsatt stated that soil hydraulic conductivity cannot be directly equated to a specific contaminant travel distance, such as three feet per day, without factoring variables such as gradient and other site-specific conditions. He cautioned against oversimplifying the science behind soil permeability.
- Senator Avard asked if Mr. Wimsatt agreed that New Hampshire has some of the weakest landfill siting rules in the country.
  - Mr. Wimsatt disagreed with the claim that New Hampshire has the weakest landfill rules compared to other states. He referenced a JCLAR meeting in December 2024 where DES submitted a detailed response to objections and listed nearly 30 areas where the landfill rules had been strengthened.
- Senator Avard asked if under current rules, a landfill could be sited anywhere in the state.
  - Mr. Wimsatt stated that assumption is incorrect. He explained that in addition to the basic 500-foot setback from surface water, DES requires landfills to be designed so any potential release can be detected, investigated, and remediated before reaching groundwater standards at the property boundary or surface water. These evaluations are based on site-specific data and require licensed professionals for both application preparation and agency review.
- Senator Avard asked if the existing 500-foot setback was an increase from a previous 200-foot standard.

- Mr. Wimsatt confirmed this, explaining that the 500-foot minimum is just one layer of protection, with further in-depth analysis required.
- Senator Avard asked whether the 1,500-foot setback proposed in HB 707 is based on science or arbitrary judgement.
  - Mr. Wimsatt stated DES did not prepare or propose the 1,500-foot figure and therefore could not speak to its scientific basis.
- Senator Avard asked about a provision in HB 707 that changes DES's authority from "may deny" to "shall deny" permits based on criminal history.
  - Mr. Wimsatt clarified that this would require DES to deny a permit if an applicant or officer was convicted of a felony within five years, removing agency discretion. He noted that DES has required background checks for hazardous and solid waste facilities for decades to help screen applicants for criminal history.
- Senator Rosenwald asked if different kinds of soils allow contaminants to flow through them at different rates.
  - Mr. Wimsatt confirmed that different soil types allow contaminants to move at different rates and that DES already considers contaminant travel through soil in its current review process.
- Senator Rosenwald asked if it is unreasonable to include time-of-travel in siting considerations.
  - Mr. Wimsatt replied that it is not unreasonable, but the DES rules already address this using a different method than what is proposed in HB 707.
- Senator Avard asked whether mattresses prohibited from landfill disposal in other states can be accepted in New Hampshire.
  - Mr. Wimsatt stated that New Hampshire law prohibits receiving such waste only if it is banned in the originating state. The legality depends on the specific waste type and the state's regulations.

## **Henry Veilleux**

### **Waste Management**

- Mr. Veilleux testified on behalf of Waste Management, focusing on how HB 707 could impact Turnkey Landfill. He noted that under Section 16 of the bill, the five-year time-of-travel provision does not apply to expansions of existing landfills, meaning Turnkey would be exempt from that specific requirement. However, other sections of the bill, specifically Sections 18-21, do not include this exemption, and thus would apply to Turnkey.
- He highlighted concerns with Section 20m which requires 20 feet of undisturbed soil between the landfill liner and bedrock. Turnkey is currently permitted for

only six feet in some areas. He stated if the 20-foot standard must be met throughout the site, it would be problematic unless amended to allow for imported material to meet the depth.

- Mr. Veilleux also raised concerns with Section 22, which mandates stormwater infrastructure be designed for a 100-year storm with a 50% safety margin, effectively a 500-year storm event.
- He stated this would be extremely difficult or impossible to engineer under current site conditions and would exceed what is currently required by NH DES, which already uses updated regional climate data developed by the Northeast Regional Climate Center.
- He clarified that he had spoken with Representative Potenza, who confirmed it was not her intent to negatively affect Turnkey's operations, but if the bill is not amended it could create major issues for future expansions, especially when new permits are required for each cell.
- Senator Rosenwald asked if Waste Management supports or has concerns with the five-year time-of-travel provision
  - Mr. Veilleux stated the provision does not apply to Turnkey, since it is an existing landfill.
- Senator Rosenwald asked whether the requirement for a 24/7 on-site employee would be a barrier to expansion.
  - Mr. Veilleux replied that although they believe their existing monitoring technology is more effective than round-the-clock staff, Waste Management would not oppose the requirement or abandon expansion efforts because of it.

## **Representative Nicholas Germana**

### **Cheshire County District 15**

- Representative Germana focused on the scientific reasoning behind the bill's key provisions.
- He clarified remarks on comparing New Hampshire's landfill regulations to others in the country, stating the comparison referred specifically to hydraulic conductivity rates. He offered Alabama as an example, which uses a stricter standard of  $1 \times 10^{-7}$  cm/sec, while New Hampshire's current standard is  $1 \times 10^{-3}$ , making it significantly less protective.
- He emphasized that how far a landfill is set back from a body of water should depend on how long it would take for contaminants to reach that water. He stated this is why the bill proposes a five-year contaminant travel time standard.

- Representative Germana disagreed with DES's claim that sit-specific setback standards are unworkable. He noted that many other states successfully use such standards, and JLCAR raised similar concerns, stating explicitly in its November 2024 objection and follow-up letter that the rules were not as protective as they should be.
- He referenced a 2011 DES map prepared by geologist Brendan Kernan, which showed that using the five-year travel time standard would exclude only about 14% of land in New Hampshire from landfill siting, countering claims that the standard is overly restrictive.
- Representative Germana also cited a January 2024 statement by the directory of the Casella landfill in Vermont, who said the site was ideal due to its natural clay foundation. The directory warned against siting landfills on sand or soft clay, reinforcing the bill's stance on importing soil over unsuitable land is not a substitute for proper site selection.
- He emphasized that New Hampshire's statutes and regulations should be grounded in this scientifically sound approach to protect public health and water resources.

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Date Hearing Report completed: April 17, 2025