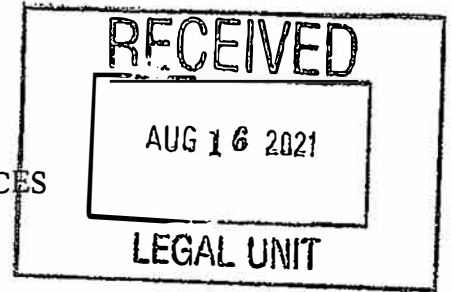


STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WASTE MANAGEMENT COUNCIL

Docket # 21-08 WMC

In re: North Country Environmental Services, Inc.



NOTICE OF APPEAL
AND REQUEST FOR PARTIAL EXPEDITED REVIEW

North Country Environmental Services, Inc. ("NCES") submits this notice of appeal pursuant to Env-WMC Part 204 and requests expedited review of its request for a stay of the department's order pursuant to Env-WMC 204.14.

I. Appellant

The appellant's full legal name and contact information are as follows:

North Country Environmental Services, Inc.
P.O. Box 866
Rutland, VT 05702
Telephone: (603) 869-3366

II. Appellant's Representative

This notice of appeal is filed on NCES's behalf by the following authorized representatives:

Bryan K. Gould, Esq. (NH Bar #8165)
Cooley A. Arroyo, Esq. (NH Bar #265810)
Morgan G. Tanafon, Esq. (NH Bar #273632)
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III. Clear and Concise Statement of Relief Sought and Statutory Provision Under Which the Relief is Sought

The department issued an administrative order that alleges NCES violated the solid waste rules and the terms and conditions of its solid waste permit and orders NCES to relocate substantial quantities of waste based on its allegations. NCES disputes the department's determinations set forth in the order and requests that the council remand the order to the commissioner with a determination that it is unlawful and unreasonable. This relief is sought pursuant to RSA 149-M:8, RSA 21-O:9, V, RSA 21-O:14, and RSA 541-A:30-a, et seq.

IV. Copy of the Order Subject to Appeal

The department issued Administrative Order No. 21-010 WMC, dated July 16, 2021 (the "Order"), a copy of which is attached as Exhibit 1.

V. Clear and Concise Statement of Facts Upon Which the Council is Expected to Rely in Granting Relief

a. Facility Background and Development

NCES owns a double-lined landfill in Bethlehem, New Hampshire. The landfill is comprised of six "stages" of development, some of which were constructed in multiple "phases." The permitting and operation of Stages V-VI are relevant to this appeal. NCES is currently filling Stage VI of the landfill facility.

NCES is regulated by the department and operates the landfill facility pursuant to a solid waste permit issued in accordance with the solid waste rules set forth in Env-Sw 100-2100. NCES received a permit modification for the development and operation of Stage V on August 15, 2014. The Stage V permit modification approved a vertical and lateral expansion of the landfill. A condition in the permit modification defined the facility limits as those shown on a design plan sheet submitted to the department titled "Stage V Landfill Expansion, Closure Plan

Drawings, Final Grading Plan.” This plan sheet showed the proposed final grading contours of the facility after construction of the final cap for the landfill.

NCES received approval for its Stage VI expansion on October 9, 2020. A condition of the Stage VI approval stated that the “preliminary design of Stage VI” was that shown on design drawings and closure plans submitted with the application.¹ These plans include the proposed final capping plan showing contours for the facility upon closure after the final cap is in place. NCES received operating approval for Stage VI from NHDES on March 19, 2021.

Both the Stage V and Stage VI approvals describe the permissible limit of landfilled waste in terms of the *final* capped and closed grades of each cell. When the waste mass is ready for capping and closure, NCES must place an impervious synthetic membrane over the waste followed by three to four feet of soil which receives hydroseed to provide stability of the landfill cover. *See* Env-Sw 805.10(e).² At the time capping and closure begins, then, the outer limits of the waste mass must be three to four feet below the final contours of the closed facility. This is reflected in the facility plans cited in the permit conditions, which include notes stating that limits of the final waste grades are three to four feet lower than the final capped grades depicted on the final grading plans.

It is well understood by the department (*see, e.g.,* Env-Sw 806.02(g)(2)) and the waste management industry that after waste is deposited and compacted in a landfill a significant amount of settlement occurs in the ensuing years. The amount of subsidence depends on such

¹ The Stage VI permit modification referenced several different plans that were submitted with the application. Only the final closure plan depicts the final grades of the landfill.

² Constructing a landfill capping system is among the requirements for closing a landfill. *See* Env-Sw 807.03(b)(4).

factors as the content of the waste mass and its overall depth at any given location. It is not uncommon for the waste mass to settle two or more feet each year. Consequently, to achieve final waste grades when the landfill is ready for capping, landfill operators in New Hampshire have for decades placed waste above what will be the final waste grades, anticipating that the waste mass will subside to close to final grades by the time capping is to take place. The department has been aware of this practice for as long as it has gone on and, until now, has never construed its rules to prohibit it. Rather, the department has applied its rules such that the *final grades* of waste before capping must be as shown on the capping and closure plan. It is also inconsistent with the statutory requirement that all of a landfill's permitted capacity be available for disposal of New Hampshire waste (*see, e.g.*, RSA 149-M:11, V and XI) to apply the department's rules so as diminish the total amount of waste the landfill can accept.

b. NHDES Enforcement Actions

Paradoxically, this appeal arises from the department's efforts to ensure that Stage V of the NCES landfill would have enough capacity to accommodate New Hampshire waste through April of 2021. These efforts culminated in an order that, had its rationale been employed by the department before now, would have substantially diminished the state's disposal capacity, including that in Stage V.

On October 18, 2019, the department notified NCES that it expected that Stage V would continue to accept New Hampshire waste through April of 2021. This notification was based on a reinterpretation of RSA ch. 149-M that represented a departure from the manner in which the department had applied the statute for decades. Notwithstanding that the department had changed its long-standing construction of the statute, NCES agreed that it would continue to accept waste in Stage V through April of 2021 and in fact did so.

On January 14, 2019, NCES applied for an approval for the development of Stage VI of the landfill. On October 21, 2019, NHDES found the application complete and commenced its technical review of the application. On December 3, 2019, the department held a public hearing on the application and extended the public comment period until December 20, 2019. On January 17, 2020, the department notified NCES that it was planning to deny the application because it had not met the requirement of establishing that Stage VI would provide a public benefit “as a function of time.” This determination was based on a reinterpretation of RSA ch. 149-M and was inconsistent with the department’s application of the statute for decades. The department gave NCES the choice to receive a denial of the application or withdraw the application and file a new application complying with the “function of time” criterion the department had decided to apply. Notwithstanding that the department had changed its long-standing construction of the statute and imposed a requirement that it had never applied before, NCES withdrew its application and refiled another for the approval of Stage VI.

NHDES issued a Notice of Findings (“NOF”) on February 18, 2021, that reached the preliminary finding that NCES had exceeded the capacity of Stage V. The NOF sought additional information about remaining capacity at the facility and directed that NCES take certain steps if, in fact, it had no more approved operating capacity in Stage V. NCES responded to this letter the following day and explained that the department’s analysis was mistaken because it “does not consider that the landfill has settled by at least 104,000 cubic yards” since the topographic survey upon which the NOF was based. NCES noted that the configuration of Stage V was consistent with its permit conditions and that it still had capacity remaining in Stage V.

Following discussions with the department, NCES supplemented its initial response with an updated capacity analysis prepared by a third party on March 3, 2021. This document included an updated topographic survey of the “deck” of the landfill (i.e., the top surface) identifying in detail those areas where the waste mass was then above or below what would eventually be the final waste grades. By netting out the areas above and below these projected grades, NCES established that there was still 139,805 cubic yards of capacity available.

The department did not acknowledge that it had been mistaken about the lack of remaining capacity. Instead, it focused on those portions of the survey showing waste then above the projected final grades of Stage V and issued a letter of deficiency (“LOD”) to NCES on April 23, 2021 alleging that NCES had failed to operate within its permitted “vertical limits” by placing waste above the future final waste grades. It requested that NCES cease placing waste outside the “vertical limits” and relocate waste that had been placed above those limits. It also requested an incident report, plan and schedule for waste relocation, and weekly updates documenting NCES’s progress in relocating waste and measures to prevent a recurrence.

In a written response to the LOD dated April 30, 2021, NCES explained why the department’s LOD was based on mistaken facts and misinterpretation of the rules and NCES’s permit conditions. It pointed out that as a landfill approaches capacity it is best practice to place waste above the projected final waste grades so that when the time comes to cap and close the landfill the waste mass will have settled to the approximate final grades. NCES asked that the department consider its explanation and notify NCES if it still required an incident report.

The department never acknowledged NCES’s response to the LOD or notified NCES that it still required an incident report. Instead, after the passage of three months, the department

issued the Order that is the subject of this appeal. The Order described the permitting history of the NCES facility, the February 18, 2021 NOF, the April 23, 2021 LOD, and NCES's responses to both letters. It stated that the department did not receive the written incident report or weekly incident reports requested by the LOD and made four determinations of violations. Specifically, the Order states that NCES:

- Violated solid waste rules and the permit by placing waste outside the permitted vertical limits of the landfill, as identified in the conditions to the Stage V and VI permits;
- Violated solid waste rules and the permit by failing to notify NHDES of violations of the solid waste rules and the permit;
- Violated solid waste rules and the permit by operating the landfill in a manner inconsistent with the design limitations of the facility; and
- Violated solid waste rules and the permit by failing to operate the facility in compliance with the solid waste rules and the terms and conditions of NCES's permit.

The Order is predicated on a reinterpretation of the department's rules as prohibiting the temporary placement of waste above the permitted final waste grades of the landfill. This new construction of the rules is inconsistent with their application for decades by the department.

c. The Order is Unlawful and Unreasonable.

The Order is unlawful and unreasonable for the following reasons:

1. It misinterprets the solid waste rules. The department relies on Env-Sw 806.02(b) which prohibits the deposition of waste beyond the "permitted vertical and lateral limits of the landfill." In the Order, the department defines the "permitted vertical limits" of the NCES facility as those identified in its permit conditions. The only limits

set forth in the permit conditions are *final grading contours*, which indirectly establish the vertical limit of waste after it has settled over time and is ready to receive the final cap. The Order treats interim waste placement as equivalent to *final* grades. The final waste grades are a target that the operator must achieve over time, not a static operational boundary as the Order alleges.

2. It is part of a pattern of changing the substantive requirements of RSA ch. 149-M and the rules implementing the statute without an amendment to the statute, a rulemaking to provide notice and an opportunity to be heard, or oversight by the Joint Legislative Committee on Administrative Rules (“JLCAR”) as required by RSA ch. 541-A.
3. It selectively enforces the department’s reinterpretation of the rule against NCES but not against similarly situated parties.
4. It is inconsistent with:
 - a. The requirement that all of a facility’s permitted capacity be available for the disposal of New Hampshire waste.
 - b. The rule’s administrative gloss developed since its adoption.
 - c. The department’s application of the rules to NCES and to other facilities since its adoption.
 - d. National industry best practice.

5. It will impose substantial financial burdens on NCES³ without notice in the law or from an established course of conduct by the department that NCES could be exposed to such burdens.
6. Depending on how the department interprets the Order, it may require NCES to close for the remainder of 2021, again without notice to NCES.

VI. Clear and Concise Statement as to Why the Appellant Has Standing

The Order includes determinations that NCES violated the solid waste rules and the terms and conditions of its permit and orders NCES to take certain actions as a result of the department's findings and determinations. Accordingly, NCES "will suffer a direct and adverse affect [sic] as a result of the decision . . . in a way that is more than any impact of the decision on the general public," and therefore has standing to bring this appeal. Env-WMC 204.02(b)(5). NCES is also a necessary party to an appeal of the department's administrative order because it is the party to whom the Order was issued. *See* Env-WMC 204.06(a)(1).

³ It is unclear what waste is specifically contemplated by the Order. The factual predicate of the Order is that it pertains only to the waste located on the deck of the facility; that was the waste depicted on the response to the LOD that is addressed in the Order. The Order also requires, however, that NCES perform a survey of the entire landfill and relocate any waste that is now above the projected final waste grades. The department has not yet determined that there is waste above the final grades anywhere at the site other than on the deck, but the Order seems to require NCES to relocate waste without a prior finding by the department that it has exceeded the landfill's vertical and lateral limits at any location other than the deck. Because the Order seeks to impose relocation obligations without a finding that NCES has exceeded permissible limits NCES challenges that portion of the Order as violative of due process and premature. NCES cannot appeal the reasonableness of the factual underpinnings of that part of the Order until the department has actually made those findings.

VII. Request for Expedited Review of Request to Stay the Order

Pursuant to Env-WMC 204.14, NCES requests that the council provide expedited review of NCES's request for a stay of the Order. NCES does not seek expedited review of the remaining issues presented in this notice of appeal, which is being filed on August 16, 2021.

By separate motion NCES will seek a stay of the Order pending the outcome of this appeal. The Order requires prompt action by NCES that will cost NCES hundreds of thousands of dollars or more to accomplish. If the council determines that the Order is unlawful or unreasonable there will be no mechanism by which NCES will be able to recoup its expenses for complying with an invalid order. Because, for the reasons outlined in this notice of appeal, there is a substantial likelihood that the Order is unlawful and unreasonable, the council should hold an expedited hearing on the motion to stay and suspend the operation of the order pending the outcome of the appeal.

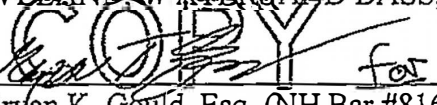
VIII. Reservation of Rights

Pursuant to Env-WMC 205.02, NCES reserves the right to amend and supplement this notice of appeal with memoranda, briefs, and other written materials prior to the hearing and with testimony, exhibits, and other evidence at the hearing. NCES also reserves its right to seek relief in the courts for any claim or request set forth in this notice that does not fall within the council's exclusive jurisdiction.

Respectfully submitted,

NORTH COUNTRY ENVIRONMENTAL
SERVICES, INC.,
By Its Attorneys,
CLEVELAND, WATERS AND BASS, P.A..

Date: 8/16/21

By:  for
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CERTIFICATE OF SERVICE

I hereby certify that the within document was this day forwarded to:

Robert R. Scott, Commissioner (via hand delivery)
Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095

Michael Wimsatt, Director (via hand delivery)
NHDES Waste Management Division
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095

Joshua C. Harrison, Esq. (via U.S. Mail, postage prepaid)
Assistant Attorney General
Office of the Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, NH 03301

Date: 8/16/21

 for
Bryan K. Gould, Esq.

EXHIBIT 1



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Robert R. Scott, Commissioner

North Country Environmental Services, Inc.
P.O. Box 866
Rutland, VT 05702

Re: Solid Waste Management Facility
581 Trudeau Road, Bethlehem, NH
Facility Permit No. DES-SW-PN-15-005

ADMINISTRATIVE ORDER
No. 21-010 WMD

July 16, 2021

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services to North Country Environmental Services, Inc. under the authority of RSA 149-M:15. This Administrative Order is effective upon issuance.

B. PARTIES

1. The New Hampshire Department of Environmental Services ("NHDES") is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive in Concord, New Hampshire.
2. North Country Environmental Services, Inc. ("NCES") is a foreign corporation registered to do business in New Hampshire having a mailing address of P.O. Box 866, Rutland, VT 05702.

C. STATEMENTS OF FACTS AND LAW

1. RSA chapter 149-M authorizes the NHDES to regulate the management and disposal of solid waste. Per RSA 149-M:7 the Commissioner of NHDES has adopted NH CODE ADMIN. RULES Env-Sw 100-2100 (the "Solid Waste Rules") to implement this program.
2. NCES owns and operates a solid waste management facility on property located at 581 Trudeau Road in Bethlehem, New Hampshire; more particularly described on Bethlehem Tax Map 419, as Lot Nos. 1, 2, 21, 22, 24, and 25 (the "Facility").
3. Per RSA 149-M:9, I, no person shall construct, operate, or initiate closure of a public or private facility without first obtaining a permit from the NHDES.
4. NHDES issued Solid Waste Facility Permit No. DES-SW-SP-03-002 to NCES on March 13, 2003, authorizing the development and operation of Stage IV of the landfill at the Facility (the "Permit").
5. On August 15, 2014, NHDES issued a Record of Modification to the Permit, authorizing the expansion, development, and operation of the landfill at the Facility referencing Stage IV, and Stage V. This modification to the Permit included approval of certain revisions to the facility

operating plan; authorization of future construction and operation of a vertical and lateral expansion of the landfill, referred to as Stage V; and specified closure and post-closure requirements for the entire landfill, comprised of Stages I-V.

6. The approved footprint and final grades of the landfill at the Facility, encompassing Stage I through Stage V, are defined in Condition (3) of Section IV of the Permit, as modified on August 15, 2014.

7. NCES was required to operate Stage V of the landfill at the Facility in accordance with RSA chapter 149-M, the Solid Waste Rules, and the facility limits specified in Condition (3); per Condition (8) of Section IV of the Permit, as modified on August 15, 2014.

8. Per Env-Sw 1105.04(a), a facility shall operate in compliance with RSA chapter 149-M, all requirements in the solid waste rules, and the terms and conditions of the permit.

9. Prior to commencing operation of Stage V of the landfill at the Facility NCES was required to obtain operating approval as specified in Env-Sw 1105.03, per Condition (9)(c) of Section IV of the Permit, as modified on August 15, 2014.

10. Per Env-Sw 1105.03(c), the “returned copy of the notice [of intent to operate] shall constitute approval to commence operations as specified in the notice and in accordance with the approved operating plan.”

11. Per Env-Sw 1105.03(d), the approval “to commence operations shall be subject to terms and conditions as necessary to assure that the facility operates in accordance with the approved plans and specifications, all applicable rules and regulations, and the terms and conditions of the permit.”

12. On December 23, 2015, NHDES issued operating approval to NCES authorizing operations in the Stage V, Phase I airspace. NHDES issued operating approval of Stage V, Phase II in 2017.

13. On October 9, 2020, NHDES issued a Record of Modification to the Permit, providing conditional approval to vertically and laterally expand the landfill at the Facility to increase its permitted disposal capacity by over one million cubic yards of air space. The expansion, referred to as Stage VI, is located to the south and east of the existing landfill footprint (Stages I – V) – as well as over previously permitted portions of Stages I – IV of the landfill at the Facility.

14. Prior to commencing operation of Stage VI, or any phase or portion thereof, of the landfill at the Facility NCES was required to obtain operating approval as specified in Env-Sw 1105.03, per Condition (15)(c) of Section IV of the Permit, as modified on October 9, 2020.

15. On February 18, 2021, NHDES sent a Notice of Findings (“NOF”) to NCES regarding facility capacity (Stages I-V). In the NOF, NHDES noted that it had reviewed the 2019 annual facility report, and supplements; the monthly facility reports for 2020; and the monthly facility report for January 2021; for the landfill at the Facility. NHDES stated that the purpose of the review was to determine compliance with the capacity limitations of the landfill at the Facility set out in Conditions (3) and (8) of the Permit, as modified on August 15, 2014; for development of Stage V, in accordance with the operating approval issued on December 23, 2015. In the NOF, NHDES reached a preliminary finding that NCES had exceeded the landfill capacity under the current

operating approval; and requested additional information from NCES, before NHDES made a final determination.

16. On February 19, 2021, NCES responded to the NOF in a letter in which NCES stated that the “pertinent issue [is] whether NCES has remained within its permitted grades.” NCES stated that “[b]ased on a site survey conducted on January 4, 2021 and engineering analysis, NCES’s Stage I-V remaining capacity is approximately 141,000 cubic yards.”

17. On February 24, 2021, NHDES acknowledged receipt of NCES’ initial response and expressed its understanding that NCES would “submit documentation supporting the remaining capacity figures reported in [its] response, on or before March 5, 2021.”

18. On March 3, 2021, NCES submitted to NHDES a letter that included an engineer’s capacity analysis. In the analysis, the engineer concluded that NCES had capacity remaining within the landfill at the Facility. The documentation included topographic surveys from June 2020, October 2020, and January 2021, as well as a cut/fill figure, titled *January 4, 2021 Site Survey Volume Remaining*, comparing the January 2021 grades with the permitted vertical limits of the landfill. The cut/fill figure shows the elevation of materials placed exceeds the permitted vertical limits by up to 16 feet.

19. On March 19, 2021, NHDES issued operating approval to NCES authorizing Stage VI, Phase I operations within the landfill at the Facility.

20. On April 23, 2021, NHDES issued Letter of Deficiency (“LOD”) No. WMD 21-009 to NCES, for *failure to operate only within the permitted vertical and lateral limits of the landfill*. In the LOD, NHDES requested that NCES take the following specific actions:

- a. immediately cease placing waste outside the vertical limits of the landfill;
- b. relocate waste to areas within the permitted vertical and lateral limits of the landfill;
- c. submit to NHDES an incident report, within five working days, that includes the information required by Env-Sw 1005.09(b) [*sic*], and a plan and schedule for completing waste relocation to within the permitted limits approved for operation; and
- d. submit to NHDES weekly written updates on progress relocating the waste, and status of implementing measures to reduce, eliminate, and prevent a recurrence of the violation.

21. Per Env-Sw 1005.09(a), the permittee shall report to NHDES all incidents or situations at the facility which involve an imminent and substantial risk to human health, safety or the environment or which constitute a violation of the solid waste rules or the facility permit.

22. Per Env-Sw 1005.09(b), reports pursuant to Env-Sw 1005.09(a) shall be verbally made to NHDES by the permittee as soon as practicable.

23. Env-Sw 1005.09(c), the permittee shall submit a written report pursuant to Env-Sw 1005.09(a) within five working days of the time the permittee becomes aware of the incident or situation and include certain specified information.

24. Per Env-Sw 806.02(b), wastes shall be placed only within the permitted vertical and lateral limits of the landfill.

25. NHDES received a response to LOD #WMD 21-009, from NCES dated April 30, 2021. In its response, NCES asserted that it was not operating outside of the *final permitted limits* of the landfill at the Facility. NCES cited significant settling of waste between current operations and final limits of waste at closure. NCES also cited Env-Sw 1005.01(a) in its response to the LOD.

26. Env-Sw 1005.01(a) states “[a] facility shall not exceed the capacity limits specified in its permit or, in the case of a permit-exempt facility, the capacity limits specified by the exemption, if any.”

27. Env-Sw 1005.01(b) states “[a] facility shall operate in a manner consistent with the design limitations of the facility and associated equipment.”

28. To date, NHDES has no record of receiving the written report of the incident requested in the LOD. NHDES has no record of receiving weekly reports of efforts by NCES to come into compliance with the Permit, as modified.

29. The Facility is subject to the requirements of RSA chapter 149-M; the Solid Waste Rules; and the Permit, as modified.

D. DETERMINATION OF VIOLATIONS

1. NCES violated Env-Sw 806.02(b); and the Permit, as modified; by placing waste outside the permitted vertical limits of the landfill at the Facility; as identified in Condition (3) of the modification dated August 15, 2014, and Conditions (10) and (11) of the modification dated October 9, 2020.

2. NCES violated Env-Sw 1005.09; and the Permit, as modified; by failing to notify NHDES of the violations of the Solid Waste Rules; and the Permit, as modified.

3. NCES violated Env-Sw 1005.01(b); and the Permit, as modified; by operating the landfill in a manner inconsistent with the design limitations of the Facility.

4. NCES violated Env-Sw 1105.04(a); and the Permit, as modified; by failing to operate the Facility in compliance with the Solid Waste Rules, and the terms and conditions of the Permit, as modified.

E. ORDER

Based on the above findings and determinations, NHDES hereby orders NCES as follows:

1. NCES shall immediately cease placing waste outside the permitted vertical and lateral limits of the landfill.

2. Within 30 days of the date of this Order, NCES shall:

a. conduct a survey of the landfill at the Facility, and submit to NHDES a comparison of the existing grades to the permitted vertical and lateral limits approved for operation; and

b. submit to NHDES an incident report that includes the information required by Env-Sw 1005.09(c), including a plan and schedule for relocating all waste to within the permitted limits approved for operation.

3. Within 120 days of the date of this Order, NCES shall complete the relocation of waste to areas within the permitted vertical and lateral limits, approved for operation, of the landfill at the Facility. During waste relocation activities, NCES shall implement effective odor controls pursuant to the approved odor control plan identified in Condition (14)(d) of Section IV of the Permit, as modified on October 9, 2020. NCES shall conduct waste relocation activities, at all times, in a manner that controls to the greatest extent practicable dust, litter, insects, odors, vectors, spills, the production of leachate, fire hazards including spontaneous combustion, the generation of methane and other hazardous or explosive gases, noise and nuisances.

4. From the date of this Order through December 2022, NCES shall conduct quarterly surveys of the landfill at the Facility; and NCES shall submit to NHDES a comparison of the existing grades to the permitted vertical and lateral limits approved for operation, by the 15th of the month following each quarter.

5. NCES shall send all correspondence, data, reports, and other submissions made in connection with this Administrative Order, other than appeals, to NHDES as follows: Laurel Pushee, Solid Waste Management Bureau, Waste Management Division, P.O. Box 95, Concord, NH 03302-0095 ~ Fax: 603-271-2456 ~ Email: laurel.c.pushee@des.nh.gov.

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the New Hampshire Waste Management Council ("Council") by filing an appeal that meets the requirements specified in RSA 21-O:14 and the rules adopted by the Council, Env-WMC 200. The appeal must be filed directly with the Council within 30 days of the date of this decision and must set forth fully every ground upon which it is claimed that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the notice of appeal can be considered by the Council.

Information about the Council, including a link to the Council's rules, is available at <http://nhec.nh.gov/> (or more directly at <http://nhec.nh.gov/waste/index.htm>). Copies of the rules also are available from the NHDES Public Information Center at (603) 271-2975.

G. OTHER PROVISIONS

Please note that RSA 149-M:15, and RSA 149-M:16, provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. NCES remains obligated to comply with all applicable requirements, in particular RSA 149-M, the Solid Waste Rules, and the Permit. NHDES will continue to monitor compliance with applicable requirements and will take appropriate action if additional violations are discovered.

NHDES will take all necessary and feasible steps to assist companies and other entities affected by the outbreak of COVID-19, including those with employees who are unable to work because of illness or the need to care for a family member, those which have temporarily closed or reduced their hours, those unable to access necessary resources because of shortages, or any other company experiencing hardship because of the outbreak of COVID-19. All extension requests of any deadline set out in this Order, due to the COVID-19 pandemic, will be carefully considered. Approval of such requests will not be unreasonably withheld.

This Order is being recorded in the chain of title in the Grafton County Registry of Deeds so as to automatically transfer with the Property when the Property is transferred.

COPY

Robert R. Scott, Commissioner
Department of Environmental Services

- cc: NHDES Legal Unit
CT Corporation System, *registered agent*, 2 ½ Beacon Street, Concord, NH 03301-4447 (*cert. mail*)
- ec: Public Information Officer, NHDES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Bethlehem Select Board, Town Clerk, and Administrative Assistant
Laurel Pushee, Solid Waste Management Bureau, WMD/NHDES
John Gay, NCES
Kevin Roy, NCES