OBSERVATIONS IN SUPPORT OF HB 707
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SUMMARY:

DES spent 2024 writing the weakest, most unscientific landfill siting rules *in the world*. I have 91-A responses revealing that DES weakened the rules further 4 different times, each time after privately meeting with industry. I defy DES to deny the charge that they REVERSE-ENGINERED the rules specifically to greenlight one project (the GSL in Dalton/Bethlehem) that *could not possibly pass any of the other hydrogeologic criteria set by any other state, province, or country in the world.* This is no different from a state transportation department setting a 200 mph speed limit on all state highways merely because one friend of theirs is a race car driver who asked to be allowed to drive that fast.

In order to arrive at this dog's breakfast of a regulation, DES had to ***ignore the oral and written comments of every single affected citizen, technical expert, and legislator who offered sensible alternatives.*** No one supports the rules as written beyond a very small handful of companies with a direct financial stake in their being weak.

Just for one (crucial) example of how bad these rules really are: EVERY other jurisdiction in the world forbids building a landfill in soil so porous that pollution can travel away from it at a speed greater than about 3 inches/day. MANY states/countries draw the line at 1 foot per YEAR. **But DES now allows pollution to move at 3 feet per DAY.** And that's not all: at the 11th hour, DES slipped into the rule a new loophole that allows applicants whose tracts *can't even pass the 3 ft/day test* to bring in 24 inches of imported dirt as a base layer, with porosity of 3 inches/day. Do the math: that's EIGHT DAYS of protection for the public—for the next 99.9 years while the landfill is producing leachate, they're on their own.

More broadly, EVERYBODY (except the conflicted) told DES that it's long past time to stop setting ***arbitrary and one-size-fits-all* setbacks based on distance,** and start doing what many other states having been doing for 30+ years—set ***site-specific setbacks to surface water based on local geology.*** The only (lame) excuse that DES has for ignoring this is: "we insist on doing it the wrong way because apples aren't oranges," or something.

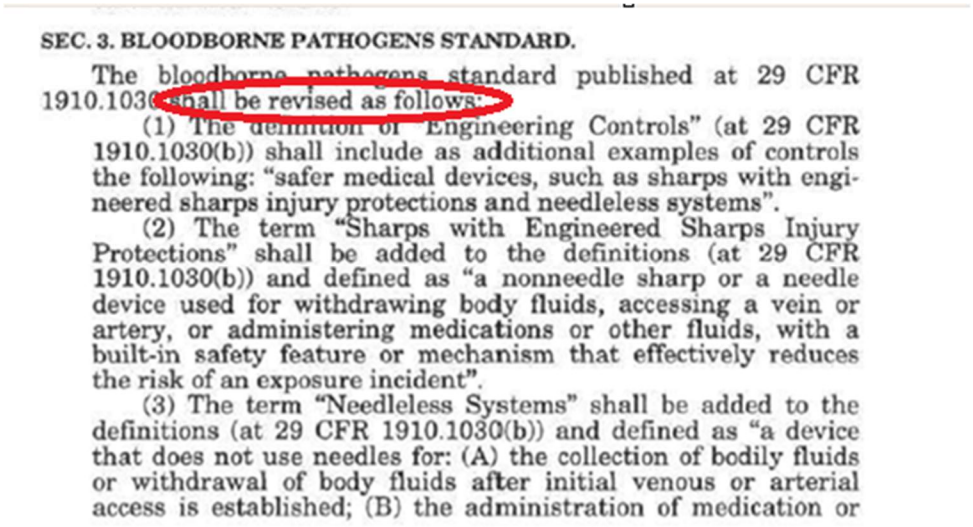
When an administrative agency does this bad a job, the Legislature is obliged to step in and fix it. HB 707 fixes the worst mistakes in the rules, and adds a few words to DES's enabling statute to ensure that they don't fail like this ever again.

THREE OTHER POINTS (THAT I DON'T THINK OTHERS WILL MAKE)

1. *It is completely normal for the Legislature to write an agency rule, especially when the agency has willfully ignored every suggestion that legislators already made during the rulemaking process.*

When I was OSHA's chief regulatory official, we took DIRECTION from Congress every day of the week. The elected officials sometimes told us what to regulate, sometimes what not to regulate, and in some cases (e.g., The Needlestick Prevention Act of 2000: https://www.govinfo.gov/content/pkg/PLAW-106publ430/html/PLAW-106publ430.htm) Congress told the Agency **exactly what the regulation shall be.**

SEE THE WORDS "SHALL BE REVISED": THIS WAS THE U.S. CONGRESS WRITING A REGULATION WHEN MY AGENCY WAS DOING A POOR JOB OF IT



SEC. 3. BLOODBORNE PATHOGENS STANDARD.

The bloodborne pathogens standard published at 29 CFR 1910.1030 shall be revised as follows:

(1) The definition of "Engineering Controls" (at 29 CFR 1910.1030(b)) shall include as additional examples of controls the following: "safer medical devices, such as sharps with engineered sharps injury protections and needleless systems".

(2) The term "Sharps with Engineered Sharps Injury Protections" shall be added to the definitions (at 29 CFR 1910.1030(b)) and defined as "a nonneedle sharp or a needle device used for withdrawing body fluids, accessing a vein or artery, or administering medications or other fluids, with a built-in safety feature or mechanism that effectively reduces the risk of an exposure incident".

(3) The term "Needleless Systems" shall be added to the definitions (at 29 CFR 1910.1030(b)) and defined as "a device that does not use needles for: (A) the collection of bodily fluids or withdrawal of body fluids after initial venous or arterial access is established; (B) the administration of medication or

HB 707 already has a large (14) group of co-sponsors: 7 Rs and 7 Ds, including 2R, 1D from the Senate, and including 6 members of the House Environment & Agriculture committee and its Chair.

These legislators all apparently agree with the Nov. 21, 2024, finding of the Joint Legislative Committee on Administrative Rules—that the new DES landfill rules (Env-Sw 800) "*are contrary to public interest due to a lack of responsiveness to the public… because the rules are designed to benefit the administrative convenience of the agency to the detriment of the public… and because the rules are contrary to the legislative intent of RSA 149-M:1, the purpose statement of the statute.*"

As Rep. Germana said in the Concord Monitor (1/31), "We think the legislature needs to intervene here because DES is not going to do it, no matter how many times we tell them that New Hampshire should do it the way other people do it."

Finally, I call your attention to a very recent case where the Legislature **wrote an agency rule, in order to resolve a court challenge.** In 2020, the 3M company and the city of Plymouth sued DES, claiming that its PFAS regulations were too strict. IN RESPONSE, the General Court enacted HB 271, writing the DES limits for PFAS into law.

The new DES rules may well be, and soon, the subject of a judicial challenge, if the Legislature does not intervene.

2. The Landfill Rules Put Every Community in NH at Risk of being the Host of the Next "Trash in a Sandpit" Project:

In short, these rules were a huge problem for the North Country, *until last month when the new Governor was inaugurated.* Now they are a huge problem for every town and city in our state. Now, **your** town or city can easily become "the next St. Gobain" or "the next NCES landfill."

The new rules explicitly allow a developer to site a landfill ANYWHERE, merely by bringing in "eight days of dirt" from somewhere else.

Please understand that now that Governor Ayotte has vowed that the Dalton/Bethlehem project will not occur, the rules now represent a "YIKES!" moment for the entire state:

A set of rules designed to allow one company to build a landfill in a sandpit next to a lake will allow ANY company to do so, anywhere in our state. We do not have any capacity need, but unless these rules are changed, any disposal company can and will step in to "fill the void" from the canceled Granite State Landfill and will threaten YOUR town or city. **The rules must be normalized to prevent this unintended and grave consequence.**

Please do not allow DES to persuade you to "let these new rules work." No: you must not let these new rules ruin an unsuspecting community.

3. *The Most Shameless Argument you May Hear is that HB 707 would make Landfill Siting "Impossible."*

I fully expect one or more industry representatives to claim at the hearing that "the sky will fall" if HB 707 becomes law. After all, they say that every time. Let's examine the facts:

- Let's be honest about where we are now. The rules as currently written are the polar opposite of "no landfill anywhere." They LITERALLY allow any landfill anywhere. The new 805.03(d) loophole invalidates every other locational provision in the rules.

- But the locational standards in HB 707 (five years time-of-travel from the nearest surface water; soils with conductivity less than 10^{-5} cm/sec) are ***in the mid-range of what all other states/provinces/nations allow***. So they CAN'T cause the sky to fall, as these other jurisdictions have thriving landfill industries.

- Now, suppose for a moment that HB 707 as written WAS the polar opposite, and it made landfill siting nearly impossible. *It will be far easier to amend the bill, or grant a variance, to allow the ONE NEW LANDFILL WE MIGHT NEED OVER THE NEXT 50-75 YEARS,* than to allow that landfill to be sited anywhere, damn the consequences. <u>We have an extreme rule, and HB 707 is a sensible mainstream fix to it.</u> As you've all heard a dozen times, 86% of our state has relatively impermeable clay and till underlying it. The BIA and others want you to believe that we can't find 300 acres in our 6-million-acre state to put that one site. This is ludicrous.

- Indeed, Director Wimsatt acknowledged several times to this Committee that industry has provided ZERO evidence for its tales of woe.

- Finally, if the choice is between maximally permissive and maximally strict, it SHOULD be hard to site a landfill! We only need at most one new one for most of the rest of the century, which gives us roughly 50 years to evolve BEYOND putting PFAS-laden trash in the ground and trucking/piping billions of gallons of leachate away.