

FEATURE

Op-Ed: It Appears the NCES Landfill is Operating Without a Valid Permit

By Jon Swan November 9, 2022



Courtesy photo

Jon Swan, president of Save Forest Lake, is pictured in front of the State House.

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Good Morning Commissioner Scott:

I am writing in reference to the NCES Landfill in Bethlehem and the decision by the NH Waste Management Council (WMC) regarding the Conservation Law Foundation (CLF) appeal of the October 9, 2020 approval by your department of the NCES Stage VI expansion

permit, DOCKET NO. 20-14 WMC, CONSERVATION LAW FOUNDATION, INC. APPEAL. Specifically, I am inquiring about the fact that in the May 11, 2022 FINAL ORDER ON APPEAL, the WMC determined that:

*“C. NHDES acted unlawfully in determining there existed sufficient capacity need under RSA § 149-M:11, III(a) justifying operation of the NCES Facility for its proposed six year operating period.” and that “CLF’s appeal is **granted** regarding this matter.”*

and

*“The Council REMANDS the Permit to the NHDES Commissioner with respect to Discussion Section C. The Council has determined that **NHDES acted unlawfully in finding the NCES Facility provided a substantial public benefit under RSA § 149-M:11, III** when the NCES Facility was projected to operate during a period without capacity need.”*

As I am sure you are aware, on Thursday, November 3, 2022, the WMC upheld its May 11 determination, denying all remaining motions for reconsideration and rehearing. Therefore, it would appear that the NCES Landfill is now operating **without a valid permit, in direct violation of RSA 149-M.**

According to **RSA 149-M:9 Permit Required.** –

I. No person shall construct, operate, or initiate closure of a public or private facility without first obtaining a permit from the department.

II. It shall be unlawful to transport solid waste to, or to dispose of solid waste at, any facility other than an approved facility.

According to RSA 149-M:38 Enforcement. –

I. The commissioner may issue an order to any person in violation of this subdivision, any rule adopted under this subdivision or any condition in any exemption granted under this subdivision to comply with the subdivision, the rule or condition, and may require such remedial measures as may be necessary.

II. The commissioner may request the attorney general to bring a civil action in superior court for appropriate relief, including a temporary or permanent injunction, or both, to enforce any provision of this subdivision, any rule adopted under this subdivision, any condition in any exemption granted under this subdivision, or any order issued pursuant to this subdivision.

<https://gencourt.state.nh.us/rsa/html/X/149-M/149-M-mrg.htm>

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In the attached Union Leader story, dated November 8, 2022, it is stated that Casella will likely take this to the NH Supreme Court. However, in the meantime, and without a valid permit from NHDES, it would seem that the most appropriate course of action, in accordance with RSA 149-M:38 II, would be for you to request that the NH Attorney General’s Office file an injunction to cease operations at the NCES facility until the matter is resolved and a permit to operate is obtained from NHDES. Failure to do so would seemingly find your office in violation of state statute.

On an aside, it was noted that in approving the Stage VI expansion in **2020**, NHDES officials stated “...as a practical matter, the **desired pivot will take time to accomplish**,” DES writes, “and some commenters made the point that **NH communities and other NH waste generators that currently depend on the NCES [Casella Bethlehem] landfill need time to plan for its closure and redirect their solid waste management practices.**” <https://www.des.nh.gov/organization/divisions/waste/swmb/documents/nces->

[lf-application-public-comments.pdf](#)

(<https://www.des.nh.gov/organization/divisions/waste/swmb/documents/nces-lf-application-public-comments.pdf>)

<https://www.nhpr.org/environment/2020-10-13/state-approves-small-expansion-at-bethlehem-landfill-facing-pollution-suit> (<https://www.nhpr.org/environment/2020-10-13/state-approves-small-expansion-at-bethlehem-landfill-facing-pollution-suit>)

Has this happened since 2020? Has there been any kind of discussion with those communities that rely on NCES for waste disposal? We are almost to 2023, and once again, we again find ourselves questioning the life span of this facility, kind of like deja vu all over again. Will your department be in communication with those towns that rely on NCES? I would think it prudent for your department to communicate with those towns, or require the facility operator, to begin candid discussions relative to alternatives to NCES. I am certain AVRDD and Waste Management would appreciate a heads up from the department as well.

Lastly, I would like to share my concerns that your department has not conducted an inspection of the NCES facility for permit compliance since October 28, 2020, over 2 years ago. This despite the fact that since 2019, there have been 4 LODs “Letter of Deficiency” issued by your department, including the May 1-3, 2021 154,000 gallon leachate release (still waiting to learn of any violations being issued), and 4 violations via Administrative Order 21-010 WMD, for filling waste outside of permitted areas. You submitted a letter to the NH House Environmental & Agriculture Committee on February 12, 2021, submitting testimony on HB177, attached. In that letter to the committee, seemingly to address concerns about the siting of landfills and nuisance issues, contamination, etc., you provided information relative to the regulatory program of NHDES for solid waste landfills. However, it would appear, based on reality, that there has been very little regulatory oversight at NCES, particularly in the last 2 years. Instead, relying on self-monitoring and self-reporting. This is not very reassuring to those of us in the North Country, who feel that a new and unneeded landfill, owned and operated by this very same company, poses a significant threat to our environment, health, and safety.

I hope you will do the right thing relative to the continued operation of the NCES Landfill without a valid permit. It is crucial that your department also follow the regulations and statutes that are in place to “*protect human health, to preserve the natural environment, and to conserve precious and dwindling natural resources through the proper and integrated management of solid waste*” as stated in the RSA 149-M:1 “Statement of Purpose”. Failure to do so only serves to further erode the faith the public has in your department in fulfilling its mission to “*sustain a high quality of life for all citizens by protecting and restoring the environment and public health in New Hampshire.*”

cc: NH Attorney General John Formella

Thank You!

Jon Swan

Dalton, NH

Disclaimer: The opinions published in op-eds are those of the writer. InDepthNH.org welcomes diverse opinions. email nancywestnews@gmail.com