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New Hampshire Department of Environmental Services
Solid Waste Management Bureau, Attn: Michael Nork
P.O. Box 95
Concord, NH 03302-0095

Comments on the Draft New Hampshire Solid Waste Management Plan

Dear Mr. Nork,

Conservation Law Foundation (“CLF”) appreciates the opportunity to comment on the New Hampshire Department of Environmental Services’ (“NHDES”) draft New Hampshire Solid Waste Management Plan (“SWMP”), released in August, 2022. CLF is a non-profit environmental advocacy organization working to protect communities and natural resources in New Hampshire and across New England. We have a long history of working on issues related to municipal solid waste in New Hampshire and across the region, dating back to our participation in the early 2000s on the Governor’s Solid Waste Task Force, to engaging in advocacy in the legislature, and in permitting processes, to advance New Hampshire’s statutory waste reduction goal and solid waste management hierarchy.

CLF considers the State Waste Plan to be a critically important document and tool – one that will guide solid waste management in the state, and that will catalyze needed legislation to reduce waste and better protect New Hampshire’s communities and environment from the impacts associated with our current system – a system that continues to be focused on waste disposal. As demonstrated in a court action initiated by CLF, as well as in permit-related advocacy, we have been troubled by the failure to update the 2003 State Waste Plan. We are pleased that NHDES is now publishing a new State Waste Plan and note that – because the Plan will now have a ten-year lifespan – it is more important than ever that the Plan provide a robust and comprehensive roadmap, with clear actions and priorities, to achieve meaningful progress.

Unfortunately, the draft SWMP is rather un-inspiring, and far from adequate to achieve meaningful change in the face of a current system that remains heavily oriented toward disposal, with significant influxes of waste from other states. Particularly given its ten-year lifespan, it is essential that the final SWMP provide guidance on, and inspire, clear action, including at the legislature. The draft SWMP fails to do so. Rather, it seems NHDES is somehow holding back – declining to acknowledge the imperative to significantly change the status quo, failing to recognize that New Hampshire has become (and will continue to be, absent serious change) a dumping ground for the rest of the region, and effectively abdicating real leadership on an issue

squarely within NHDES's purview and responsibility. With respect to the latter, for example, the draft SWMP's repeated references to merely "exploring" and "considering" various actions (and without any sense of prioritization) inspires little confidence that needed actions will be developed, advanced, and *implemented*. With specific regard to legislation, NHDES should use the Plan as a tool to demonstrate leadership, stating in clear terms what it believes is necessary to achieve the SWMP's goals. Unfortunately, the draft SWMP evokes no such leadership by NHDES and no clear direction for the legislature.

Related to the points above, the draft SWMP reads much like a laundry list of recommendations, without timelines, without explicit recognition of who is primarily responsible, and without prioritization. Whereas the 2003 State Waste Plan contained timelines and specific actions to be advanced, the draft SWMP does not.

In light of the foregoing, CLF is greatly concerned that if the final SWMP is similar to the draft SWMP (lacking in clarity of action, prioritization, accountability, and inspiration to achieve meaningful change), it will accomplish little more than the 2003 State Waste Plan did, leading to a continued failure on the part of the State to achieve statutory waste reduction goals and the statutory waste management hierarchy.

In addition to these significant concerns, which we hope NHDES will specifically address and rectify in its final SWMP, we offer the following additional comments.

Statutory Requirements

1. The draft SWMP fails to meet the statutory requirements of RSA 149-M:29, I(a) because it does not include strategies and actions that will result in the accomplishment of the goals in the draft plan. According to New Hampshire's solid waste management statute, the SWMP must include, at a minimum:

- (a) Goals, strategies, and actions to reduce solid waste generation through source reduction, to increase diversion through methods such as reuse, recycling, and composting, and to achieve the state's solid waste disposal reduction goal, with such efforts incorporating the principles of the solid waste management hierarchy established in RSA 149-M:3.
- (b) Discussion of opportunities to reduce solid waste generation through source reduction and increase diversion through methods such as recycling and composting.
- (c) Goals, strategies, and actions necessary to maintain and ensure adequate disposal capacity for management of waste generated in New Hampshire.

RSA 149-M:29, I. Accordingly, NHDES is statutorily obligated to produce a plan that includes goals, strategies, and actions to (1) reduce solid waste generation, (2) increase diversion, and (3)

achieve the state’s solid waste disposal reduction goal. RSA 149-M:29, I(a). The plan must also include goals, strategies, and actions that result in maintaining and ensuring disposal capacity for New Hampshire-generated waste. RSA 149-M:29, I(c). Notably, the legislature carved out a separate provision for the discussion of opportunities to reduce solid waste generation. RSA 149-M:29, I(b). Subsections (a) and (c), in contrast to subsection (b), require more than discussion – they mandate strategies and actions designed to lead to results. *See* RSA 149-M:29, I(a), (c).

Unfortunately, the draft SWMP focuses largely on the discussion of opportunities, and not on results-oriented strategies and actions. The draft plan regularly calls for exploring opportunities and considering actions, rather than establishing actual, developed actions. Exploring opportunities is ineffective, virtually unmeasurable, and sets a very low bar for the next ten years. Because the plan fails to contain strategies and actions to achieve results, the draft SWMP does not meet the minimum requirements of the statute.

2. The draft SWMP fails to meet the statutory requirements of RSA 149-M:29, I(a) because it does not include a goal of achieving the state’s solid waste disposal reduction goal. Despite a statutory requirement that the plan include a goal to achieve the state’s solid waste disposal reduction goal, the draft SWMP does not. *See* RSA 149-M:29, I(a). Recognizing the importance of reserving landfill capacity for solid wastes that cannot be diverted through source reduction, reuse, recycling and composting, New Hampshire’s waste reduction goal calls for a reduction in the disposal of solid waste by 25% by 2030 and 45% by 2050. RSA 149-M:2; *see also* SWMP, at 2. Achieving the State’s waste reduction goal should be one of the plan’s top priorities. The SWMP must include a goal of achieving 25% reduction in waste disposal by 2030 and 45% by 2050 and identify specific, developed actions and strategies to achieve that goal.

The Draft SWMP’s Themes

3. The draft SWMP’s themes are incomplete, as they fail to include the significant importation of waste from other states. New Hampshire can, and should, decrease the amount of out-of-state waste imported into the state. As more and more states reduce their landfill capacity and enact laws to protect their environmental resources, New Hampshire should not continue to be the dumping ground for other states’ unwanted waste. Currently about half of the waste buried in New Hampshire is imported from out-of-state. SWMP, at 5-6. The beneficiaries of this practice are three private, for-profit landfills. *See* SWMP, at 5. As NHDES recognizes, “[l]egislators and members of the public have expressed significant concern about the receipt and disposal of out-of-state waste in New Hampshire.” SWMP, at 5-6. Addressing this concern should be a theme throughout the SWMP.

4. The draft SWMP includes, for the first time, themes of addressing climate change and environmental justice, but is missing actions to support those themes. *See* SWMP, at 7. Climate change and environmental justice are critical issues that should be incorporated throughout the plan. The plan must do more than acknowledge climate change and

environmental justice, it should require real actions to address the climate crisis and the disproportionate impacts of the New Hampshire waste management system on low-income communities and communities of color.

The Draft SWMP's Goals and Actions

5. The draft SWMP fails to demonstrate leadership or action towards advancing legislation. The draft SWMP is replete with references to *exploring* and *considering* legislation, without even a suggestion of *who* is to *explore* and *consider* legislation. *See* SWMP at Actions 1.8, 2.9, 2.10, 3.15, 3.16, 3.17, 3.18, 5.10, 8.3. Merely exploring and considering legislative solutions are not good enough. New Hampshire cannot waste the next decade researching potential solutions when the State needs to be implementing solutions. The plan should clearly set forth legislation that is necessary to address New Hampshire's waste management problems, and NHDES should commit in the plan to affirmatively working to advance such legislation. Actions in the draft SWMP that call for the exploration or consideration of legislation should be changed to supporting and advancing legislation. This includes advancing legislation for extended producer responsibility (SWMP Actions 1.8, 2.9, 3.17), certain waste disposal bans (SWMP Actions 2.9, 3.15), mandatory recycling and/or diversion (SWMP Actions 3.15, 3.16, 3.18), and legislation to address emerging chemicals of concern, including PFAS (SWMP Action 2.10). The 2003 Plan used stronger language than the current draft, calling for NHDES to pursue legislation and develop model legislation. *See, e.g.*, 2003 Plan, Objective 2.1.2, Objective 2.1.3, at 7. NHDES should not backtrack; at a minimum the new plan should be more robust – not weaker – than the 2003 Plan.

6. The draft SWMP should include a clear articulation of legislative priorities. Establishing legislative priorities will focus NHDES efforts and guide the legislature toward solutions that will have the biggest impact on New Hampshire's waste management system. As discussed below, CLF urges NHDES to prioritize legislation to establish diversion infrastructure, waste disposal bans (especially food waste), and extended producer responsibility ("EPR") (specifically a bottle bill).

7. The draft SWMP should prioritize waste diversion infrastructure. Prioritizing waste diversion will advance New Hampshire's waste management hierarchy and help to achieve SWMP Goal 3 (maximize diversion) and Goal 4 (ensure adequate capacity for New Hampshire-generated waste). In establishing these goals, NHDES recognized that "[w]hen waste is generated, it should be diverted from disposal whenever possible." SWMP, at 11. Diversion includes recycling, composting, and anaerobic digestion. *See id.* at 11, 13. Diversion is needed to ensure adequate capacity for New Hampshire's waste that must be landfilled. *Id.* at 13. NHDES describes this need in Goal 4:

Maintaining adequate capacity for management of New Hampshire's waste will necessitate an integrated solid waste management system with facility

infrastructure encompassing all levels of the waste management hierarchy. This integrated system **should prioritize capacity for diversion as much as possible**, reserving disposal capacity for wastes that have limited or no other management options. Attaining this system **will require development of new and expanded solid waste management infrastructure, with capital investments from public and private waste management entities at all levels**. It will be **vitaly important to shift away from New Hampshire's reliance on landfills and bolster capacity for recycling and other forms of diversion**. It will also be critical to compile comprehensive data to ensure that waste management infrastructure is developed to meet New Hampshire's projected solid waste management needs while supporting the goals of this plan.

SWMP, at 13 (emphasis added).

8. The draft SWMP is inadequate because it is missing necessary actions to increase diversion. There is a great disconnect in the draft SWMP between NHDES's description of Goal 4, *supra*, and the actions intended to support that goal. The SWMP should include actions to prioritize capacity for diversion as much as possible and to invest in public and private diversion infrastructure at all levels. The SWMP should endorse the creation of state-of-the-art material recover facilities ("MRF") for recycling, composting facilities, and anaerobic digestion facilities. It also should endorse and encourage diversion infrastructure owned and operated by the State. NHDES should pursue legislation, technical assistance, and incentives to increase diversion infrastructure. Critically, the SWMP should require benchmarks to measure progress towards achieving diversion goals. For example, the 2003 Plan included an objective to increase the diversion of food waste through composting by 30% by October, 2005. 2003 Plan, at 3.2.8. The current SWMP also should include benchmarks.

9. The draft SWMP should prioritize eliminating food waste in landfills. Food waste is the largest component of landfills, constituting approximately 24% of landfill material by EPA estimates. SWMP, at 6.¹ Eliminating food waste from landfills would immediately and significantly reduce the amount of waste being disposed of in New Hampshire landfills, advancing SWMP Goals 1, 3, and 4. Food waste exacerbates the climate crisis because decomposing food in landfills produces methane, a potent greenhouse gas.² An EPA report in 2021 concluded that if the United States is going to meet targets to address climate change,

¹ SWMP, at 6 (citing EPA, Facts and Figures about Materials, Waste and Recycling, available at <https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/national-overview-facts-and-figures-materials#Landfilling>).

² U.S. Department of Agriculture, Food Waste and its Links to Greenhouse Gases and Climate Change, available at <https://www.usda.gov/media/blog/2022/01/24/food-waste-and-its-links-greenhouse-gases-and-climate-change>.

changes to address food loss and food waste are essential.³ Banning food waste from landfills would support SWMP Goal 6, to support climate change initiatives. In 2019 NHDES recognized a rising interest among legislators, municipalities, regional organizations, commercial and institutional entities and the general public in pursuing composting and organic waste diversion.⁴ NHDES noted that diverting food waste and other organics from landfilling “is consistent with the hierarchy, recovers resources, reduces disposal need, and has the potential to reduce waste management costs.”⁵ NHDES should amend the SWMP to include actions that will prohibit or limit food waste in New Hampshire landfills. At a minimum the SWMP should call for NHDES to pursue legislation to ban food waste from New Hampshire landfills. In addition to a food waste ban, other actions could include promoting, developing, and incentivizing composting and anaerobic digestion. The SWMP should call for the development of State-owned composting facilities. Moreover, programs that divert wasted food from landfills and redistribute unspoiled food to people may advance Goal 7 of the draft SWMP, pertaining to environmental justice. The plan should include programs to divert certain food waste to address food insecurity, in line with EPA’s Sustainable Management of Food practices.⁶

10. The draft SWMP should prioritize extended producer responsibility programs, including a bottle bill. Extended producer responsibility (“EPR”) programs, such as bottle bills, promote diversion and waste reduction. EPR programs make manufacturers responsible for the end-of-life management of the products they produce.⁷ EPR programs offer well established, efficient, and cost-effective solutions to waste management. New Hampshire already has some EPR programs in place, such as the State’s successful mercury thermostat take-back program, RSA 149-M:58-a.⁸ Bottle bills are proven EPR programs that have been operating successfully in some states for decades. Bottle bills require manufacturers, distributors, and/or sellers of bottled and canned beverages to charge a deposit fee for each beverage, and the deposit is returned to the consumer when the container is returned at a redemption center.⁹ Bottle bills

³ EPA, From Farm to Kitchen: the Environmental Impacts of U.S. Food Waste, Nov. 2021, at ii, available at https://www.epa.gov/system/files/documents/2021-11/from-farm-to-kitchen-the-environmental-impacts-of-u.s.-food-waste_508-tagged.pdf.

⁴ NHDES 2019 Biennial Solid Waste Report, Oct. 2019, at 9.

⁵ *Id.*

⁶ <https://www.epa.gov/sustainable-management-food/sustainable-management-food-basics>. See also Vermont Agency of Natural Resources, Universal Recycling Law Boosts Fresh Food Donations, available at <https://anr.vermont.gov/node/901> (Reporting a 40% increase in food donations to food banks in Vermont following the implementation of Vermont’s mandatory food waste recycling law.)

⁷ NHDES 2019 Biennial Solid Waste Report, at 11.

⁸ See also NHDES 2019 Biennial Solid Waste Report, at 11.

⁹ See., e.g., Maine’s Bottle Bill program, which has been successfully recycling glass, metal, and plastic beverage containers since 1978, available at <https://www.maine.gov/dep/sustainability/bottlebill/index.html>.

divert glass, metal, and plastic beverage containers from landfills and into recycling programs, reducing litter, conserving resources, and saving energy.¹⁰ The benefits of a bottle bill and other EPR programs are wide-ranging, and would advance at least SWMP Goals 1 through 5. NHDES should amend the draft SWMP to include EPR actions and support for EPR legislation, including a bottle bill. The SWMP could include other EPR programs that NHDES has recognized as successful in other New England states, including paint take-back programs, electronic waste recycling programs, and Maine’s recent EPR program for packaging.¹¹ The plan should include exploration of additional EPR solutions, including reverse vending machines that collect recyclable materials, such as cans and bottles.

11. The draft SWMP should prioritize actions that will reduce out of state waste. Despite acknowledging the significant concern legislators and members of the public have expressed about the amount of out-of-state waste being disposed of in New Hampshire, taking up roughly 50% of New Hampshire landfill capacity, the draft SWMP fails to include a single action to address this issue. *See* SWMP, at 5. The SWMP must address this major source of waste. While NHDES often references the Constitution’s Commerce Clause as preempting any efforts NHDES might take to reduce out-of-state waste,¹² there are, in fact, measures that can address this significant problem (e.g., relying more on publicly-owned waste disposal rather than privately-owned facilities, and requiring out-of-state waste generators to comply with certain requirements that also apply to in-state generators). The draft SWMP represents an abdication of leadership on this issue; the final SWMP should prioritize the issue and commit to exploring how New Hampshire can limit out-of-state waste within Constitutional constraints, as other states have successfully done

12. The draft SWMP should include actions to reduce out of state waste, including supporting publicly owned landfills. The SWMP should include actions that support publicly owned landfills, including State owned and operated facilities, which can operate with limited service areas. Other actions in the plan could include support for legislative efforts to reduce out-of-state waste, including bans on commercial landfills, and regulations that require out-of-state municipalities to register with the State before disposing waste in New Hampshire.

13. The draft SWMP fails to include actions that support the plan’s climate goal (Goal 6). Despite recognizing the importance of solid waste practices that support climate change initiatives, the draft SWMP fails to include actions to accomplish that goal. As a preliminary matter, the SWMP should identify the state and federal climate change initiatives it seeks to support. *See* SWMP, at 15. High priority action items described above, including increasing diversion, eliminating food waste from landfills, and increasing EPR programs, are actions items

¹⁰ *Id.*

¹¹ NHDES 2019 Biennial Solid Waste report, at 11; *see also* Maine Department of Environmental Protection Extended Producer Responsibility Program for Packaging, available at <https://www.maine.gov/dep/waste/recycle/epr.html>.

¹² *See, e.g.*, NHDES 2019 Biennial Solid Waste Report, at 9.

that should be added to the SWMP and will support SWMP Goal 6. The SWMP should include actions to measure greenhouse gas emissions associated with New Hampshire solid waste management and to actively explore ways reduce those emissions. Additionally, the SWMP should include, as an action, NHDES rulemaking to ensure that so-called “advanced recycling” is conducted in an environmentally safe manner that results in meaningful recycling and no net increase in greenhouse gas emissions.

14. The draft SWMP fails to include action items to support the environmental justice goal (Goal 7). The draft SWMP references NHDES’s “Title VI Nondiscrimination/Environmental Justice policy,” SWMP at 16, but Title VI and environmental justice policies are different, and require separate policies. Title VI of the Civil Rights Act prohibits recipients of federal funds from discriminating based on race, color, or national origin.¹³ Environmental justice, on the other hand, recognizes the disproportionate impacts of environmental harms on certain communities, in particular low-income communities and communities of color.¹⁴ The SWMP should include, as an action, the development of an environmental justice policy to guide NHDES’s regulation of solid waste. Such policy should include, at a minimum, the requirement that cumulative impacts be closely considered in determining whether to grant permits for new or expanded waste facilities.

15. SWMP Goal 2 should be strengthened to address not only the toxicity of the waste stream, but the safe management of landfilled waste. The SWMP Goal 2 should address the management of waste after it is landfilled, to prevent harmful environmental contamination from landfills. The SWMP should call for a review and update of NHDES rules for the siting, construction, operation, and closure of landfills under Env-Sw 800 to protect against toxic leachate release from landfills. It also should support the establishment of more protective buffers between landfills and surface waters.

16. The draft SWMP is overly reliant on public outreach. CLF is concerned that NHDES is overly reliant on public outreach to achieve the goals in the draft SWMP. The majority of the actions in the plan are categorized by NHDES as public outreach, education, and technical assistance. Much of this information is already publicly available,¹⁵ and further information gathering and sharing will not result in meaningful reductions in waste generation. CLF urges NHDES to prioritize actions that will have greater impact, such as those discussed above, and to demonstrate more leadership in identifying and advancing needed legislation and regulatory changes.

¹³ EPA, Title VI and Environmental Justice, available at <https://www.epa.gov/environmentaljustice/title-vi-and-environmental-justice>.

¹⁴ *See id.*

¹⁵ For example, the Northeast Resource Recovery Association (“NRRA”) is a nonprofit organization that provides recycling and waste reduction information to municipalities, businesses, and individuals throughout New England. NRRA offers education and technical assistance. Northeast Resource Recovery Association, <https://www.nrrarecycles.org/>.

17. The draft SWMP needs to make public outreach actions measurable. Where the SWMP includes public outreach actions, those actions should be measurable. For example, an action in the 2003 Plan required NHDES to offer technical assistance regarding source reduction to ten New Hampshire manufacturers over three years. 2003 Plan Objective 1.2.3, at 5. Similar benchmarks, such as the quantity and timeframe of information sharing, should be added to the SWMP.

In light of the many concerns discussed above, CLF is greatly concerned that the final SWMP will not be up to the task of complying with RSA 149-M:29, I and advancing meaningful efforts to reduce and better manage waste in New Hampshire. If, in light of the statutory deadline for publishing the final SWMP, NHDES lacks the time necessary to fully develop and prioritize clear and meaningful actions – with specific timeframes for implementing those actions – we urge NHDES to include in the final SWMP a commitment to preparing an addendum, to be completed within 90 days of the SWMP’s publication, that provides those necessary critically important details.

CLF appreciates the opportunity to provide these comments. We request that NHDES specifically address each of the comments discussed above, and we hope the final SWMP will be a significantly more robust document that both complies with RSA 149-M:29, I and leads New Hampshire to a much more sustainable future with respect to solid waste.

Respectfully submitted,



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