

SB 267-FN - AS INTRODUCED

2023 SESSION

23-0950

08/04

SENATE BILL **267-FN**

AN ACT relative to rulemaking for advanced recycling facilities.

SPONSORS: Sen. Altschiller, Dist 24; Sen. Watters, Dist 4; Rep. McWilliams, Merr. 30; Rep. Caplan, Merr. 8; Rep. N. Murphy, Hills. 12; Rep. M. Paige, Rock. 11

COMMITTEE: Energy and Natural Resources

ANALYSIS

This bill requires the department of environmental services to make rules relative to advanced recycling facilities.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to rulemaking for advanced recycling facilities.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Statement of Purpose. Given the emerging and untested nature of advanced recycling as an
2 industrial process; the broad range of toxic pollutants, including per- and polyfluorinated alkyl
3 substances (PFAS), benzene, heavy metals, and polycyclic aromatic hydrocarbons, that can be
4 present in plastic materials processed through advanced recycling; the potential for such toxic
5 pollutants to result in air, water, and soil pollution that is harmful to public health and the
6 environment; and New Hampshire's experience with widespread PFAS pollution; it is prudent to
7 ensure public health and environmental safety, and to avoid the adverse economic impacts of
8 pollution, by establishing appropriate rules for the permitting and operation of advanced recycling
9 facilities.

10 2 New Paragraph; Cumulative Impacts; Definition. Amend RSA 149-M:4 by inserting after
11 paragraph IV-b the following new paragraph:

12 IV-c. "Cumulative impacts" means the total, combined impacts on public health and the
13 environment, including air and water resources, caused by a proposed facility in combination with
14 pollution from other, existing sources within the geographic area that would be affected by the
15 proposed facility.

16 3 New Paragraph; Undue Risk of Harm. Amend RSA 149-M:4 by inserting after paragraph
17 XXVII-a the following new paragraph:

18 XXVII-b. "Undue risk of harm" means it is more likely than not that an advanced recycling
19 facility, on its own or as a result of cumulative impacts, will cause or contribute to:

20 (a) Rates of relevant cancers in the affected geographic area that exceed the current
21 rates of such cancers in the area or the median rates of such cancers in New Hampshire, whichever
22 is lower;

23 (b) Rates of acute and chronic illness in the affected geographic area, including but not
24 limited to asthma, chronic obstruction pulmonary disease, cardiovascular disease, and childhood
25 lead poisoning, that exceed the current rates of such diseases in the area or the median rates of such
26 diseases in New Hampshire, whichever is lower;

27 (c) The exceedance of national ambient air quality standards and other state air quality
28 standards;

29 (d) The exceedance of a federal or state maximum contaminant level for drinking water;

30 (e) The exceedance of a state water quality standard for surface waters;

31 (f) The exceedance of an ambient groundwater quality standard; or

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1 (g) The exceedance of a lifetime increased individual risk of cancer of 1 in 1,000,000 from
2 exposures to toxins in fish, crops, or animal products consumed for food.

3 (h) Exceedance of a hazard index of 1 for cumulative exposures to toxins with non-cancer
4 effects in fish, crops, or animal products consumed for food.

5 4 New Sections; Advanced Recycling. Amend RSA 149-M by inserting after section 63 the
6 following new sections:

7 149-M:64 Rulemaking; Advanced Recycling. The department shall, no later than November 1,
8 2023, commence the rulemaking process under RSA 541-A related to the permitting and operation of
9 advanced recycling facilities relative to:

10 I. Air pollution from advanced recycling facilities. Such rules shall, at a minimum, require
11 best available control technology for benzene, polycyclic aromatic hydrocarbons, dioxins, per- and
12 polyfluorinated alkyl substances, lead, mercury, arsenic, cadmium, and chromium, and, based on
13 advanced recycling facilities in operation outside of New Hampshire, any other pollutants of concern
14 to the department. Such rules also shall ensure no undue risk of harm to public health or the
15 environment.

16 II. The discharge of advanced recycling process waste water and liquid wastes into surface
17 waters and groundwater to ensure compliance with state surface water quality standards, ambient
18 groundwater quality standards, and maximum contaminant levels for public and private drinking
19 water. Such rules shall include, but not be limited to, discharges directly into surface waters;
20 industrial user discharges into, and through, wastewater treatment facilities; and shall ensure no
21 undue risk of harm to public health or the environment.

22 III. The disposal of waste products from advanced recycling, including but not limited to
23 char, liquid wastes, and chemical wastes. Such rules shall ensure that such waste, or constituents of
24 such waste, do not enter the environment, including through landfill leachate collected from disposal
25 facilities and discharged to surface waters or groundwater, and cause no undue risk of harm to
26 public health or the environment.

27 IV. Monitoring air emissions from advanced recycling facilities. Such rules shall include, at
28 a minimum, continuous monitoring of emissions for each of the air pollutants for which the
29 department requires best available control technology and for particulate matter in the range 1-10
30 micron in aerodynamic diameter range.

31 V. Assessing the cumulative impacts of proposed advanced recycling facilities, including the
32 methodology for assessing cumulative impacts, which shall include, at a minimum, the
33 methodologies for (a) defining the geographic area affected by a proposed facility, (b) assessing
34 existing public health or environmental conditions of the community or communities in the effected
35 geographic area, including sensitive receptors such as schools, hospitals, and public housing, and (c)
36 assessing the impacts of the proposed facility on those baseline conditions. Such rules shall not

1 allow the permitting of an advanced recycling facility that will have cumulative impacts that pose an
2 undue risk of harm to public health or the environment.

3 VI. Establishing requirements that ensure meaningful public participation in the permitting
4 process. Such rules shall require, at a minimum, at least 90 days between public notice and public
5 hearing on an application; public notice and hearing accommodations for members of the affected
6 community for whom English is not the primary language; notice to the legislative body of the
7 municipality in which the facility is proposed, and of any municipality located within 5 miles of the
8 proposed facility.

9 5 Department of Environmental Services; Prohibition on Certain Permits. Notwithstanding
10 RSA 149-M, the department of environmental services shall not issue a permit for an advanced
11 recycling facility, including a facility for which a permit application has been submitted prior to the
12 effective date of this section, until it has issued final rules as required by section 4 of this act. The
13 rules required by section 4 of this act shall apply to any proposed advanced recycling facility,
14 including any facility for which one or more permit applications are submitted prior to the effective
15 date of this section.

16 6 Effective Date. This act shall take effect 60 days after its passage.

**SB 267-FN- FISCAL NOTE
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AN ACT relative to rulemaking for advanced recycling facilities.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	\$67,000	\$105,000	\$109,000
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill requires the department of environmental services to make rules relative to advanced recycling facilities.

Given the broad scope of the rules envisioned in this bill, the Department of Environmental Services assumes it would need to coordinate the rulemaking process across several of the agency’s programs relating to regulation of air, water, and waste. The Department assumes the rulemaking would be complex and take 1-2 years to complete. The work would necessitate establishment of a new position, at the level of Environmentalist IV, LG 27, to act as a project manager to research rulemaking approaches and coordinate the rule writing process across relevant programs within the agency. The Department assumes the position would be established and filled half way through FY 2024 and the estimated cost would be approximately \$67,000 in FY 2024 and \$105,000 in FY 2025, and \$109,000 in FY 2026 including salary, benefits, equipment, office space and other operating expenses. The bill does not specifically create or fund this position, but the Department assumes the process for creating the position could be completed by December 1, 2023 and that general funds would be the funding source.

The Department further assumes the bill may have fiscal impacts on local governments by increasing the complexity of industrial discharge permits administered by municipally owned wastewater treatment facilities, under existing water quality regulations. The Department

assumes there will be an additional cost to local governments associated with administering these more complex permits. The Department does not expect this bill will have any impact on state, county or local revenues.

This bill does not include an appropriation or authorize establishment of a new position.

AGENCIES CONTACTED:

Department of Environmental Services