

Senate Energy and Natural Resources Committee

Nikolas Liamos 271-7875

SB 61, relative to surface water setbacks for landfills.

Hearing Date: January 24, 2023

Time Opened: 9:32 a.m.

Time Closed: 10:40 a.m.

Members of the Committee Present: Senators Avar, Pearl and Altschiller

Members of the Committee Absent : Senators Birdsell and Watters

Bill Analysis: This bill enables the department of environmental services to adopt rules relative to surface water setbacks for landfills.

Sponsors:

Sen. Avar

Sen. Lang

Sen. Ward

Sen. Watters

Sen. Carson

Who supports the bill: Kirsten Koch, Nikki Delude Roy, Tim White, Senator Ruth Ward (SD 8), Senator Tim Lang (SD 2), Senator David Watters (SD 4), and Senator Sharon Carson (SD 14)

Who opposes the bill: Clark Corson, Heidi Trimarco, Susan Liebowitz, Susan Richman, Margaret Jernstedt, Jack Hurley, and Lois Cote

Who is neutral on the bill: Tom Tower, Mark Sanborn, and Mike Wimsatt

Summary of testimony presented in support:

Senator Kevin Avar

Senate District 12

- Senator Kevin Avar introduced Senate Bill 61.
- Senator Avar stated that SB 61 would enable the Department of Environmental Services to adopt new rules for surface water setbacks in relation to landfills.
- Senator Avar provided background for SB 61. Senator Avar stated that in 2022, HB 1454 created a new rule set concerning wetland buffers for new landfills. HB 1454 was amended by both the Senate and House but was ultimately vetoed by the Governor.
- Senator Avar stated that under the current statute, there is a one size fits all 200 ft boundary that a new landfill must abide by concerning wetlands near the proposed landfill site.

- Senator Avarad stated that SB 61 would place the responsibility to determine an effective wetland buffer for new landfills on experts in this field.
- Senator Avarad noted that SB 61 would require DES to adopt new rules that closely resemble the approach to how PFAS chemicals are handled.
- Senator Avarad stated that the new set of rules concerning a wetland buffer for new landfills would take a science-based approach and would take into consideration the travel time for ground water.

Nikki Delude Roy

Verdantas

- Nikki Delude Roy stated that she has worked for 20 years monitoring landfills.
- Ms. Delude Roy stated that the current DES rules have protected New Hampshire's natural resources.
- Ms. Delude Roy stated that DES should have the rule making power to determine adequate wetland setbacks because that is where the experts are.
- Ms. Delude Roy stated that she would like to see a scientifically determined setback that exceeds the current 200 ft boundary.
- Ms. Delude Roy noted that SB 61 provides incentives for landfills to take extra precautionary steps to protect bodies of water from contamination.
- Senator Avarad asked if Ms. Delude Roy had ever experienced a similar rule making process in other states. Ms. Delude Roy replied that in other states there are engineer controls that assist in the landfill application process.
- Senator Avarad asked if the language in SB 61 was sufficient and not open to interpretation. Ms. Delude Roy stated that she believed that the language was sufficient.
- Senator Altschiller asked if Ms. Delude Roy had ever worked with an applicant that found the 200 ft boundary was unnecessary. Ms. Delude Roy replied that there are some instances where the surface water near a landfill does not interact with the groundwater so, contamination is highly unlikely.

Tim White

Vice President of Sanborn Head Associates

- Tim White stated that he works with geologists that work to determine the safety of landfills.
- Mr. White stated that site specific information should be considered when determining how far a setback should be.
- Mr. White stated that he believes SB 61 allows for engineering opportunities to further add protections for landfills and the surrounding environment.
- Mr. White stated that by granting DES the oversight of landfill applications, it will add further protections to our ground water.
- Mr. White stated that SB 61 should be amended to allow DES to have enough time to meet with technical experts to adopt a new set of rules concerning wetland setbacks for new landfills.
- Senator Avarad asked if SB 61 creates a sufficient safety net for New Hampshire's natural resources. Mr. White replied that he believes SB 61 creates a sufficient safety net.

- Senator Pearl asked if there is technology or certain measures that can determine if a 200 ft boundary is unnecessary. Mr. White responded that he believes DES has the capacity to determine if the 200 ft boundary is unnecessary.

Summary of testimony presented in opposition:

Clark Corson

Collaborative Solid Waste Strategies

- Clark Corson began his testimony by stating that he used to be a lobbyist for people opposed to bottle bills.
- Mr. Corson stated that the committee should table the bill until an agreement can be reached concerning the time frame to publish a new set of rules.
- Mr. Corson stated that he would like to see SB 61 specify wetland setback requirements, and not have it left up to DES.

Heidi Trimarco

Conservation Law Foundation

- Heidi Trimarco stated that the Conservation Law Foundation opposes Senate Bill 61 because it does not state any minimum wetland setback requirement.
- Ms. Trimarco stated that there should be a science-based approach to determining a wetland setback requirement for new landfills.
- Ms. Trimarco stated that she supports placing a moratorium on issuing new permits.
- Ms. Trimarco noted that she believes there is no waste crisis in New Hampshire.
- Senator Pearl asked if the CLF would like to see language in SB 61 that sets a general minimum setback, plus a scientifically determined setback on top of the minimum setback. Ms. Trimarco replied that the CLF sees the 200ft boundary as the floor and the scientifically determined setback as an added precaution to protect our bodies of water from contamination from a landfill.

Neutral Information Presented:

Mike Wimsatt and Mark Sanborn

Department of Environmental Services

- Mike Wimsatt stated that the Department of Environmental Services has some concerns with Senate Bill 61.
- Mr. Wimsatt stated that DES sees the language of SB 61 open to interpretation, which causes concern for the department.
- Mr. Wimsatt stated that DES also has concerns that the timetable to adopt new rules is not feasible for the department. The department would like the new timetable to be extended to 2025 to publish a new set of rules concerning wetland setbacks for new landfills.

- Senator Pearl asked if DES had any suggestions for a language change in SB 61. Mike Wimsatt stated that the department did not have any suggestions for new language at the time of the hearing.
- Senator Avarad stated that if there is a new landfill application brought to the department before the new rules can be adopted, then the old set of rules will be applied to that application.
- Senator Avarad asked if adopting a new set of rules based on a science-based approach to a new wet-land boundary is the right steps. Mike Wimsatt replied that taking a science-based approach to a new set of rules is the right step.
- Senator Altschiller asked that if we feel the current rules for setbacks are out of date due to new advances in technology, would it be possible to put a moratorium on issuing new landfill permits until a new set of rules can be adopted. Mark Sanborn replied that placing a moratorium on issuing new landfill permits is a policy decision and it up to the legislature.
- Mark Sanborn stated that DES would like more time to figure out how to best move forward with a new rule making process.
- Mark Sanborn stated that the DES does support a scientific approach to a new rule set, however the department would need more than a year to adopt a new set of rules.
- Senator Pearl asked if a new application is filed for a new landfill and the new rules have not been set, would they be governed by the old rules. Mike Wimsatt confirmed that a new applicant would follow the old rules until a new set of rules could be adopted.
- Senator Pearl asked if pushing out the rule making process to at least 2 years, would that hold up applicants. Mike Wimsatt replied that the department suggests that the language for SB 61 not include a retroactive rule making process, and to either put a hold on issuing new landfill permits or allow for the old rules to stay in effect until new rules can be adopted.
- Senator Pearl asked what the usual timeframe is for a landfill permit to be approved by DES. Mike Wimsatt replied that the department realistically takes more than a year to approve a new permit.
- Senator Altschiller asked that since DES has no current landfill applications before them, then we could a moratorium be placed on issuing new permits. Mark Sanborn replied that he has heard that a new permit may be filed soon.
- Senator Altschiller reiterated her statement, that a moratorium should be placed on issuing new permits so that no new applicants are accepted based on the old rules. Mark Sanborn stated that it is possible to place a moratorium on issuing new permits so that no new applicant squeaks by on the old rules.
- Senator Birdsell asked if hiring a consultant would help with creating new rules. Mark Sanborn agreed that hiring a consultant would help the new rule making process.

Tom Tower

North Country Alliance for Balanced Change

- Tom Tower thanked Senator Avarad for sponsoring Senate Bill 61.
- Mr. Tower stated that he believes SB 61 should be combined with Senator Watter's landfill bill.
- Mr. Tower stated that a solid waste report stated that if New Hampshire follow's it's diversion goals, then the state will not need a new landfill until after 2030.

- Mr. Tower urged the committee to consider a moratorium on issuing new landfills, stating that New Hampshire has time to solve its solid waste issue.

NPL

Date Hearing Report completed: January 25, 2023