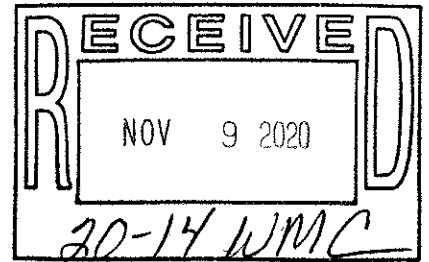


THE STATE OF NEW HAMPSHIRE
WASTE MANAGEMENT COUNCIL



NOTICE OF APPEAL

Type I-A Permit Modification and Waiver for Expansion (Stage VI) (Permit No. DES-SW-SP-03-002)

North Country Environmental Services, Inc. Landfill, Bethlehem, NH

Conservation Law Foundation (“CLF”) submits this Notice of Appeal of the above-referenced Type I-A Permit Modification and Waiver for Expansion (“Permit”) issued by the Department of Environmental Services (“DES”) on October 9, 2020 to North Country Environmental Services, Inc. (“NCES”) and, in support thereof, provides the following information in accordance with the requirements of Env-WMC 204.02(b):

1. Appellant

Conservation Law Foundation, Inc.

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27 North Main Street
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(603) 225-3060
Email address: tirwin@clf.org

Organizational Headquarters:
62 Summer Street
Boston, MA 02110
(617) 350-0990

2. Appellant’s Representative

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Vice President and New Hampshire Director
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3. Concise Statement of Relief Sought and Statutory Basis

CLF requests that the Waste Management Council rule that the Permit is unlawful and/or unreasonable and that the proposed landfill expansion cannot proceed under the Permit. RSA 149-M:8; Env-WMC 205.14.

The Permit is unlawful, and arbitrary and capricious, because the landfill expansion proposed by NCES fails to provide a substantial public benefit, as required by New Hampshire's solid waste management statute, RSA Chapter 149-M, which mandates that a proposed solid waste facility must provide a "substantial public benefit" to the citizens of New Hampshire. RSA 149-M:11, III. *See also* RSA 149-M:4, XVII ("Public benefit" means the protection of the health, economy and natural environment of the state of New Hampshire consistent with RSA 149-M:11.").

In rendering its substantial-public-benefit determination, DES was required as a matter of law to assess three specific criteria enumerated in RSA 149-M:11, III: (a) "[t]he short- and long-term need for [the proposed facility] to provide capacity to accommodate solid waste generated within the borders of New Hampshire...;" (b) "[t]he ability of the proposed facility to assist the state in achieving the implementation of the [waste management] hierarchy and [waste reduction] goals under RSA 149-M:2 and RSA 149-M:3[;]"¹ and (c) "[t]he ability of the proposed facility to assist in achieving the goals of the state solid waste management plan, and one or more solid waste management plans submitted to and approved by the department under RSA 149-M:24 and RSA 149-M:25." RSA 149-M:11, III (a), (b), (c). The Permit is unlawful, and arbitrary and capricious, because it fails to satisfy the three requirements necessary to demonstrate a substantial public benefit: capacity need, assistance in achieving the state's waste management hierarchy and waste reduction goals, and assistance in achieving the state solid waste management plan.

¹The state's statutorily-established waste reduction goals include achieving by the year 2000 a per capita 40 percent minimum weight diversion of solid waste away from landfills and incinerators, discouraging the disposal of recyclable materials in landfills, and requiring the use and consideration of criteria relevant to the state's waste reduction goal and disposal hierarchy. RSA 149-M:2; RSA 149-M:3.

The Permit also is unlawful, and arbitrary and capricious, (1) because mandatory planning requirements have not been completed by the state, RSA 149-M:29, (2) there is no evidence that DES assessed the status and substance of solid waste management plans from relevant municipalities and/or districts and whether the Permit is consistent with such plans, RSA 149-M:11, 12, 23, 24, 25, and (3) there is no evidence in the record that DES has administered those plans pursuant to 149-M:5, 6, 23, 24.

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

The Permit authorizes NCES to expand the Bethlehem landfill vertically and laterally and to increase its permitted disposal capacity at the Bethlehem landfill by approximately 1.24 million cubic yards, and to expand the operating life of the landfill until 2026. After initially determining that there was no capacity need for the Permit, DES failed to sufficiently explain its reversal and new position that there is a capacity need for the Permit. Indeed, for the majority of the Permit's operating period DES found no capacity need, and only determined there to be a capacity need for one year, and then not until 2026. A substantial portion of the landfill's capacity will be consumed by waste that can be diverted through source reduction, recycling, and composting strategies, including waste generated by out-of-state sources. The Permit is unlawful and unreasonable because it does not satisfy the substantial-public-benefit criterion set forth in RSA 149-M:11, III(a).

The Permit will not assist the state in achieving the implementation of the state's waste management hierarchy and waste reduction goals; to the contrary, it undermines the state's hierarchy, which ranks landfilling as the least favorable waste management method, and waste reduction goals. Condition 27 of the Permit, upon which DES relies for purposes of its substantial-public-benefit determination, is vague and ambiguous, failing to provide the necessary details (e.g., the wastes that may be counted for diversion purposes, and the criteria to be used in selecting the waste generators to be assisted by NCES) to support a substantial-public-benefit determination. The vagueness and ambiguity of the condition renders the Permit unlawful and unreasonable and repeats and perpetuates flaws identified by a majority of the Waste Management Council in CLF's appeal of DES's permit issued to Waste Management of New Hampshire, Inc., relative to the Turnkey landfill in Rochester. The Permit is unlawful and unreasonable because it does not satisfy the substantial-public-benefit requirement set forth in RSA 149-M:11, III(b), pertaining to New Hampshire's statutorily-established waste reduction goal (which the state has yet to achieve) and waste management hierarchy.

The Permit was issued in the absence of a statutorily required solid waste management plan that complies with RSA 149-M:29, I, which requires DES to develop a plan every six years, rendering the Permit unlawful and unreasonable. RSA 149-M:29. In the absence of a plan that complies with RSA 149-M:29, DES could not lawfully and reasonably determine that the Permit provides a substantial public

benefit in accordance with the requirements of RSA 149-M:11, III (c). DES also could not lawfully and reasonably determine that the Permit provides a substantial public benefit in the absence of, or without detailed consideration of, solid waste planning by the relevant towns or districts. RSA 149-M:23, 24, 25. There is no evidence that DES conducted an independent assessment of solid waste plans for any municipality or district to determine if the Permit is consistent with those plans. RSA 149-M:11, III; RSA 149-M:12. No plans or plan conditions were identified and it is unclear what criteria DES used, if any, to determine the Permit's consistency with any relevant town and/or district plans.

The proposed landfill expansion will result in the acceptance of waste from out-of-state waste generators to the detriment of New Hampshire and its residents, contrary to the substantial-public-benefit requirements of RSA 149-M:11, III (a), (b), and (c).

5. Standing

Conservation Law Foundation has members who own property and/or reside in close proximity to NCES's Bethlehem landfill who are directly and adversely affected by the landfill facility's operation, and who will be directly and adversely affected by the Permit at issue in this appeal. One such member owns and resides on property in close proximity to the landfill. From her home she experiences regular noise and odor from the landfill. She experiences noise from trucks servicing the landfill. She has raised concerns with NCES regarding the landfill that have not been addressed. CLF has members who will suffer a direct and adverse effect as a result of the Permit, which authorizes the landfill to expand vertically and horizontally, and to increase its disposal capacity by approximately 1.24 million cubic yards, with disposal operations to continue until 2026, and with an associated continuation of local truck traffic, continuing and/or exacerbating impacts they currently experience. CLF has members who, as New Hampshire citizens, are adversely affected by the state's failure to meet its waste reduction goal and waste management hierarchy and are adversely affected by the permitting of a landfill expansion that does not satisfy the substantial-public-benefit requirements set forth in RSA 149-M:11.

6. Copy of Decisions Which Are Being Appealed

Please see attached.

WHEREFORE, Conservation Law Foundation respectfully requests that the Council:

- A. Accept this appeal;
- B. Conduct a hearing on the appeal;
- C. Rule that the permit that is the subject of this appeal is unlawful and/or unreasonable and does not provide authorization for the proposed landfill's construction and operation; and
- D. Grant such further relief as it deems just and reasonable.

Respectfully submitted,

CONSERVATION LAW FOUNDATION

By its attorneys,

Thomas F. Irwin (NH Bar No. 11302)
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Dated: November 9, 2020

CERTIFICATE OF SERVICE

I certify that the original and 20 copies of the foregoing Notice of Appeal was this 9th day of November, 2020, hand-delivered to the Waste Management Council and with a hand-delivered copy to DES Commissioner Robert Scott and DES Waste Division Director Michael Wimsatt, and sent by first class U.S. Mail, postage prepaid, as well as by electronic mail, to John Gay, E.I, Engineering Manager, North Country Environmental Services, Inc., 1855 Vt Route 100, Hyde Park, VT 05655 (john.gay@casella.com).

Heidi H. Trimarco



WAIVER APPROVAL

Issued by the New Hampshire Department of Environmental Services, Waste Management Division (NHDES) pursuant to RSA 149-M and Part Env-Sw 202 of the New Hampshire Solid Waste Rules (Rules)

I. IDENTIFICATION OF FACILITY/ACTIVITY:

Waiver Approval No.: DES-SW-WV-20-004

Applicant Name/Address: North Country Environmental Services, Inc., 581 Trudeau Rd, Bethlehem, NH

Facility Name & Location: North Country Environmental Services, Inc., 581 Trudeau Rd, Bethlehem, NH

Related Regulatory Activity: Permit No. DES-SW-SP-03-002

II. FILE REFERENCE/RECORD OF APPLICATION:

Date(s) Received: March 24, 2020

WMD Log #(s): 2020-47865-01

III. SECTION OF RULES BEING WAIVED: In the absence of the design features required by Env-Sw 805.07(a) (1) and (2), the requirement for a leak detection and location system beneath the secondary liner for the portions of Stage VI that overly Stage I is waived.

IV. TERMS AND CONDITIONS: This waiver applies only to the vertical component of the Stage VI expansion of the landfill where such expansion overlies Stage I.

V. EFFECTIVE DATE/DURATION OF WAIVER: Effective from the date of signature below. Continuous in duration.

VI. AUTHORIZATION: This approval grants to the applicant (identified in Section I above) a waiver to the requirements set forth in the rules cited in Section III above, as the rules relate to the facility or activity specified in Section I above, subject to the conditions specified in Section IV above. The waiver is valid for the period of time specified in Section V above and is granted on the basis of information supplied by the applicant. If that information is false, misleading or incomplete, this approval may be revoked or suspended in accordance with Part Env-Sw 306 of the Rules.

BY EXERCISING ANY RIGHTS UNDER THIS AUTHORIZATION, THE APPLICANT HAS AGREED TO ALL TERMS AND CONDITIONS. Failure to comply with the terms and conditions of the waiver could result in administrative, civil or criminal enforcement action and penalties, and suspension or revocation of this approval or any permit to which it may apply. No liability is incurred by the State of New Hampshire by reason of any approval of this waiver or the facility or activity to which it relates. No warranty/guarantee is intended or implied by reason of any advice given by NHDES or its staff.

This approval shall not eliminate the applicant's obligation to obtain all requisite federal, state or local permits, licenses or approvals, or to comply with all other applicable federal, state, district and local permits, ordinances, laws, approvals or conditions relating to the approved activity.

COPY

Michael J. Wimsatt, P.G., Director
Waste Management Division

October 9, 2020

Date

Waste
Management
Division

Digitally signed by Waste Management Division
DN: cn=Waste Management Division, o=Solid Waste Management Division, ou=Waste Management Division, email=NELSON.ORDWAY@DES.NH.GOV, c=US
Date: 2020.10.09 15:04:03 -04'00'



RECORD OF MODIFICATION

TO SOLID WASTE MANAGEMENT FACILITY PERMIT

Issued by the New Hampshire Department of Environmental Services, Waste Management Division (NHDES)
pursuant to RSA 149-M and Chapter Env-Sw 300 of the New Hampshire Solid Waste Rules (Rules)

I. PERMIT/FACILITY IDENTIFICATION:

Permit No.: DES-SW-SP-03-002
Permittee: North Country Environmental Services, Inc.
Facility Name: North Country Environmental Services, Inc.
Facility Location: 581 Trudeau Road, Bethlehem, NH
Facility Type: Lined Landfill
Service Type: Unlimited
Permit Modification Type: Type I-A per Env-Sw 315.02(b)

II. FILE REFERENCE/RECORD OF APPLICATION:

Application No.: 2020-47865
Date(s) Received: March 24, 2020; April 3, 2020; April 6, 2020; May 6, 2020; May 8, 2020; and May 26, 2020
WMD Document Log #(s): 2020-47865-01 through -06, respectively

III. MODIFICATION: This permit modification provides conditional approval to vertically and laterally expand the North Country Environmental Services, Inc. landfill to increase its permitted disposal capacity by approximately 1.24 million cubic yards of air space. The expansion is referred to as Stage VI and is located to the south and east of the existing landfill footprint as well as over previously permitted portions of Stages I through IV, as depicted in the submittals referenced in Section II herein. Further, this modification provides approval of the design plans and specifications for construction of Stage VI, Phase I. An associated waiver to certain leak detection and location system design requirements, Waiver No. DES-SW-WV-20-004, is issued concurrently with this approval.

IV. TERMS AND CONDITIONS: Attached.

V. EFFECTIVE DATE: Date of signature below.

VI. AUTHORIZING SIGNATURE: The permit identified in Section I above is hereby modified as specified in Section III above, subject to the terms and conditions provided in Section IV above. This authorization is based on information provided to NHDES by the permittee in documents referenced in Section II above. If the information is false, misleading or incomplete, the modified permit may be revoked, suspended or modified in accordance with Part Env-Sw 306 of the Rules.

BY EXERCISING ANY RIGHTS UNDER THIS AUTHORIZATION, THE PERMITTEE HAS AGREED TO ALL TERMS AND CONDITIONS OF THE PERMIT, AS MODIFIED. Failure to comply with the terms and conditions of the permit could result in administrative, civil or criminal enforcement action and penalties, and suspension or revocation of the permit. No liability is incurred by the State of New Hampshire by reason of any approval of this solid waste facility. No warranty/guarantee is intended or implied by reason of any advice given by NHDES or its staff. This permit shall not eliminate the permittee's obligation to obtain all requisite federal, state or local permits, licenses or approvals, or to comply with all other applicable federal, state, district and local permits, ordinances, laws, approvals or conditions relating to the facility.

COPY
Michael J. Wimsatt, P.G., Director
Waste Management Division

October 9, 2020
Date

Waste
Management
Division

Digitally signed by Waste Management
Division
DN: cn=Waste Management Division,
o=Solid Waste Division, ou=Waste
Management Division,
email=NELSON.ORDWAY@DES.NH.GOV,
c=US
Date: 2020.10.09 15:01:19 -0400



Section IV: Terms and Conditions

General Provisions:

- (1) This facility (Stages I through VI) shall comply with the requirements of the Solid Waste Management Act, RSA 149-M; the New Hampshire Solid Waste Rules (Env-Sw 100 et seq.); and the terms and conditions of Standard Permit No. DES-SW-SP-03-002, as each may be amended from time to time.
- (2) This permit modification has been prepared on the basis of the New Hampshire Solid Waste Management Act, RSA 149-M; and the New Hampshire Solid Waste Rules, Env-Sw 100 et seq. (Rules), in effect on the issue date of this permit modification. The meanings of specific terms are as defined in the Rules, unless specified otherwise.
- (3) If a conflict exists between any provision in the Permit Modification Application identified in Section II and the provisions of this permit modification, the provisions of this permit modification shall apply.
- (4) If the provisions of this permit modification conflict with any other permit modification or approval issued for this facility pursuant to RSA 149-M and the Rules prior to the effective date of this permit modification, this permit modification shall supersede the earlier provision.
- (5) This approval shall not be construed in any way as: (a) authorization of any activity that occurred prior to the effective date of this approval; (b) authorization of any activity that does not comply with the requirements of Env-Sw 100 et seq. or RSA 149-M; (c) authorization of any activity that is not in compliance with other applicable federal, state, or local requirements; (d) a waiver of any cause of action for violations pre-dating this approval; or (e) elimination of any obligation to obtain requisite federal, state or local permits, licenses or approvals, or to comply with all other applicable federal, state, and local requirements.

Boundary of Regulated Facility & Stage VI Limits:

- (6) On the effective date of this permit modification, the regulated facility shall be comprised of Town of Bethlehem, NH Tax Map 419, Lots 1, 2, 21, 22, 24 and 25, as documented for record pursuant to Condition (29)(d) herein, and the outermost boundaries of those lots shall constitute the compliance boundary for requirements in the Rules that refer to "property line" or "property boundary" provided that, pursuant to the requirement in Env-Sw 804.06, all parcels comprising the regulated facility are owned by the permittee.
- (7) On the effective date of this permit modification, the approved vertical and horizontal limits of Stage VI shall be as shown on Drawing No. C-2 prepared by CMA Engineers, Inc. dated March 2020, and entitled "Stage VI Landfill Expansion," as provided in the Permit Modification Application document received March 24, 2020 and assigned WMD Log No. 2020-47865-01, with the revisions required pursuant to Condition (30)(a).

Stage VI Siting:

- (8) On the effective date of this permit modification, the approved siting and footprint of Stage VI shall be as shown on Drawing No. 4 of the Stage VI Landfill Expansion Design Drawings prepared by CMA Engineers, Inc., dated March 2020, and entitled "Proposed Overall Site Plan – Phase I and II," as provided in the Permit Modification Application document received March 24, 2020 and assigned WMD Log No. 2020-47865-01.



Stage VI Design:

(9) Stage VI shall be designed in conformance with the preliminary design identified in Condition (10) and in compliance with the requirements in effect at the time of final design approval, subject to Waiver No. DES-SW-WV-20-004, including the following:

- (a) The landfill design requirements identified in Env-Sw 805;
- (b) The universal design requirements identified in Env-Sw 1004;
- (c) The additional design requirements identified in Env-Sw 1103; and
- (d) The terms and conditions of this permit.

(10) The approved preliminary design of Stage VI shall be as shown in the Stage VI Landfill Expansion Design Drawings and Stage VI Closure Plan drawings prepared by CMA Engineers, Inc., both dated March 2020, as provided in the Permit Modification Application document received March 24, 2020 and assigned WMD Log No. 2020-47865-01, with the revisions required pursuant to Condition (30) herein.

(11) The final plans and specifications for construction of Stage VI, Phase I, provided in the documents referenced in Section II, are approved for construction, with the revisions required pursuant to Condition (28) herein.

Facility Construction:

(12) Prior to commencing construction of the facility, or any phase or portion thereof, the permittee shall:

- (a) Satisfy the prerequisites for construction specified in Env-Sw 1104.01;
- (b) File a Notice of Intent to Construct in accordance with Env-Sw 1104.02; and
- (c) Obtain construction approval as specified in Env-Sw 1104.03.

(13) This facility shall be constructed in accordance with the following requirements:

- (a) The landfill construction requirements in Env-Sw 805;
- (b) The additional construction requirements in Env-Sw 1104;
- (c) The final design plans and specifications approved for construction; and
- (d) The terms and conditions of this permit.

(14) **Additional Construction Requirements:** The following requirements apply to all construction activities at the facility.

- (a) Construction hours shall be limited to between 7 am and 6 pm.
- (b) Static alarms shall be used on all equipment requiring alarms, when not in conflict with health and safety regulations, and the permittee shall keep documentation of compliance therewith in the facility record.
- (c) Survey required:
 - 1. The permittee shall ensure a third-party licensed surveyor conducts a survey of the anchor trench alignment and proximate topography periodically during construction. At a minimum, surveys shall be conducted following:
 - a. Placement of the secondary geomembrane liner;
 - b. Placement of the primary geomembrane liner; and
 - c. Installation of the waste placement markers;



2. The permittee shall provide the results of the survey compared to the approved Stage VI footprint as identified in Condition (8) under the stamp of a third-party qualified professional with the biweekly construction report.
 3. The permittee shall immediately correct misalignments upon discovery without prompting by NHDES, and document such corrections in the biweekly construction reports.
- (d) The permittee shall implement the Odor Control Plan provided in the Permit Modification Application document received March 24, 2020 and assigned WMD Log No. 2020-47865-01, with the revisions required pursuant to Condition (28)(c) herein.
- (e) Cover materials used during construction activities shall meet all of the same requirements for landfill cover applied during operations, as specified in Env-Sw 806.03.
- (f) Odor complaints and mitigation measures taken relative to each complaint filed during waste excavation or exposure activities shall be included in the biweekly construction reports.
- (g) Construction shall be conducted in a manner that limits 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.
- (h) Backfilling of excavated waste areas, whether excavated during construction activities or operations, shall be completed as soon as practicable.

Facility Operations:

- (15) Prior to commencing operation of Stage VI, or any phase or portion thereof, the permittee shall:
- (a) Satisfy the prerequisites for operations specified in Env-Sw 1105.01;
 - (b) File a Notice of Intent to Operate in accordance with Env-Sw 1105.02; and
 - (c) Obtain operating approval as specified in Env-Sw 1105.03.
- (16) Operating requirements: This facility shall be operated in accordance with:
- (a) The Solid Waste Management Act, RSA 149-M;
 - (b) Env-Sw 806, Env-Sw 1005, Env-Sw 1105, and other applicable Rules;
 - (c) The Approved Operating Plan of Record identified in Condition (18) herein; and
 - (d) The terms and conditions of this permit.
- (17) Additional Operating Requirements:
- (a) Routine operations, including waste acceptance, waste placement, leachate removal, inspections, monitoring, and maintenance, shall be limited to between 6 am and 6 pm.
 - (b) Backfilling of excavated waste areas, whether excavated during construction activities or operations, shall be completed as soon as practicable.
 - (c) Starting April 1, 2021, the permittee shall be prohibited from accepting sludges not treated for odors prior to receipt at the facility.
 - (d) The permittee shall submit with the quarterly operations reports required pursuant to Env-Sw 806.08(g):
 1. A summary of all complaints received during the quarter, including:
 - i. The permittee's investigation and response actions;
 - ii. An analysis of the most likely causes of the complaints;
 - iii. An analysis of the effectiveness of the permittee's measures taken to address the complaints and abate the conditions that likely caused the complaints;
 - iv. An analysis of additional practicable measures warranted to prevent the reoccurrence of



conditions that likely caused the complaints, and, if such measures are identified, the date by which the permittee shall implement the additional measures; and

2. A trend analysis of leachate flows, presented numerically and graphically, for each leachate flow monitoring point.

(e) By August 31, 2021 and by August 31 each year operations take place thereafter, the permittee shall submit an annual odor control evaluation report for July 1 through June 30 (preceding), prepared and signed and stamped by a third-party qualified professional, which provides a comprehensive assessment of all odor control measures employed at the facility during the reporting period based on a comprehensive cause and effect evaluation of all odor incidents, response measures, and corrective actions, and includes no less than the following content:

1. Facility Description, including a description of the landfill gas collection and control system, and facility changes since the previous reporting year;
2. Odor Control Evaluation, consisting of a review and evaluation of odor control practices and measures employed by the facility during the reporting period, including a comparison of those practices with industry standard and best practices; a review of odor control methods used at the facility specifically including but not limited to control measures employed for areas used to stage trucks waiting to off-load, the working face, locations under construction, and locations without final cap; and an assessment of the effectiveness of odor control measures based on an evaluation of records compiled for odor events including, construction related odors, landfill gas odors, leachate odors, and control methods used;
3. Landfill Gas Collection System Analysis, including system design and development (i.e., phased installation, system and well field coverage, system design), and landfill gas collection, recovery and efficiency;
4. Odor Complaint Analysis, including geographical trends, weather-related trends, temporal trends (e.g., time-of-day, seasonal), waste composition trends, working face location trends, landfill cover trends, landfill gas system function trends, and a summary;
5. Conclusions and Recommendations, including such relative to daily and routine operations, landfill gas system operations, leachate management practices, construction practices, and odor complaint reporting and response procedures; and
6. Implementation plan, including dates by which the permittee has already or shall timely implement the recommendations and a status update regarding the implementation of recommendations in prior odor control evaluation reports.
7. Figures, Tables and Attachments, including a site locus map, a gas extraction well location plan, a figure showing odor complaints by location, figures showing graphical trends of landfill gas and waste composition data relative to odor complaints and weather, tables summarizing final cover installation and daily cover use as well as annual odor complaints and surface emissions monitoring results, and logs of odor complaints and waste loads rejected due to odors.

(f) By January 1, 2021 and during the remaining operating life of the facility, the permittee shall post to its existing publicly accessible internet webpage contact information for the public to notify the permittee of a potential issue related to dust, litter, insects, odors, vectors, spills, noise, and other nuisances or conditions of concern to the public.

(18) Approved Operating Plan:

(a) The Approved Operating Plan of Record on the effective date of this permit modification is the operating plan received March 24, 2020 and assigned WMD Log No. 2020-47865-01 with the supplemental page



received April 3, 2020 and assigned WMD Log No. 2020-47865-02 and the changes required pursuant to Condition (31) herein, subject to Conditions (18)(b) below.

(b) Nothing included in or omitted from the Approved Operating Plan of Record shall be construed to mean a waiver of any requirement to comply with RSA 149-M, the Rules, this permit, or other applicable federal, state, district and local permits, ordinances, laws, approvals or conditions relating to this facility.

(19) Authorized Wastes:

(a) Subject to (b) below, this facility is authorized to landfill the following types of solid waste only:

1. Municipal solid waste, as defined by Env-Sw 103.47;
2. Construction and demolition debris, as defined in Env-Sw 102.42;
3. Other solid wastes, as listed below, subject to the special waste profiling and acceptance procedures provided in the Approved Operating Plan of Record.
 - a. Waste from industrial processes;
 - b. Waste from pollution control processes including but not limited to waste and wastewater treatment sludges, subject to Condition (19)(b)10 below, and air pollution control residues;
 - c. Residue from a spill of a chemical substance or commercial chemical product or a waste listed above;
 - d. Commercial products which are off-specification, outdated, or unused;
 - e. Waste produced during the demolition or dismantling of industrial process equipment;
 - f. Ash managed in accordance with Env-Sw 902;
 - g. Contaminated soils and media managed in accordance with Env-Sw 903;
 - h. Other non-hazardous solid waste not specifically identified above that requires special handling prior to disposal.

(b) This facility is not authorized to landfill the following types of waste:

1. Hazardous wastes as defined by RSA 147-A and the NH Hazardous Waste Rules, Env-Hw 100 et seq.;
2. Asbestos waste, as defined in Env-Sw 102.14;
3. Untreated infectious waste;
4. Contained gaseous waste;
5. Liquid wastes (i.e., waste material that is determined to contain "free liquids" as defined by Method 9095, *Paint Filter Liquids Test*, as described in Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Pub. No. SW-846);
6. Wet cell batteries;
7. Leaf and yard wastes;
8. Whole tires;
9. White goods;
10. Sludges not treated for odors, pursuant to Condition (17)(c);
11. Radioactive materials as defined and regulated by the New Hampshire rules for the control of radiation, He-P 4000;
12. Solid wastes identified in Condition (19)(a)3 that have not received prior written approval from the permittee;
13. Wastes which, based on quantity, condition or other specific characteristics, the facility operator determines are unsuitable or inappropriate for landfilling at this facility; and
14. Any other waste that is prohibited from disposal in a solid waste landfill under RSA 149-M, Env-Sw 806.12, or any other state or federal regulation.



(20) Public Benefit Requirement:

- (a) Until required to do otherwise by Condition (20)(b) below, this facility shall operate in such a manner as to provide a substantial public benefit in accordance with the public benefit provisions of the permit modification approved August 15, 2014.
- (b) Commencing with the start of operations in Stage VI, or any portion thereof, this facility shall be operated in such a manner as to provide a substantial public benefit in accordance with the public benefit provisions provided in Condition (27) herein.
- (c) The permittee shall keep records to document compliance with Conditions (20)(a) and (b) above.

Facility Closure:

(21) Closure Requirements: The permittee shall close and provide post-closure inspection, monitoring, and maintenance of this facility in accordance with:

- (a) The Solid Waste Management Act, RSA 149-M;
- (b) Env-Sw 807, Env-Sw 1006, Env-Sw 1106, and other applicable Rules;
- (c) The Approved Closure Plan of Record identified in Condition (22); and
- (d) The terms and conditions of this permit.

(22) Approved Closure Plan:

- (a) The Approved Closure Plan of Record on the effective date of this permit modification is the closure plan received March 24, 2020 and assigned WMD Log No. 2020-47865-01 with the changes required pursuant to Condition (32) herein, subject to Condition (22)(b).
- (b) Nothing included in or omitted from the Approved Closure Plan of Record shall be construed to mean a waiver of any requirement to comply with RSA 149-M, the Rules, this permit, or other applicable federal, state, district and local permits, ordinances, laws, approvals or conditions relating to the facility.

(23) Prior to construction of the capping system or any portion thereof, the permittee shall obtain approval from NHDES of the final design plans and specifications for constructing the capping system or the relevant portion thereof, prepared on the basis of the preliminary design plans provided in the Approved Closure Plan of Record, and submitted for approval in accordance with Env-Sw 315.

(24) Additional Closure Requirements

- (a) The permittee shall cap the facility consistent with the fill sequencing plans received March 2020, and entitled, "Stage VI Facility Sequencing Plans," as provided in the Permit Modification Application document received March 24, 2020 and assigned WMD Log No. 2020-47865-01, and incorporated by reference in the Approved Operating Plan of Record.
- (b) By August 31 for each year of the closure and post-closure care periods of the facility, the permittee shall submit an annual odor control evaluation report for July 1 through June 30 (preceding) signed and stamped by a third-party qualified professional with the contents identified in Condition (17)(e).
- (c) During the closure and post-closure care period, the permittee shall maintain contact information on a publicly accessible webpage as required pursuant to Condition (17)(f) above.



Financial Assurance

(25) **Financial Assurance Requirements:** The permittee shall provide and continually maintain financial assurance in accordance with:

- (a) The Solid Waste Management Act, RSA 149-M;
- (b) Env-Sw 1005.08, Env-Sw 1400, and other applicable Rules;
- (c) The Approved Financial Assurance Plan of Record identified in Condition (26) herein; and
- (d) The terms and conditions of this permit.

(26) **Approved Financial Assurance Plan:** The Approved Financial Assurance Plan of Record for this facility is the financial assurance plan consisting of: Evergreen National Indemnity Company Insurance Policies No. 850599 in the amount of \$8,153,800 and No. 850600 in the amount of \$8,345,875; the Standby Trust Agreement between North Country Environmental Services, Inc. and Keybank National Association established September 18, 2013; and the last most recent closure cost estimate prepared pursuant to Env-Sw 1400.

Determination of Public Benefit:

(27) It is the determination of NHDES under RSA 149-M:11,X that operation of this facility provides a substantial public benefit, as required by RSA 149-M:11,III and IV, when facility operations conform to the following conditions:

- (a) The permittee shall limit airspace use to a maximum of 230,200 cubic yards per year, inclusive of cover materials, and preserve for use during calendar year 2026 no less than 150,000 cubic yards of capacity.
- (b) The permittee shall operate the facility through at least December 31, 2026.
- (c) The permittee shall make available disposal capacity for New Hampshire generated solid waste for the entire operating life of the facility.
- (d) The permittee shall, for each calendar year in which the facility operates:
 - 1. demonstrate that the sources, in aggregate, from which the permittee accepted municipal solid waste (MSW) and construction and demolition (C&D) debris for disposal achieved a minimum 30 percent waste diversion rate to more preferred methods other than landfilling as outlined in the hierarchy in RSA 149-M:3. If a minimum 30 percent diversion rate cannot be demonstrated, then the permittee shall submit to NHDES by July 1 of the following year a waste diversion report which presents the permittee's evaluation of:
 - a. the actual MSW and C&D debris waste diversion rate achieved;
 - b. the primary factors affecting the waste diversion rate; and
 - c. the practicable measures that the permittee will undertake to improve the diversion rate and an implementation schedule for doing so.
 - 2. the demonstration required under Condition (27)(a)1 above shall not be required to include certain sub-types of MSW and C&D debris waste based upon a demonstration by the permittee that there are no environmentally safe or economically sound diversion alternatives to landfilling such wastes.
- (e) The permittee shall assist 10 or more New Hampshire solid waste generators, inclusive of at least 5 New Hampshire municipalities, per year with establishing or improving programs that assist in the implementation of the goals and hierarchy under RSA 149-M:2 and RSA 149-M:3, respectively.



Additional Submittals:

(28) Prior to or concurrent with filing the notice of intent to construct any liner system for Stage VI, Phase I or any portion thereof, the permittee shall revise and submit for record the following:

(a) Technical Specification:

1. Revise Section 02223, *Filling*, to identify that "Screened Till" is also known as "Select Secondary Subgrade Fill."
2. Revise sections as needed to replace method ASTM D3042 with ASTM D4373;
3. Revise sections as needed to ensure cover materials used during construction activities meet all of the same requirements for landfill cover applied during operations, as specified in Env-Sw 806.03;

(b) Construction Drawings:

1. Revise Drawing D1, Detail 4/7 and other details as needed to show no liner slope exceeding 2H:1V; and
2. Revise the drawings as needed to ensure cover materials used during construction activities meet all of the same requirements for landfill cover applied during operations, as specified in Env-Sw 806.03.

(c) Odor Control Plan:

1. Specify that cover materials shall meet all of the same requirements for landfill cover applied during operations, as specified in Env-Sw 806.03;
2. Specify that odor masking agents shall not be considered odor control or odor neutralizing agents.
3. Specify that waste shall not be excavated or exposed on days when odor control or odor neutralizing agents cannot be used due to weather conditions, a lack of appropriately trained personnel onsite for the control of odors, or other factors that will inhibit the permittee's ability to control odors to the greatest extent practicable and to be responsive to complaints of off-site odors;
4. Specify that waste shall not be excavated or exposed unless all odor control equipment and agents, as well as personnel trained to operate and deploy such, are immediately available on-site; and
5. Add a section regarding spray-on cover materials, detailing procedures for use of spray-on cover materials in general conformance with Minnesota Pollution Control Agency guidance document "Alternate Daily Cover: Spray-On Cover Materials," Waste/Solid Waste Publication No. 5.11, dated May 2009.

(29) Prior to filing the notice of intent to operate new footprint in Stage VI, Phase I, or any portion thereof, the permittee shall:

(a) Submit with the construction quality assurance report required pursuant to Env-Sw 1104.07(f):

1. An inspection report meeting the requirements of Env-Sw 1104.04(h) for earthwork completed prior to this approval as required to facilitate construction of Stage VI; and
2. A final plan signed and stamped by a third-party licensed surveyor showing the surveyed anchor trench alignment and waste placement markers compared to the approved plan identified in Condition (8) and meeting the requirements of Env-Sw 1103.05.

(b) Submit confirmation that signage has been posted as required by Env-Sw 1103.03.

(c) Submit for record the following:

1. Appendix D.8 missing from the application, or a correction to the calculations package with regard to Appendix D.8, including an explanation as to the change(s), if any;
2. The 100-year storm event HELP model results missing from the application;
3. Leachate storage capacity calculations, revised as needed, to (a) ensure primary and secondary flows for Pump Station 3 are included and the existing leachate storage capacity is adequate for the entirety of



- the landfill; and (b) ensure that leachate removal by tanker truck can be accomplished as required by Env-Sw 805.06 within the permitted operating hours specified in Condition (17)(a); and
4. The "Secondary Pipe Layout" figure referenced in Section 2, Leak Detection and Location System, of the design report calculation package.
- (d) Submit for record a plan showing the regulated facility boundary as identified in Condition (6) above with local tax map and lot numbers as well as lot deed references by county, volume and page numbers, certified by a qualified professional.
- (30) With the application for final design approval for Stage VI, Phase II, the permittee shall submit:
- (a) Revised closure plan drawings for the cap section around Pump Station 3 and, if needed, revised final grading envelope to meet the capping system design requirements of Env-Sw 805.10;
 - (b) Design details for extension of the subliner gas wells;
 - (c) Details for a high water alarm for Pump Station 3; and
 - (d) Instructions for final cover or cap removal on the Eastern Slope.
- (31) Within 90 days of the effective date of this permit modification, the permittee shall submit to NHDES, in .pdf format with pages upright and sections bookmarked, a complete and true copy of the Approved Operating Plan of Record, with a signed statement certifying that it is a complete and true copy of the Approved Operating Plan of Record, namely the operating plan received March 24, 2020 and assigned WMD Log No. 2020-47865-01 with the supplemental page received April 3, 2020 and assigned WMD Log No. 2020-47865-02 and the following changes:
- (a) Revise the date on each page to the effective date of this approval;
 - (b) Add the facility location and permit number to each page, including the cover page;
 - (c) In Section 1, add the average weekly tonnage to be received at the facility during the quarter in which the most waste is anticipated to be received, pursuant to Env-Sw 102.09(a);
 - (d) In Section 2, revise the list of prohibited wastes to include sludges that are not treated for odors prior to receipt at the facility, pursuant to Conditions (17) and (19) herein;
 - (e) In Section 3:
 - 1. Clarify routine operating hours for leachate removal as identified in Condition (17)(a) herein;
 - 2. Clarify the language in paragraph one of Section 3.2;
 - 3. Restore the language in Section 3.3.5 reading "As refuse is spread at the working face, operators continue to visually inspect for unacceptable materials.";
 - 4. Add to Section 3.3.6 that "at least" one load per day is randomly chosen to be inspected more thoroughly;
 - 5. Change the reference in Section 3.6 to Appendix F;
 - 6. Remove instructions regarding final cover or cap removal;
 - 7. Add the requirement that buckets with teeth shall not be used within a specified distance of the anchor trench or liner system;
 - 8. Add that if more than 4 acres of exposed geomembrane is used, a qualified professional engineer must reevaluate stormwater management requirements;
 - 9. Add that cover material must be placed over all exposed waste no less frequently than at the end of each operating day;
 - (f) In Section 4, add a very brief description of the landfill gas management system, identify the quantity(ies) of landfill gas generated, and identify that the facility also has air permits;
 - (g) In Section 5, add a leachate removal schedule that identifies the design load out rate of the leachate



collection system, and the needed amount of leachate removal per typical operating day and during or immediately following a 25-year storm event and a 100-year storm event;

(h) In Sections 5 and 6, clarify the notification requirements for exceedances of the LEL by identifying that exceedances of the LEL limits require notification and a written incident report pursuant to Env-Sw 1005.09(a);

(i) In Section 7:

1. Restore the previous description of training requirements from the approved October 2016 Operating Plan;

2. Add that facility personnel who receive and respond to odor complaints shall be trained in detecting odors, identifying potential sources of odors, and documenting the odor complaint and NCES' response actions, and such training shall be provided by a qualified third-party and renewed annually; and

(j) In Section 8, add a list of solid waste reports required to be filed with NHDES and/or other entities such as the host solid waste management district pursuant to RSA 149-M, the Rules, and the permit, specifically including those required by Condition (17) herein.

(32) Within 90 days of the effective date of this permit modification, the permittee shall submit to NHDES, in .pdf format with pages upright and sections bookmarked, a complete and true copy of the Approved Closure Plan of Record, with a signed statement certifying that it is a complete and true copy of the Approved Closure Plan of Record, namely the closure plan received March 24, 2020 and assigned WMD Log No. 2020-47865-01, with the following changes:

(a) Revise the date on each page to the effective date of this approval;

(b) Add to the appropriate sections the requirements identified in Condition (24) herein; and

(b) Add elevation labels to Closure Plan Drawing No. C-2.