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TESTIMONY IN SUPPORT OF HB 1478

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Dear Members of the Environment and Agriculture Committee:

The House already passed this bill (as HB 707) last year, before the Senate shredded it and replaced it with an insulting special-interest bill written by and for one company. I trust it will pass again without controversy, as it should.

Make no mistake: the DES Env-Sw 800 landfill rules must be fixed, as this bill does, for four simple reasons:

1. **They are demonstrably the weakest landfill siting rules in the entire world.** This is a startling claim, but it is true, and no one has rebutted it. Director Wimsatt merely intones over and over and over that the design criteria in the rules make up for the incredibly permissive siting rules. This is ridiculous: all landfills will leak (or experience spills, fires, landslides, etc.), and putting faith in thin layers of plastic is insulting. The other environmental "powerhouses," like Nigeria and Mississippi and India, whose hydrogeologic siting requirements are *hundreds or thousands of times stricter that New Hampshire's now are,* ALSO require modern designs, making Wimsatt's claim fallacious and hardly "clever" at all. Appendix A to this testimony, submitted yet again, proves my point.

2. **They contain just a shocking, eleventh-hour giveaway to one troubled company** that DES until recently was apparently wholly "captured" by. New section 805.03(e) of the rules, added after all public comment was closed, takes the world's weakest criteria for where a landfill can be built and weakens them *infinitely more*. It says that when a developer wants to build in soil where pollution will flow even *faster* than the unprecedented 3 feet per DAY criterion, it can simply ignore even this restriction if it lays down 24 inches of imported soil that can transmit pollution at 3 inches per day. 24 divided by 3 is, obviously, 8: this means that DES will allow a landfill *anywhere* as long as it provides 8 DAYS of protection against migration to water over its 100-year lifetime. This sentence, I surmise, was added to placate Casella Waste Systems, whose Dalton/Bethlehem tract cannot even satisfy the world's weakest rules without this huge loophole.

3. **They were produced without any legislative guidance.** Amazingly, RSA 149-M:7 empowers DES to write any solid waste rules it wants, without a single word of *how*

or why. The U.S. Supreme Court has struck down federal regulations when Congress has failed to give the bureaucracy any "intelligible principle" to guide its work, and 149-M:7 (which merely lists the topics DES can work on) is as "unintelligible" as any I've ever seen. HB 1478, **at long last,** would add the words "necessary to protect the public health and the environment with an ample margin of safety" to instruct DES that the **purpose** of its rulemaking is to protect. This still gives DES enormous discretion to determine when, why, and how to "protect," but at least it gives them a purpose. The General Court has a golden opportunity to fix the "barn door statute" of RSA 149-M:7. *DES should welcome this rudimentary direction from its legislature, as any good agency would.* When I was a federal regulator, we all knew that infinite discretion was a bug, not a feature.

4. **Rescuing these awful rules will save the state considerable time, expense, and embarrassment when—not if—they are challenged in court.** I and others with substantial expertise in science and law will bring an action to repeal the DES rules as arbitrary and capricious in many ways that HB 1478 would improve. Remember, this is not just the NH voters with standing to sue talking: the Joint Legislative Committee on Administrative Rules voted unanimously in November 2024 that the rules were "contrary to legislative intent," "designed to benefit the administrative convenience of the agency to the detriment of the public," and "contrary to public interest due to a lack of responsiveness to the public." We would echo these conclusions with far more specific evidence.[1]

Finally, at this writing (mid-evening on Monday) I note that there is only one voice in opposition to HB 1478 (against about 50 in support)—that of Garrett Trierweiler of Waste Management Inc. (WMI). I have high regard for WMI, but this particular piece of testimony is quite off the mark. For example:

- He criticizes the term "potable water aquifer," but it is nowhere found in the bill…
- He mis-states Paragraph XVII(a)(1) of the bill: it does not bar a consultant from "ever working at the site," but rather it asks for a consultant who has not *previously* worked for the client, to avoid conflicts of interest. Of course the person(s) hired will be expected to visit and understand the new site.

[1] Yes, a month later JLCAR reached the opposite conclusion, even though DES changed not a word of the regulatory text or of its perfunctory response document "summarizing" public comment and why it ignored so much of it. I would argue that this reversal of course only makes the inevitable lawsuits more powerful, as it's obvious to all that JLCAR (in the waning weeks of the Sununu administration) simply had its collective arms twisted.

- He claims, without support, that having a person on-site 24/7 will not "guarantee" that a problem will be identified. This could conceivably be true, but surely we should emphasize the obverse point: NOT having someone on site will guarantee that a problem will NOT be quickly identified, as happened in 2021 when the largest leachate spill in state history (NCES/Bethlehem) persisted for nearly 3 days before being discovered.
- He claims that requiring 20 feet of in situ $1x10^{-4}$ cm/sec soil is "arbitrary." True enough: *any* velocity requirement is "arbitrary." But he provides no evidence that the Turnkey site can't meet this requirement, and more importantly, provides no alternative criterion WMI *can* meet. Surely the Legislature should fix *in some way* the farcical DES criterion currently on the books (again, the risk persists for a century, but DES will graciously offer eight DAYS of protection via its 24-inch allowance).
- He mis-states Part 4 of the bill: it does *not* bar a company who violated an environmental law in the past, only one convicted of a prior *felony.* Big difference.

Please consider these corrections to WMI's testimony when you appraise their opposition.

Thanks for the opportunity to offer this supportive testimony, and for all the amazingly hard and good work that E&A reliably provides to our state.

Adam M. Finkel