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Attorneys At Law

Brenda E. Keith

March 21, 2008



Kelly A. Ayotte, New Hampshire Attorney General
New Hampshire Dept. of Justice
33 Capitol Street
Concord, NH 03301

Thomas S. Burack, Commissioner
Department of Environmental Services
29 Hazen, P.O. Box 95
Concord, NH 03302-0095

Michael Wimsatt, Director
Solid Waste Management Bureau
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

RE: State of NH vs. North Country Environmental Services, Inc., Dkt. # 07-E-0495
Town of Bethlehem's comments on Brown and Caldwell remedial report

Dear Attorney General Ayotte, Commissioner Burack and Director Wimsatt:

Thank you for the opportunity to comment on the Waste Control Evaluation report filed in the above-entitled matter by Brown & Caldwell. Enclosed is the report of Aries Engineering who serves as the Town's engineer.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Brenda E. Keith

c. Maureen Smith, Sr. Assistant Attorney General
Clients
Bryan Gould
File



ARIES ENGINEERING, INC.

Environmental Engineers and Hydrogeologists

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46 South Main Street | Concord, NH 03301 | Phone: 603-228-0008 | Fax: 603-226-0374 | www.aries-eng.com

March 21, 2008
File No. 2002-015

Brenda Keith
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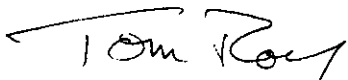
Re: January 10, 2008 Brown and Caldwell report Comments
NCES Landfill
Bethlehem, NH

Dear Brenda:

As you requested, Aries Engineering (Aries) evaluated Brown and Caldwell's January 10, 2008 Waste Control Evaluation report (WCE report) prepared for North Country Environmental Services' (NCES') landfill in Bethlehem, New Hampshire. Aries summarized our WCE report in the attached comments.

Aries appreciates the opportunity to assist your office in this matter. Should you have any questions, I can be reached at 603-228-0008.

Sincerely,
Aries Engineering, Inc.



Thomas E. Roy, P.E., P.G.
Principal Engineer/Geologist

Attachment: Comments

TER:sgc

North County Environmental Services
January 10, 2008 NCES Waste Control Evaluation Comments
Prepared for the Town of Bethlehem by
Aries Engineering, Inc.

As requested by the Town of Bethlehem (Town), Aries Engineering, Inc. (Aries) evaluated the January 10, 2008 North County Environmental Services (NCES) Waste Control Evaluation report (WCE report) prepared by Brown and Caldwell (BC) of Middleborough, Massachusetts. The WCE report was prepared for NCES' Trudeau Road landfill facility (facility) in Bethlehem, New Hampshire to comply with the November 2007 New Hampshire Department of Justice (DOJ) Consent Decree (Consent Decree). Following are Aries' WCE report comments generally arranged according to WCE report sections.

Introduction

1. WCE report paragraph 1 indicated the purpose of the WCE report was to assess existing operations with respect to Best Management Practices (BMPs) and compliance with the New Hampshire Code of Administrative Rules. However, the Consent Decree that required WCE report preparation indicated the WCE report shall assess and make recommendations on the following:
 - a) Adequacy of NCES' waste management/inspection and acceptance/rejection procedures,
 - b) Modifications to NCES' operational plan and permit to optimize identification and rejection (non-acceptance) of prohibited wastes, and
 - c) Procedures that NCES should adopt to verify that recommendations are being implemented.

Further, the DOJ January 7, 2008 correspondence (DOJ correspondence) to the Town regarding the Consent Decree indicated that the Consent Decree requires NCES to go beyond existing regulatory requirements to protect Town citizens from the acceptance and burial of prohibited waste. The DOJ correspondence also confirmed that the WCE report must assess current landfill procedures, identify any inadequacies in NCES' waste inspection processes, and recommend improvements that would *ensure* detection and rejection of prohibited wastes in the future.¹

The WCE report objectives were not consistent with the Consent Decree objectives and DOJ correspondence requirements. The WCE report should therefore be revised to explicitly and specifically address each Consent Decree objective.

¹ DOJ, January 7, 2008, Correspondence to Daniel Tucker, Chairman, Board of Selectmen, Town of Bethlehem, p. 2.

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2. According to New Hampshire Department of Environmental Services (DES) representatives, the DES has not developed BMPs for landfills. The BMPs referred to in the WCE report were not defined and should be attached to the WCE report so that each BMP can be further assessed for their relevance to attaining Consent Decree objectives. Once the BMPs are submitted to the DES, the Town and its advisors should be given the opportunity to further comment.

1.1.2 NCES Operations Personnel and Training

3. WCE report section 1.1.2 indicated NCES employees receive additional training on prohibited waste recognition when the facility is closed. The Consent Decree requires that the WCE report provide recommendations to modify NCES' operational plan to optimize identification and rejection of prohibited waste. The WCE report did not include these recommendations. The WCE report should therefore be revised to specify these detailed recommendations.
4. The WCE report should include a recommendation to require scheduled periodic employee training on prohibited waste recognition at a minimum frequency of once every 12 months. The recommended employee-training syllabus should also be submitted with the WCE report to allow assessing whether the employee training will be sufficiently rigorous and thorough to attain the DOJ's objective of ensuring that employees identify and reject prohibited waste. The employee training should be in addition to any minimal employee training required by relevant DES rules.

2.1 Waste Acceptance Procedures

5. The Consent Decree indicated the WCE report should contain an assessment of waste acceptance procedures. Section 2.1 of the WCE report included a description of facility operations. Section 3 of the WCE report indicated the facility meets BMP standards and was compliant with the DES Rules for the prevention of the disposal of unauthorized solid waste. However, the WCE report did not provide an assessment of the adequacy of the waste acceptance procedures for the facility as required by the Consent Decree. Further, since the WCE report did not define the BMP standards used in WCE report preparation, the relationship of BMPs to WCE report objectives cannot be further assessed. Waste acceptance procedures may be compliant with DES Rules, but may not be adequate to prevent disposal of unauthorized solid waste as required by the Consent Decree, and would not go beyond existing regulatory requirements as specified in the DOJ correspondence. The WCE report should therefore be revised to address this Consent Decree requirement.
6. Section 2.1 of the WCE report indicated prohibited waste consisting of a whole tire was rejected from a waste load during the BC facility visit. The WCE report indicated the rejected waste was removed from the active face and placed on the plateau above the active face. However, the WCE report did not indicate how the rejected waste was disposed following removal from the active face. The

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WCE report also did not assess the adequacy of NCES's waste rejection procedures. Therefore, since the Consent Decree requires that the WCE report provide "Recommendations for procedures to improve inspection, identification and rejection of prohibited waste"², the WCE report should be revised to address this Consent Decree requirement.

2.2 Waste Inspections

7. Section 2.2 of the WCE report described waste inspection procedures observed during a facility visit and indicated waste inspection logs from 10/1/07 through 12/17/07 were reviewed. The WCE report did not indicate whether waste inspection logs were maintained prior to 10/1/07. The WCE report did not include a discussion regarding the items included on the waste inspection logs, a discussion regarding the adequacy of the information on the waste inspection logs, or an assessment regarding whether the waste inspection procedures were adequate to prevent disposal of unauthorized solid waste. As required by the Consent Decree, the WCE report should be revised to include an assessment and recommendations on the adequacy of NCES' waste assessment/inspection procedures.

3 Assessment of Operations

8. The WCE report Assessment of Operations section began with a conclusion that waste acceptance and rejection procedures observed on a single day, met undefined BMPs and were compliant with "New Hampshire Code of Administrative Rules for the prevention of the disposal of unauthorized solid waste." The WCE report did not include the basis for the conclusion, and did not address operations on dates other than 12/17/07. The WCE report should therefore be revised to provide a basis for others to assess the accuracy of the report conclusions.
9. The Consent Decree indicated the WCE report should contain an assessment of customer compliance with restrictions on acceptable waste. Section 3 of the WCE report indicated that the "majority of customers are compliant with restrictions on acceptable waste." However, the WCE report did not provide a detailed basis for this conclusion. The WCE report should be revised to define terms such as "majority" and should include the period during which data were collected (more than one day of data collection and analysis would be anticipated to arrive at statistically significant conclusions), tables and/or graphs depicting the number of customers in compliance compared to the number of customers not in compliance, type and frequency of restricted items observed, the statistical procedures employed, and a comparison of the data evaluation with data from other acceptable landfill operations. This statistical data analysis could then serve as a basis to assess and improve facility communication with the customers. The statistical analysis could also be used as a basis to provide recommended improvements to attain the DOJ correspondence objective of

² DOJ, November 26, 2007, Consent Decree, paragraph 12 b.

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ensuring detection and rejection of prohibited wastes, and ensure that waste shipments received at the facility are inspected randomly (rather than over-inspecting certain shipments) over the period of the entire work day (rather than preferentially at some time of day such as in the morning).

10. The Consent Decree indicated the WCE report should contain an assessment of NCES personnel attention to waste characterization. Section 3 of the WCE report indicated, "NCES personnel were observed to be generally attentive in characterizing waste". The WCE report did not include the basis for this conclusion, whether current operations were adequate, and did not include recommendations to go beyond existing regulatory requirements. The WCE report should be revised to address these Consent Decree and DOJ correspondence requirements.
11. Section 3 of the WCE report provided an assessment of facility operations. According to the DOJ correspondence, the WCE report should assess current landfill operations and identify any inadequacies in NCES' waste inspection processes. Therefore, to comply with the Consent Decree, the WCE report should include a technical discussion that lists or otherwise identifies the inadequacies of the current operation, and provides detailed recommendations to improve operations to ensure that prohibited waste is not received at the facility. Further, the WCE report should support the conclusions and recommendations by specifying the methods used and information relied upon. This will allow others to assess whether the WCE report conclusions and recommendations were based on a representative database that was assessed using a reliable method. Further, the WCE report should specify whether the methods employed included unannounced facility inspections.

4 Recommendations

12. The Consent Decree and DOJ correspondence indicated the WCE report should assess and recommend procedures that NCES should adopt to verify that required changes are being implemented. Since the WCE report did not include these detailed procedures to verify that required changes are being implemented, the WCE report should be revised accordingly to comply with Consent Decree and DOJ correspondence requirements.

4.1 Documentation

13. Section 1.1 of the WCE report indicated the waste descriptions in the Facility Operating Plan (plan) were similar to the definitions provided in the DES Rules. However, Section 4.1 of the WCE report indicated potential confusion may be caused by unclear or contradictory descriptions of authorized or prohibited wastes. Since the WCE report did not include a basis for this conclusion, the report should be revised to clarify this apparent discrepancy.

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14. The last sentence on page 7 of the WCE report regarding recommended documentation was confusing. The recommendation should be revised to clarify the proposed documentation change and indicate how it would achieve Consent Decree objectives.

4.2 Comments on the Draft Plan

15. Section 4.2 of the WCE report commented on a draft copy of a revised Facility Operating Plan (draft plan). However, the WCE report did not include the draft plan to allow assessing its relationship to the Consent Decree requirements. The draft plan should therefore be included with the revised WCE report for evaluation. Further, rather than the WCE report concurring with the draft plan by reference, the WCE report should include separate specific recommendations that can be independently assessed for compliance with the Consent Decree and DOJ correspondence requirements.

4.3 Operations

16. The recommendations were not specific as required by the Consent Decree. The WCE report should be revised to include specific recommendations to optimize identification and rejection of prohibited waste. The recommendations should be in the operational plan format for inclusion into a revised plan.

General Comment

1. The Consent Decree required that the WCE report be prepared by a professional engineering firm licensed in the State of New Hampshire³. However, the New Hampshire Board of Professional Engineers Professional Engineering Certified Business Organization Listing as of February 7, 2008, did not list Brown and Caldwell, the consultant that prepared the January 10, 2008 WCE report, as a "professional engineering firm licensed in the State of New Hampshire" as required by the Consent Decree.

³ DOJ, November 27, 2007, Consent Decree, paragraph D. 11.