

STATE OF NEW HAMPSHIRE

GRAFTON, SS

SUPERIOR COURT

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES

v.

NORTH COUNTRY ENVIRONMENTAL SERVICES, INC.

Docket No. 215-2026-CV-00004

COMPLAINT FOR CIVIL PENALTIES

NOW COMES the State of New Hampshire Department of Environmental Services (“Department”), by and through its attorneys, the Office of the Attorney General (collectively, the “State”), and hereby submits this Complaint for Civil Penalties against North Country Environmental Services, Inc. (“Respondent”). In support hereof, the State avers as follows:

SUMMARY OF THE CASE

This is an action against North Country Environmental Services, Inc. (“Respondent”), for violations of RSA ch. 149-M, State’s Solid Waste Management Act, Respondent’s permit, and related administrative rules. Respondent owns and operates the North Country Environmental Services (“NCES”) landfill in Bethlehem, New Hampshire, one of the State’s few large commercial landfills. This complaint relates to Respondent’s operation of its landfill in violation of waste placement standards, leachate management requirements, construction and facility modification requirements, facility design limitation requirements, and notification and reporting requirements. Specifically, the complaint alleges that Respondent: (1) placed significant amounts of waste beyond permitted vertical limits; (2) caused a release of leachate by failing to have a leak-tight leachate collection system and to operate its leachate collection system as required; (3) violated its permit and administrative rules by storing significantly more leachate

on the primary landfill liner than allowed; (4) caused secondary leachate system average flow rate exceedances far in excess of limits and failed to conduct required investigations and submit notifications and incident reports; (5) caused and failed to report the existence of a hole in the primary liner; (6) drilled gas wells in multiple locations through what is known at the landfill as the “Overlay Liner;” and (7) failed to place alternative daily cover at the end of a working day, in addition to related rule violations with respect to each of the foregoing.

The State is seeking civil penalties for each day of each of the violations of RSA ch. 149-M, Respondent’s permit, and the related administrative rules as detailed herein.

PARTIES

1. Complainant, the State of New Hampshire Department of Environmental Services (“Department”), located at 29 Hazen Drive, Concord, New Hampshire 03302, is the state agency responsible for the administration and enforcement of RSA ch. 149-M, the Solid Waste Management Act, and the respective administrative rules promulgated thereunder.

2. The New Hampshire Attorney General has the authority to enforce the State’s environmental statutes and the rules adopted thereto in the Superior Court pursuant to RSA 21-M:10, II.

3. Respondent, North Country Environmental Services, Inc. is a Virginia corporation with principal offices at 25 Green Hill Lane, Rutland, Vermont 05701. It owns and operates a commercial solid waste landfill at 581 Trudeau Road, Bethlehem, New Hampshire 03574.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to RSA 491:7, RSA 498:1, and RSA 149-M:15. Venue is appropriate as the property where the violations occurred is in Grafton County, New Hampshire.

RELEVANT STATUTES AND RULES¹

5. RSA 149-M:1 provides that it “is the declared purpose of the general court 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.”

6. RSA 149-M:4, IX defines “facility” to mean a “location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment, or disposal of solid waste.”

7. RSA 149-M:7 “Rulemaking” provides, in relevant part, that the “commissioner shall have the responsibility and authority to adopt rules, under RSA 541-A, relative to this chapter, including rules relative to the “III. [a]dministration of a permit system, including the terms, conditions, and time frames under which the department shall issue, modify, suspend, revoke, terminate, deny, approve, or transfer permits required by this chapter, and means of noticing the public about such permits...” and “XVI. [s]uch other rules as are deemed necessary to implement the provisions of this chapter.”

8. RSA 149-M:9, I provides that “[n]o person shall construct, operate, or initiate closure of a public or private facility without first obtaining a permit from the department.”

9. RSA 149-M:15, IV provides that:

Any person who violates any provision of the provisions of this chapter, or any rule adopted under this chapter, or any condition in a permit issued under this chapter shall be subject to a civil penalty not to exceed \$25,000 for each violation, or for each day of a continuing violation.

¹ Citations to rules within this Complaint are to rules in place prior to the Department’s re-adoption or amendment of rules in 2024.

10. N.H. Admin. R. Env-Sw 102.43 defines “Cover material” to mean “soil or other functionally equivalent material that is placed over solid waste at a landfill. The term does not include materials used to construct a landfill capping system.”

11. N.H. Admin. R. Env-Sw 102.47 defines “Discharge” to mean “the accidental or intentional release, spilling, leaking, pumping, pouring, emitting, or dumping of any solid waste or solid waste constituent, including leachate, into or on any air, land or water.”

12. N.H. Admin. R. Env-Sw 103.34 defines “Leachate” to mean “a liquid, including any suspended components in the liquid, which has contacted or passed through solid waste.”

13. N.H. Admin. R. Env-Sw 315.03 “Approval Required,” provides that:

- (a) Before making a modification to the design, construction, operation, or closure of a facility as permitted by the department, the permittee shall obtain written approval for such modification in accordance with this part.

14. N.H. Admin. R. Env-Sw 805.04(b) provides, in part, that: “[g]eomembrane liners shall meet or exceed the following specifications: (1) [t]he liner material shall have a minimum thickness of 60 mils.”

15. N.H. Admin. R. Env-Sw 805.06 “Leachate Collection and Removal System Design Standards” provides, in part, that:

- (a) Leachate collection and removal systems shall be required at all lined landfills, to collect and remove leachate contained within each liner system in conformance with Env-Sw 806.05...
- (e) Leachate collection and removal systems shall be designed to maintain one foot or less of hydraulic head on all portions of the liner, excluding the leachate collection sumps if any, during routine operations including the 25-year storm event with a duration equivalent to the time of concentration of the drainage area of the component being sized.
- (f) Leachate collection and removal systems shall be designed to manage the quantity of leachate to be generated by the 100-year storm event

with a duration equivalent to the time of concentration of the drainage area which contributes to leachate generation, in a manner which will:

- (1) Not allow a hydraulic head greater than one-foot to exist on any portion of the liner system, excluding the leachate collection sumps, if any, for longer than 7 days...
- (g) Leachate collection and removal systems which are not directly connected to a permitted wastewater treatment facility shall provide capacity for storing leachate as follows...:
 - (3) Containment for the volume of leachate produced by the 100-year storm event which exceeds the volume of the primary storage units shall be provided:
 - a. Within contingency storage units located outside the waste deposition area, which shall be leak tight and accessible for leak testing, inspection and repair, but not necessarily multi-walled....
- (p) Tanks, sumps or other storage units associated with leachate collection and removal systems shall be equipped with high-water alarms.

16. N.H. Admin. R. Env-Sw 806.02 "Waste Placement" provides, in relevant part, that:

- (a) As part of the facility operating plan, a fill sequencing plan shall be developed in accordance with Env-Sw 805.11 and implemented in accordance with the requirements of this section.
- (b) Wastes shall be placed only within the permitted vertical and lateral limits of the landfill.
- (c) Wastes shall be placed in a controlled manner, in accordance with the fill sequencing plans....
- (f) Exposed waste on the working face of the landfill shall be limited, to reduce precipitation contact with the waste and to allow the area to be covered as required pursuant to Env-Sw 806.03.
- (g) All waste shall be evenly spread in shallow lifts and compacted, in accordance with plans and procedures which:
 - (1) Assure stability;

- (2) Limit potential future settlement;
- (3) Limit rainfall infiltration; and
- (4) Are consistent with the progressive development of final grades.

17. N.H. Admin. R. Env-Sw 806.03(c) “Landfill Cover During Operations” states, in relevant part, that:

- (c) At landfills receiving [municipal solid waste (“MSW”)], cover material shall be placed over all exposed waste no less frequently than at the end of each operating day.

18. N.H. Admin. R. Env-Sw 806.05(b) provides, in part, that:

As part of a facility’s operating plan, a leachate management plan shall be developed and implemented at all lined landfills, based on the following criteria:

- (1) Routine facility operations, including operations during the 25-year storm event, shall not result in more than one foot of hydraulic head on the liner system(s)....

19. N.H. Admin. R. Env-Sw 806.08 “Inspections, Maintenance, Monitoring and Reporting Requirements” provides, in relevant part, that:

- (d) Leachate management systems shall be monitored, and the data recorded in the facility operating records, as follows:

- (1) The hydraulic head elevation on the liner shall be measured at the low point of a cell, phase or stage where leachate is collected, and recorded:
 - a. At least once per month;
 - b. After each storm event greater than or equal to the 2-year/24-hour storm; and
 - c. If the hydraulic head is found to be 12 inches or greater, daily until the hydraulic head is less than 12 inches...

- (3) Flow in the secondary leachate collection system(s), shall be measured and recorded:
 - a. At least once per week...
- (4) The average flow in the secondary leachate collection system(s) occurring during the 30-day operating period preceding the last measurement shall be calculated, recorded and, when required pursuant to (k) below, reported;
- (5) Analytical characteristics, based on representative samples taken from the primary leachate collection system in April, July and November, shall be determined for the following parameters:
 - a. pH;
 - b. Temperature;
 - c. Chemical oxygen demand (COD);
 - d. Specific conductance;
 - e. Iron;
 - f. Manganese;
 - g. Sulfates;
 - h. Chlorides;
 - i. Chromium;
 - j. Lead;
 - k. Cadmium; and
 - l. Except for ash landfills, volatile organic compounds (VOCs)...

(g) Facilities shall file quarterly and annual reports in accordance with Env-Sw 303, according to the following schedule:

- (1) Quarterly reports shall be filed no later than 30 days following the end of the quarterly reporting period...

(h) The quarterly report shall include...

- (2) The data specified by (d) and (e) above, excluding leachate analytical data required by (d)(5)...

(i) The leachate analytical data required pursuant to (d)(5), above, shall be filed in accordance with Env-Sw 303, no later than 30 days following receipt of analytical results.

(k) The following reporting requirements shall apply to the average secondary leachate collection system flow rates occurring over a 30-day period:

- (1) Rates less than or equal to 25 gallons per tributary acre per day shall be reported to the department in accordance with (h) above no less than quarterly;
- (2) Rates which exceed 25 gallons per tributary acre per day shall be reported to the department within one week of identifying the rate, except for flow which the department agrees is the result of the dewatering of the drainage layer following construction; and
- (3) Except for flow which the department agrees is the result of the dewatering of the drainage layer following construction, rates which exceed 100 gallons per tributary acre per day shall require the permittee to file an investigation report with the department in accordance with Env-Sw 806.09.

20. N.H. Admin. R. Env-Sw 806.09 provides, in relevant part, that:

- (e) The permittee shall investigate the occurrence of flow rate in the secondary leachate collection system that exceeds 100-gallons per tributary acre per day and which cannot be reasonably attributed to the dewatering of the drainage layer following construction.
- (f) The investigation in (e) above shall be for the purpose of identifying the potential cause(s) and appropriate response actions related thereto, which shall be reported to the department in writing in the form of a proposed response action plan.
- (g) The permittee shall implement the approved response action plan to include any of the following actions deemed necessary on the basis of the likely cause and remedy of the problem:
 - (1) Increasing monitoring and reporting;
 - (2) Instituting operational changes to limit hydraulic head on the overlying liner;
 - (3) Locating and repairing leak(s);
 - (4) Retrofitting the overlying liner; or
 - (5) Closing part or all of the facility if necessary to protect human health and the environment.

21. N.H. Admin. R. Env-Sw 1005.01 “General Operating Requirements” provides, in relevant part, that:

- (b) A facility shall operate in a manner consistent with the design limitations of the facility and associated equipment.
- (c) Facility equipment shall be operated and maintained in conformance with manufacturer specifications and recommendations unless otherwise allowed by the solid waste rules.
- (d) A facility, including associated equipment, containers, and vehicles, shall be operated and maintained in a manner that controls to the greatest extent practicable:
 - (1) Dust;
 - (2) Litter;
 - (3) Insects;
 - (4) Odors;
 - (5) Vectors;
 - (6) Spills;
 - (7) The production of leachate;
 - (8) Fire hazards including spontaneous combustion;
 - (9) The generation of methane and other hazardous gases;
 - (10) Noise; and
 - (11) Other nuisances

22. N.H. Admin. R. Env-Sw 1005.09 “Incident Reporting” provides, in relevant part:

- (a) The permittee shall report to the department 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.
- (b) Reports pursuant to (a) above shall be verbally made to the department by the permittee as soon as practicable.
- (c) The permittee shall submit a written report pursuant to (a) above within 5 working days of the time the permittee becomes aware of the incident or situation and include the following information:
 - (1) Facility name, location by street and municipality, and permit number;
 - (2) Permittee name, mailing address, and telephone number;

- (3) Identification of all persons involved in the incident or situation, including name, title, and affiliation;
- (4) A description of the incident or situation, including:
 - a. The date and time the incident or situation occurred;
 - b. The quantity and types of wastes and material(s) involved in the incident or situation and in the clean-up activities;
 - c. Measures employed to contain releases caused by the incident or situation; and
 - d. An assessment of actual or potential hazards to the environment, safety, and human health related to the incident; and
- (5) Measures the permittee has or intends to apply to reduce, eliminate, and prevent a recurrence of the incident or situation.

23. N.H. Admin. R. Env-Sw 1103.05 “Design Plans and Specifications, Content, and Format” provides, in relevant part, that:

Facility plans and specifications, including preliminary and final plans submitted with an application pursuant to Env-Sw 311 through Env-Sw 315 and record drawings submitted pursuant to Env-Sw 1104.07, shall conform to the following requirements...

- (h) Plans and specifications shall be submitted with all calculations and design related documentation required to support and verify the adequacy of the proposed design and construction.

24. N.H. Admin. R. Env-Sw 1104.04 “General Construction Requirements” provides, in relevant part, that:

- (c) The permittee shall implement quality assurance controls during construction.

25. N.H. Admin. R. Env-Sw 1104.07 “Construction Reporting and Recordkeeping Requirements” provides, in relevant part, that:

- (a) The permittee shall submit in accordance with Env-Sw 303, no later than the Wednesday following the end of each 2 week period during construction of a facility, a written status report of all construction activities in progress.
- (b) The status report submitted pursuant to (a) above shall include the following information:
 - (1) Facility identification, including name, location by street and municipality, and permit number;
 - (2) Description of work completed to date;
 - (3) An amended construction schedule if the anticipated schedule deviates from the last construction schedule of record;
 - (4) Design changes implemented pursuant to Env-Sw 1104.05, if any; and
 - (5) Damage and repair information pursuant to (e) below, if any...
- (c) If a facility sustains damage during construction which has the potential to adversely affect the integrity of facility operations, life expectancy, or performance, the permittee shall:
 - (1) Inform the department as soon as practicable under the circumstances; and
 - (2) Provide, with the related biweekly construction progress report, a written damage and repair report detailing the incident.
- (d) No later than 90 days following completion of construction, the permittee shall:
 - (1) Submit in accordance with Env-Sw 303 the applicable facility record drawings, prepared in accordance with Env-Sw 1103.05 and explicitly identifying all features different than the features provided in the approved plans and specifications;
 - (2) Provide written certification that the facility, as-built, meets or exceeds all applicable requirements of the permit including the approved plans and specifications.

26. N.H. Admin. R. Env-Sw 1105.04 “Basic Operating Requirements” provides:

- (a) A facility shall operate in compliance with RSA 149-M, all requirements in the solid waste rules, including those noted in Env-Sw 1101.02(c) as applicable and this part, and the terms and conditions of the permit.
- (b) As a condition of the permit, the facility shall operate in accordance with the last approved operating plan [of] record.

FACTUAL ALLEGATIONS

- 27. Respondent owns and operates the NCES Landfill in Bethlehem, New Hampshire at 581 Trudeau Road (“NCES Landfill”).
- 28. Landfills are subject to RSA 149-M, the “Solid Waste Management” Act.
- 29. Landfills are subject to the regulatory requirements within the New Hampshire administrative rules sections Env-300 et seq, “Solid Waste Programs: Permits,” Env-Sw 800 et seq., “Landfill Requirements,” and the universal and additional facility requirements within Env-Sw 1000 et seq. and Env-Sw 1100 et seq., respectively.
- 30. Landfills must also comply with their permit, permit modifications, permit conditions, and all approved designs, construction approvals, operating plans, fill sequencing plans, and closure plans.
- 31. Permitted lined landfills are engineered and designed with liner systems that consist of geomembranes and leachate collection and removal systems that include nearby leachate storage tanks, among many other systems.
- 32. On March 13, 2003, the Department issued Respondent Standard Permit No. DES-SW-SP-03-002, which it has since operated under.
- 33. Under its standard permit, Respondent has requested and the Department has approved requests to expand and/or alter NCES Landfill throughout its operational history to

create new capacity and construct new landfilling areas, known as “stages” at NCES Landfill.²

At different times, NCES has constructed a stage in multiple sub-stages, referred to as “phases.”

34. NCES Landfill is made up of multiple stages and phases built on top of or adjacent to one another.

35. The State brings this complaint for civil penalties related to five sets of violations: (1) Respondent’s placement of wastes beyond the permitted vertical limits of its engineered and approved designs and permit; (2) Respondent’s May 2021 discharge of leachate and leachate reporting requirement failures; (3) Respondent’s storage of leachate on the primary liner and its flow rate exceedances within the secondary leachate system and associated reporting and investigation failures, as well as the existence of a hole in the primary liner and failure to report the hole; (4) Respondent’s drilling and puncture of the overlay liner at the facility; and (5) Respondent’s noncompliance with daily landfill cover requirements. Factual allegations related to each set of violations are set forth separately in the subsequent sections and subsections.

I. Violations Relating to Placing of Waste Beyond Permitted Limits

36. Respondent is required to comply with RSA 149-M, the Department’s solid waste administrative rules, as well as its permits, permit conditions, and all Department approved design, operating, and closure plans.

37. N.H. Admin. R. Env-Sw 806.02 “Waste Placement” requires that “(b) [w]astes shall be placed only within the permitted vertical and lateral limits of the landfill.”

² The Department regulates landfills through a permitting system wherein it issues a standard permit, which may thereafter be modified through successful modification applications for expansion or to accomplish other technical, design, or operating changes, rather than to issue multiple successive permits. Each approved modification is accompanied by either superseding conditions or a readoption of existing permit requirements that are not otherwise altered by the modification.

38. On August 15, 2014, the Department issued Respondent a permit modification approving an expansion known as Stage V of NCES Landfill (“2014 Permit”).

39. Respondent’s 2014 Permit requires that Respondent operate the NCES Landfill in accordance with the facility limits set by permit conditions.

40. Permit Conditions #3 and #8 within the 2014 Permit set the permitted vertical waste facility limits by reference to plans submitted by the Respondent that the Department has approved.

41. Per N.H. Admin. R. Env-Sw 1105.04 and Respondent’s 2014 Permit conditions, Respondent is required to comply with its approved plans.

42. On February 18, 2021, after reviewing waste capacity information related to NCES Landfill, the Department sent Respondent a Notice of Findings regarding remaining approved waste capacity at the NCES Landfill.

43. On March 3, 2021, in response to Department requests, Respondent provided the Department with a landfill capacity evaluation and topographic survey of limited areas of the NCES Landfill footprint prepared by its consultant, CMA Engineers, Inc.

44. The capacity evaluation and topographic survey indicated multiple areas of the NCES Landfill that had been filled with waste beyond the facility’s permitted vertical limits.

45. The topographic survey depicted the NCES Landfill footprint with red and green positive or negative numbers reflecting the placement of waste in relation to the permitted limits with either a (1) zero integer indicating that the waste is at the permitted limit; (2) a green, positive integer indicating the number of feet that waste is located below the permitted limit; or (3) a red, negative integer indicating the number of feet that waste is located above the permitted limit.

46. The March 2021 topographic survey demonstrates that, for the areas presented, Respondent had placed waste above the permitted limits.

47. In some locations, based on this survey, Respondent had filled beyond the permitted limits by as much as nineteen feet.

48. On April 23, 2021, the Department issued Respondent Letter of Deficiency No. WMD 21-009 (the “Permitted Limits LOD”), which informed Respondent of the exceedance of permitted limits violation and requested an incident report within 5 working days.

49. On April 30, 2021, Respondent provided a written response to the Permitted Limits LOD, containing the incident report.

50. The incident report, however, did not contain all the information required by N.H. Admin. R. Env-Sw 1005.09(c).

51. Accordingly, Respondent did not provide a complete written incident report within 5 working days of the notification of the violation.

52. On July 16, 2021, the Department issued Administrative Order No. 21-010 WMD (“Administrative Order”) in response to the permitted limits exceedance.

53. On August 30, 2021, in response to the Administrative Order, Respondent provided the Department with an updated incident report related to the exceedance of the facility’s permitted limits, which included plans containing an additional topographic survey and cross-sections of the facility.³

³ In response to the Administrative Order, Respondent filed a *Petition for Writ of Certiorari and for Declaratory Judgment* against Department Commissioner Scott (Docket No. 217-2021-CV-00434) on this issue in the Merrimack County Superior Court. The Department and Respondent subsequently entered into a settlement agreement whereby Respondent withdrew the petition without prejudice and the Department rescinded the Administrative Order No. 21-010 WMD without prejudice. Respondent also agreed to submit other analyses for Department

54. Respondent's placement of waste outside of the permitted vertical limits constitutes a violation of N.H. Admin. R. Env-Sw 806.02(b) and Respondent's permit, including the 2014 Permit conditions.

55. Respondent did not timely report the exceedance of the permitted limits issue pursuant to N.H. Admin. R. Env-Sw 1005.09(a)-(c) either verbally as soon as it was practicable or in writing within 5 working days.

56. In a settlement agreement dated November 22, 2021 between Respondent and the Department related to the Department's August 30, 2021 Administrative Order and the petition filed by Respondent against Department Commissioner Scott (see footnote 2), Respondent admitted that it "has placed waste beyond permitted final waste closure grades at the NCES Bethlehem landfill, as depicted...[on a plan] entitled 'October 5, 2021 Drone Survey Volume Remaining.'"

57. The "October 5, 2021 Drone Survey Volume Remaining" plan is similar to the March 3, 2021 topographic survey referenced in ¶¶43-47 herein, in that it shows the amount of fill above and below the permitted vertical limits.

58. However, the October 5, 2021, survey more accurately shows the amount of waste beyond permitted limits because it shows all uncapped areas, including the side slope areas of the landfill, and is presented in the permitted 3 horizontal to 1 vertical (3H:1V) slope rather than 2.7 H:1V slope depicted in previous submittals.

59. This survey shows waste placed above permitted limits by as much as 27 feet.

consideration. The Department reserved its right to seek civil penalties related to the exceedance of permitted limits violation.

60. Upon information and belief, the waste placed outside of the permitted vertical limits amounted to approximately 197,465 cubic yards.

61. Respondent violated N.H. Admin. R. Env-Sw 806.02(b) by placing waste outside of the permitted vertical limits of the NCES Landfill.

62. The waste placement violation of N.H. Admin. R. Env-Sw 806.02(b) continued for some time prior to March 3, 2021, and multiple days thereafter.

63. Respondent violated its 2014 Permit and N.H. Admin. R. Env-Sw 1105.04 by failing to operate the NCES Landfill in compliance with the terms and conditions of its permit and associated plans with respect to its placement of waste beyond permitted limits.

64. Respondent violated N.H. Admin. R. Env-Sw 1005.09(c) by failing to provide the Department a written incident report pursuant to Env-Sw 1005.09 between at least April 30, 2021, the date five working days after receipt of the Permitted Limits LOD, and August 30, 2021, when Respondent provided the Department with a complete written incident report.

II. Violations Related to Leachate Discharge and Leachate Reporting Requirements

65. As part of the Respondent's landfill operations, Respondent is required to install and maintain a leachate collection and removal system.

66. Leachate that is not collected and removed from a landfill's waste mass can leak through a landfill's liner systems or otherwise cause strain on the landfill's liners and instability of the waste mass. As such, one of the primary purposes of leachate collection systems is to remove leachate from the landfill so it does not collect on the landfill liner system.

67. Leachate often contains contaminants known to present risks to human health and the environment.

68. Respondent is required to have leak-tight leachate contingency storage areas located outside the waste disposal area of NCES Landfill.
69. Respondent is also required to equip leachate tanks, and other storage units, with high water alarms.
70. Respondent is also required to operate and maintain the facility, equipment, and containers in a manner that controls spills to the greatest extent practicable.
71. On October 9, 2020, the Department issued Respondent a permit modification related to the expansion of NCES Landfill into Stage VI (“2020 Permit”).
72. Per N.H. Admin. R. Env-Sw 1105.04 and Respondent’s 2020 Permit conditions, Respondent is required to comply with its approved operating plan.
73. As part of the NCES Landfill leachate system, there are sump pumps installed within the liners of the landfill itself, which pump leachate off the liner and into three storage tanks located just outside the NCES Landfill footprint.
74. The storage tanks are referred to as Underground Storage Tank A (“UST A”), Underground Storage Tank B (“UST B”), and an aboveground storage tank (“AST”).
75. UST A and UST B have capacity for approximately 30,000 gallons of leachate each.
76. The AST has capacity for approximately 162,000 gallons of leachate.
77. The three storage tanks operate together such that the leachate collection system within the liners on the landfill first pump leachate into UST A. Once UST A is full, UST A pumps leachate into UST B. Once UST B is full, UST B pumps leachate to the AST. Leachate is then loaded into tanker trucks for offsite disposal from the AST via Valve Box 403 or from UST B via Valve Box 403.

78. In the event all storage tanks are full, Respondent's leachate system, per the NCES Landfill approved operating plan, is designed such that the pump control system sends an inhibit signal to the preceding tanks or to the sump pumps in the landfill to stop the pumps from pumping leachate into the full tanks.

79. On the morning of May 1, 2021, upon information and belief, the leachate storage tanks at NCES Landfill became full.

80. However, no inhibit signal was sent or received telling a landfill sump pump to cease pumping leachate into UST A.

81. The continuous pumping of leachate from the landfill into UST A resulted in leachate flowing into an open, abandoned, conduit located within Manway A-1, the access port within UST A, which was connected to Valve Box 401, an abandoned valve box, which was located away from the UST/AST area.

82. For years prior to May 2021, Respondent had not decommissioned or capped the open conduit(s) connected to the leachate collection system's underground storage tanks.

83. For at least two days, Valve Box 401 filled with leachate, overtopped, and discharged leachate into the environment and an adjacent stormwater detention pond.

84. Over this two-day period, the sump pump within the NCES Landfill footprint continued to pump approximately 154,000 gallons of leachate into the already full UST A.

85. The continuous leachate pumping into the leachate tanks and resultant discharge went unnoticed until a person on site noticed the leachate release early in the morning on May 3, 2021.

86. On May 3, 2021, Respondent notified the Department via telephone that this leachate discharge occurred at NCES Landfill.

87. The Department's Spill Response and Complaint Investigation Section responded to NCES Landfill to assess the extent of the leachate discharge.

88. The active discharge lasted from approximately the morning of May 1, 2021, to the morning of May 3, 2021.

89. The discharge of leachate required a large cleanup operation involving the removal of over a thousand cubic yards of soil and over three hundred thousand gallons of stormwater in the adjacent stormwater detention pond.

90. At no point prior to the May 2021 leachate discharge did Respondent remove or decommission Valve Box 401 or the associated piping connected to UST A.

91. During subsequent investigations, Respondent identified other uncapped or not decommissioned piping connected to the leachate collection system.

92. Respondent did not demonstrate that it had decommissioned, sealed, or capped all open piping connected to the leachate collection system tanks until August 2, 2021.

93. For some significant time prior to the May 1-3 leachate release through August 2, 2021, Respondent failed to decommission or cap abandoned piping connected to the leachate collection system to ensure the facility leachate collection system contingency storage areas were leak-tight as required by Env-Sw 805.06(g)(3)(a).

94. Respondent was aware of electrical problems related to its leachate collection system alarm and notification system for up to several weeks prior to the May 1-3, 2021 leachate release.

95. Respondent did not adequately resolve these known electrical issues or take alternative measures to ensure that, in the event of high leachate levels in the storage tanks or a

leachate discharge, personnel would be alerted to act to ensure that the system would cease all leachate pumping into the storage tanks.

96. During an audit that followed the May 2021 leachate release, Respondent's consultant identified other controls and interlock systems that were not present or not functional within Respondents' leachate management system.

97. Respondent violated N.H. Admin. R. Env-Sw 805.06(g)(3)(a) by failing to have leak-tight leachate contingency storage areas.

98. Respondent violated N.H. Admin. R. Env-Sw 805.06(p) by not having operating high-water alarms as part of its leachate management system.

99. Respondent violated N.H. Admin. R. Env-Sw 1005.01(d)(6) by failing to operate and maintain its equipment in a manner that controls spills to the greatest extent practicable.

100. Respondent also violated its 2020 Permit conditions and N.H. Admin. R. Env-Sw 1105.04(b) by failing to operate its facility in accordance with the leachate management provisions of its operating plan.

101. On May 7, 2021, Respondent sent the Department a written incident notification of the leachate discharge from the facility as required by Env-Sw 1005.09(a)-(c).

102. The written incident report did not comply with the requirements of N.H. Admin. R. Env-Sw 1005.09(c).

103. Respondent violated N.H. Admin. R. Env-Sw 1005.09(c) by failing to submit a written incident report that provided all required information.

104. Without regard to any leachate discharge, N.H. Admin. R. Env-Sw 806.08(d) generally requires facilities to test leachate taken from primary leachate collection systems for the parameters set forth in Env-Sw 806.08(d)(5) in April, July, and November of each year.

105. N.H. Admin. R. Env-Sw 806.08(i) requires that the leachate analytical data taken pursuant to Env-Sw 806.08(d)(5) shall be filed with the Department pursuant to Env-Sw 303 no later than 30 days following receipt of the analytical results.

106. Respondent took leachate samples from its primary leachate collection system and submitted them for laboratory analysis in April and July of 2021, and received the results on June 10, 2021 and July 21, 2021, respectively, but did not submit these analytical results to the Department until December 16, 2021.

107. Respondent violated N.H. Admin. R. Env-Sw 806.08(i) between July 10, 2021, and December 16, 2021 and between August 20, 2021, and December 16, 2021, respectively, for the April and July 2021 analytical data reports by failing to file the analytical results with the Department within 30 days of receipt of results.

III. Violations Related to Leachate within the NCES Landfill Leachate Collection and Removal System

108. New Hampshire lined landfills are required to have engineered liner systems, which include a liner and a leachate collection and removal system.

109. As partially stated above, one of the purposes of leachate collection and removal systems is to remove leachate from the landfill so it does not collect on the landfill liner system in amounts that could strain the liners, cause stability problems, and potentially leak into the secondary leachate system or to the ground beneath a landfill.

110. New Hampshire administrative rules require municipal solid waste landfills to be double-lined facilities.

111. Double-lined facilities consist of a primary liner system and, below that, a secondary leachate system. Each liner system is comprised of a liner overlain by a leachate collection and removal system.

112. As cited herein, the New Hampshire administrative rules require monitoring and reporting, in certain situations, of the amount of leachate, or hydraulic head⁴, on the primary liner, which is reported in terms of a depth measurement.

113. As cited herein, the New Hampshire administrative rules also require calculating and recording and, in certain situations, reporting the amount of leachate pumped from the secondary leachate collection and removal system, which is reported in terms of a flow measurement of gallons per tributary acre per day.

114. New Hampshire administrative rules require that a permittee operate and maintain their facility in a manner that controls the production of leachate to the greatest extent practicable.

115. New Hampshire administrative rules require that a permittee operate in a manner consistent with the design limitations of the facility and associated equipment.

116. New Hampshire administrative rules also require that a facility operate in compliance with the terms and conditions of its permit.

117. NCES Landfill's primary and secondary leachate systems each consist of a liner and a leachate collection and removal system that includes sumps, leachate collection pipes, drainage layers, and pumps that serve different and independent stages and phases of NCES Landfill.

118. The pumps are located in sumps from which leachate is pushed by the pumps up pipes to ground level at various pump stations, labeled as Pump Station #1, Pump Station #2,

⁴ "Hydraulic head" refers to the liquid pressure, measured in inches or feet, of leachate on the primary liner.

Pump Station #3, and Pump Station #4.⁵ From the pump stations, the leachate travels via force main to the storage tanks located near the landfill footprint described herein.

a. Leachate on Primary Liner

119. New Hampshire administrative rules require that, as part of a facility's operating plan, a leachate management plan shall be developed and implemented, which is based on the criteria that "[r]outine facility operations, including operations during a 25-year storm event, shall not result in more than one foot of hydraulic head on the liner system(s)." N.H. Admin. R. Env-Sw 806.05(b)(1).

120. NCES Landfill's 2020 Permit Condition (16)(c) requires that the NCES Landfill be operated in accordance with its approved Operating Plan of Record.

121. NCES Landfill's 2020 Permit Condition (18)(a) identifies the approved Operating Plan of Record as the October 9, 2020 operating plan, which NCES resubmitted on March 13, 2021 ("Operating Plan").

122. Section 5.7 of the Operating Plan, beneath a section entitled "Facility Maintenance, Inspection, and Monitoring Plan," provides that "[l]eachate is removed from the sump area to keep head on the liner less than 12-inches during routine operations, including up to the 25-year, 24-hour storm events."

123. It is a violation of the NCES Landfill 2020 Permit to fail to operate in accordance with the Operating Plan.⁶

⁵ Pump Station #4 serves the secondary leachate collection and removal system only.

⁶ N.H. Admin. R. Env-Sw 806.05(b)(1) requires that a leachate management plan be developed and implemented, which is based on the criteria of ensuring that routine facility operations shall not result in "more than one foot of hydraulic head on the liner system(s)." (emphasis added). However, Respondent's approved Operating Plan states that they will remove leachate from the liner system to keep head on the liner less than 12 inches. Accordingly, the State deems it a violation of the 2020 Permit where the amount of leachate is 12 inches or more and will use

124. The NCES Landfill primary leachate collection system includes a drainage layer and pipes that carry leachate toward a sump where a pump is located. The sumps are in the landfill footprint and located near one of the three primary liner pump stations.

125. New Hampshire solid waste rules require that a solid waste facility's quarterly reports include data related to the hydraulic head of leachate on the liner as well as the flow in the secondary leachate collection system as specified by N.H. Admin. R. Env-Sw 806.08(d).

126. Respondent reports the NCES Landfill primary liner hydraulic head measurements at each of the sumps via its electronic supervisory control and data acquisition ("SCADA") system as a "snapshot" of time during a day rather than via the highest value of the telemetric data system on that same day.

127. Through a review of quarterly facility reports, beginning with third quarter of 2023, which were submitted to the Department, and other communications from Respondent, the Department identified numerous instances of leachate stored on the primary liner at depths of 12 inches or more at each of the three primary sumps in the landfill footprint.

128. On October 31, 2023, Respondent submitted its 2023 Third Quarter Facility Report to the Department, which covered the months of July, August, and September 2023. On October 11, 2024, Respondent submitted revised data for primary sump levels related to the 2023 Third Quarter Facility Report ("Revised 2023 Q3 Report").⁷

those terms for this complaint. Regardless, the State is not alleging any instance of leachate on the liner where the amount measured was exactly 12 inches for this distinction to have any consequence.

⁷ Respondent reportedly reviewed transducer elevations within the sump and provided revised/updated hydraulic head measurements as a result.

129. The Revised 2023 Q3 Report documented, pursuant to N.H. Admin. R. Env-Sw 806.08(d)(1), the hydraulic head measurement of leachate on the primary liner.⁸

130. Within 2023 Quarter 3 at NCES Landfill, Respondent reported 22 instances in which there was 12 inches or more of hydraulic head on the primary liner.

131. Of these 22 instances, 4 instances of hydraulic head on the primary liner ranged from 36.16 inches to 57.71 inches. The remaining 18 instances consisted of at least 67 inches on the primary liner, if not more.⁹

132. On January 30, 2024, Respondent submitted its 2023 Fourth Quarter Facility Report to the Department, which covered the months of October, November, and December 2023. On October 11, 2024, Respondent submitted revised data for primary sump levels related to the 2023 Fourth Quarter Facility Report (“Revised 2023 Q4 Report”).

133. The Revised 2023 Q4 Report documented, pursuant to N.H. Admin. R. Env-Sw 806.08(d)(1), Respondent’s report of some of the hydraulic head measurements of leachate on the primary liner.

134. Within 2023 Quarter 4 at NCES Landfill, there were 60 instances in which Respondent reported 12 inches or more of hydraulic head on the primary liner.

⁸ These figures are based on Respondent’s reported hydraulic head measurements. The State reserves the right to adjust these total figures following receipt of additional information.

⁹ The State identifies that the hydraulic head on the primary liner was “at least” 67 inches because Respondent’s electronic system limits the readings to a maximum of 100 inches. Subtracting the depth of the sump, which feature is not subject to the 12-inch limitation, from the maximum reported reading of 100 inches provides the depth of leachate above the primary liner. Depending on the sump and associated pump station involved, the 100-inch maximum reading equates to either at least 67, 67.6, or 68.92 inches of hydraulic head. Further, at times throughout Respondent’s reports to the Department and at times used in this complaint, Respondent recorded measurements directly from a readout panel at the pump stations themselves, which panel can display a number greater than 100 inches.

135. Of these 60 instances, 14 instances ranged from 12.85 inches to 49.16 inches; 23 instances ranged from 50.57 inches to 66.39 inches; 13 instances consisted of at least, if not more than, 67 or 67.6 inches; and 10 instances ranged from 102.8 to 106.1 inches.¹⁰

136. Further, the Revised 2023 Q4 Report did not include hydraulic head data for the month of November 2023 for the sump connected to Pump Station #3 nor did Respondent measure and record hydraulic head data for the sump connected to Pump Station #3 for the month of November 2023.

137. Respondent violated N.H. Admin. R. Env-Sw 806.08(d)(1)(a) by failing to measure and record the hydraulic head elevation on the primary liner at least once per month.

138. On April 30, 2024, Respondent submitted its 2024 First Quarter Facility Report to the Department, which covered the months of January, February, and March 2024. On October 11, 2024, Respondent submitted revised data for primary sump levels related to the 2024 First Quarter Facility Report (“Revised 2024 Q1 Report”).

139. The Revised 2024 Q1 Report documented, pursuant to N.H. Admin. R. Env-Sw 806.08(d)(1), Respondent’s report of the hydraulic head measurement of leachate on the primary liner.

140. Within 2024 Quarter 1 at NCES Landfill, there were 192 instances in which there was 12 inches or more of hydraulic head on the primary liner.

141. Of these 192 instances, 47 instances ranged from 12.04 inches to 49.93 inches; 53 instances ranged from 50.26 inches to 66.93 inches; and 92 instances consisted of at least, if not more than, 67 or 67.6 inches.

¹⁰ These 10 figures were not provided with the original 2023 Q4 report but were provided as handwritten logs to the Department and within the Revised 2023 Q4 Report.

142. On July 31, 2024, Respondent submitted its 2024 Second Quarter Facility Report to the Department, which covered the months of April, May, and June 2024. On October 11, 2024, Respondent submitted revised partial data for primary sump levels related to the 2024 Second Quarter Facility Report, which covered the months of April and May 2024 and June 1-12, 2024 (“Revised 2024 Q2 Report”).

143. The Revised 2024 Q2 Report documented, pursuant to N.H. Admin. R. Env-Sw 806.08(d)(1), Respondent’s report of the hydraulic head measurement of leachate on the primary liner.

144. Within 2024 Quarter 2 (through June 12, 2024) at NCES Landfill, there were 143 instances in which Respondent reported 12 inches or more of hydraulic head on the primary liner.

145. Of these 143 instances, 37 instances ranged from 12.96 inches to 45.16 inches; 13 ranged from 50.15 inches to 66.56 inches; 86 instances consisted of at least, if not more than, 67.0 or 67.6 inches. Additionally, for 7 instances, the primary liner serving Pump Station #1, where reported not as a maximum reading, hydraulic head reached between approximately 75.97 inches and 107.42 inches.

146. Between July 1, 2023 and June 30, 2024, NCES Landfill experienced only routine operations, as set out in N.H. Admin. R. Env-Sw 805.06(e).

147. Between July 1, 2023 and June 30, 2024, there were no storm events that exceeded the 25-year/24-hour storm event criteria in the area of NCES Landfill.

148. Between July 1, 2023 and June 12, 2024, Respondent failed to remove leachate from the primary liner to ensure that less than 12 inches of leachate was on the primary liner in violation of the 2020 Permit and the Operating Plan.

149. On April 22, 2024, in response to inquiries by the Respondent related to shipping of leachate off-site, the Department informed Respondent of the requirements of N.H. Admin. R. Env-Sw 806.05(b) and the need to file incident reports for events resulting in more than 12 inches of hydraulic head on the primary liner.

150. Between July 1, 2023 and June 12, 2024, Respondent did not verbally report to the Department the instances in which hydraulic head existed on the primary liner in excess of 12 inches or more.

151. Between July 1, 2023 and June 12, 2024, Respondent did not submit incident reports to the Department regarding the instances in which hydraulic head existed on the primary liner at depths of 12 inches or more.

152. On June 14, 2024, the Department issued a Letter of Deficiency related to leachate on the primary liner, secondary flow rates, and reporting deficiencies (“Leachate LOD”).

153. The Leachate LOD requested that the Respondent provide a written incident report regarding hydraulic head on the liner and an incident report regarding secondary flow rate exceedances.

154. Respondent submitted two separate incident reports on June 21, 2024.

155. Within the June 21, 2024 incident report, Respondent stated that “[f]or the period beginning July 1, 2023, through June 12, 2024, leachate at times exceeded the regulatory threshold on the primary liner system.”

156. Respondent violated its 2020 Permit on 417 instances over 221 different days between July 1, 2023 and June 12, 2024 by failing to remove leachate from the primary liner to ensure that less than 12 inches of leachate was on the primary liner.

157. Over 221 different days between July 1, 2023 and June 12, 2024, Respondent violated N.H. Admin. R. Env-Sw 1005.09(a)-(c) by failing to verbally report and provide written incident reports regarding these instances in which hydraulic head existed on the primary liner at depths of 12-inches or more.

158. NCES Landfill was not designed to hold leachate on the primary liner at the levels demonstrated herein.

159. Accordingly, Respondent failed to operate NCES Landfill in accordance with the design limitations of the facility in violation of N.H. Admin. R. Env-Sw 1005.01(b).

b. Leachate Flow Exceedances within Secondary Leachate System and Hole in the Primary Liner

160. Within the secondary leachate collection and removal system, immediately overlying the secondary liner (“secondary leachate system”), administrative rules require a permittee to measure and record the leachate flows coming out of the secondary leachate system and thus being removed from the secondary liner as a measure of the gallons per tributary acre per day (“G/A/D”).

161. Administrative rules require that a permittee measure and record the flow in the secondary leachate system at least once per week. N.H. Admin. R. Env-Sw 806.08(d)(3)(a).

162. A permittee is required to provide this information in its quarterly reports pursuant to N.H. Admin. R. Env-Sw 806.03(h)(2).

163. As discussed herein, NCES Landfill has multiple different stages, each with a primary and secondary leachate system that includes a leachate collection and removal system with sumps, where each sump is associated with a pump station. These measurements are made in the sumps and reported out to instrumentation at each sump’s respective pump station. For instance, Pump Station #1 serves a sump in the secondary leachate system for Stage I, a portion

of Stage IV, and Stage VI Phase I, whereas Pump Station #2 serves a sump in the secondary leachate system for Stage II, a different portion of Stage IV, and Stage VI Phase II.

164. During the fourth quarter of 2023, Respondent did not measure and record secondary leachate system flow rates for Pump Station #3 for six weeks from October 31, 2023 to December 22, 2023 in violation of N.H. Admin. R. Env-Sw 806.08(d)(3)(a).

165. Rules also require that the average flow in the secondary leachate system occurring during the 30-day period preceding the last measurement be calculated, recorded, and reported to the Department in accordance with N.H. Admin. R. Env-Sw 806.08(k). N.H. Admin. R. Env-Sw 806.08(d)(4). Accordingly, this is a rolling 30-day average.

166. Upon information and belief, between Quarter 3 of 2023 and Quarter 2 of 2024, Respondent did not calculate and record the 30-day rolling average secondary leachate system flows.

167. Accordingly, Respondent violated N.H. Admin. R. Env-Sw 806.08(d)(4) by not calculating and recording the 30-day average secondary leachate flows for approximately one year.

168. N.H. Admin. R. Env-Sw 806.08(k), cited above, requires a permittee to report, within the quarterly report, the 30-day average secondary flow rate for those instances where the 30-day average G/A/D is 25 or less.

169. N.H. Admin. R. Env-Sw 806.08(k)(2) requires that where the 30-day average G/A/D is greater than 25, a permittee must report that figure within one week of the identification of the rate.

170. N.H. Admin. R. Env-Sw 806.08(k)(3) requires that where the 30-day average G/A/D exceeds 100, the permittee must file an investigation report/proposed response action

plan and comply with the implementation of an approved response action plan pursuant to N.H. Admin. R. Env-Sw 806.09.

171. Similarly, pursuant to N.H. Admin. R. Env-Sw 806.09(e), permittees are required to investigate the occurrence of flow rates in the secondary leachate system that exceed 100 G/A/D.

172. The purpose of such an investigation is to “identify the potential cause(s) and appropriate response actions related thereto....” N.H. Admin. R. Env-Sw 806.09(f).

173. Further, a permittee must implement such an approved response action plan, which approval may include “actions deemed necessary on the basis of the likely cause and remedy of the problem” including increased monitoring and reporting, operational changes to limit hydraulic head on the liner, locating and repairing leak(s), retrofitting overlying liners, or closing all or part of a facility in order to protect human health and the environment. N.H. Admin. R. Env-Sw 806.09(g).

174. Additionally, Respondent’s Operating Plan §4.1.3 also provides that:

If it is determined that the calculated rolling 30 day average rate exceeds 25 gallons per contributory acre per day, it is to be reported to NHDES within one week of the rate identification except for flow which the NHDES agrees is the result of dewatering or a construction project. If the rate exceeds 100 gallons per contributory acre per day, NCES is to file an investigative report consistent with Env-Sw 806.09 unless the NHDES agrees the rate is the result of a dewatering activity or construction related project.

175. Respondent’s quarterly reports between July 1, 2023 and June 31, 2024 include daily G/A/D flow recordings, except for where data was not recorded or provided.¹¹

¹¹ Upon information and belief, these G/A/D secondary flow readings are “snapshot” readings of a particular time of day rather than the highest flow recorded by Respondent’s SCADA system that day. Accordingly, the figures presented herein could be higher than demonstrated in Respondent’s quarterly reports.

176. Although Respondent did not calculate and record the 30-day average secondary leachate system flows, the daily secondary flow rate data provided within quarterly reports may be used to calculate the 30-day rolling average.

177. With respect to Pump Station #1, Respondent exceeded the 25 G/A/D 30-day rolling average flow within the secondary leachate system on approximately 103 different days between January 25, 2024 and June 12, 2024 at NCES Landfill.

178. With respect to Pump Station #2, Respondent exceeded the 25 G/A/D 30-day rolling average flow within the secondary leachate system each day between August 22, 2023 and June 12, 2024, for a total of 296 different days at NCES Landfill.

179. With respect to Pump Station #3, Respondent exceeded the 25 G/A/D 30-day rolling average flow within the secondary leachate system each day between December 27, 2023 and May 28, 2024, with the exception of February 17, 2024 to March 12, 2024, for a total of 129 days at NCES Landfill.

180. With respect to Pump Station #4, Respondent exceeded the 25 G/A/D 30-day rolling average flow within the secondary leachate system each day between April 15, 2024 and May 14, 2024, for a total of 30 days at NCES Landfill.

181. Respondent did not provide any written reports notifying the Department of exceedances of the 25 G/A/D 30-day rolling average, as set forth above, in violation of N.H. Admin. R. Env-Sw 806.08(k)(2), for a total of 558 instances.¹²

¹² Respondent did provide email notifications on November 6, 2023, November 29, 2023, December 19, 2023, and June 12, 2024 but these email notifications were based on weekly averages within the secondary leachate system rather than 30-day averages.

182. These 25 G/A/D 30-day rolling average secondary leachate system flow exceedances cannot be reasonably attributed to the dewatering of the drainage layers following construction.

183. With respect to Pump Station #2, Respondent exceeded the 100 G/A/D 30-day rolling average flow within the secondary leachate system each day between November 15-21, 2023 and December 21, 2023 to June 5, 2024 for a total of 175 days.

184. These 100 G/A/D 30-day rolling average secondary leachate system flow exceedances cannot be reasonably attributed to the dewatering of the drainage layers following construction.

185. In violation of N.H. Admin. R. Env-Sw 806.09(e)-(f), Respondent did not undertake the required investigation following these exceedances of the 100 G/A/D 30-day rolling average from November 15, 2023 until at least April 9, 2024, if not later, with respect to Pump Station #2 for a total of at least 146 days.

186. During these days, the 30-day average secondary leachate system flow rates ranged from 100 G/A/D to 380 G/A/D.

187. Between November 15, 2023 and July 14, 2024, Respondent violated N.H. Admin. R. Env-Sw 806.08(k)(3) and Env-Sw 806.09(e)-(f) each day by failing to file an investigation report/proposed response action plan with the Department.

188. By at least April 2024, if not earlier, Respondent understood NCES Landfill had an excess secondary leachate system flow issue.

189. Following a review of data demonstrating high levels of leachate flow rates within the secondary leachate system, on April 9 and 10, 2024, Respondent and its consultants searched

NCES Landfill for the cause of elevated secondary leachate system flows and any construction-related damage within the tributary area for Pump Station #2.

190. Through that search, Respondent identified a quarter-inch sized hole in the primary liner associated with the tributary area for Pump Station #2.

191. Respondent did not inform the Department of or submit an incident report to the Department regarding the existence of the hole in the primary liner.

192. As stated above, the Department issued its Leachate LOD on June 14, 2024 regarding primary leachate levels and secondary flow exceedances.

193. On July 15, 2024, in response to the Leachate LOD, Respondent submitted an investigation report/proposed response action plan pursuant to N.H. Admin. R. Env-Sw 806.08(k)(3) and Env-Sw 806.09(e)-(f), as requested by the Leachate LOD.¹³

194. Between June 14, 2024 (the date of the Leachate LOD) and July 15, 2024, Respondent submitted other incident reports but did not reference the discovery of the hole in the primary liner at any point.

195. Within the July 15, 2024 submittal, Respondent informed the Department, for the first time, of the existence and discovery of the hole in the primary liner.

196. In the July 15, 2024 report, Respondent identified that the hole was along the anchor trench where the Stage VI, Phase II primary liner was tied into Stage II, the previously existing primary liner associated with a prior stage of NCES Landfill.

197. The primary and secondary leachate systems tie-in construction between Stages II and Stage VI began October 17, 2023 and concluded on November 3, 2023.

¹³ The sufficiency of the investigation and the proposed response action plan/investigation report submittal and whether they met the requirements under N.H. Admin. R. Env-Sw 806.08 and 806.09 is under review and the determination of whether more information is needed is ongoing.

198. In the July 15, 2024 submittal, Respondent reported that the approximately quarter-inch size hole in the primary liner was a potential cause of the excess leachate flows in the secondary leachate system for the areas served by Pump Station #2.

199. Specifically, Respondent reported that:

[S]econdary flow did not subside over the winter [of 2023 and 2024]...[and that] [a]fter review of the data, [Respondent] worked with CMA Engineers, Inc. and J.A. MacDonald to expose the Stage II/Stage VI anchor trench to inspect for construction-related damage on April 9 and 10, 2024. At the low northern point of the anchor trench where stormwater had been standing, a quarter-inch diameter hole in the primary liner was observed.

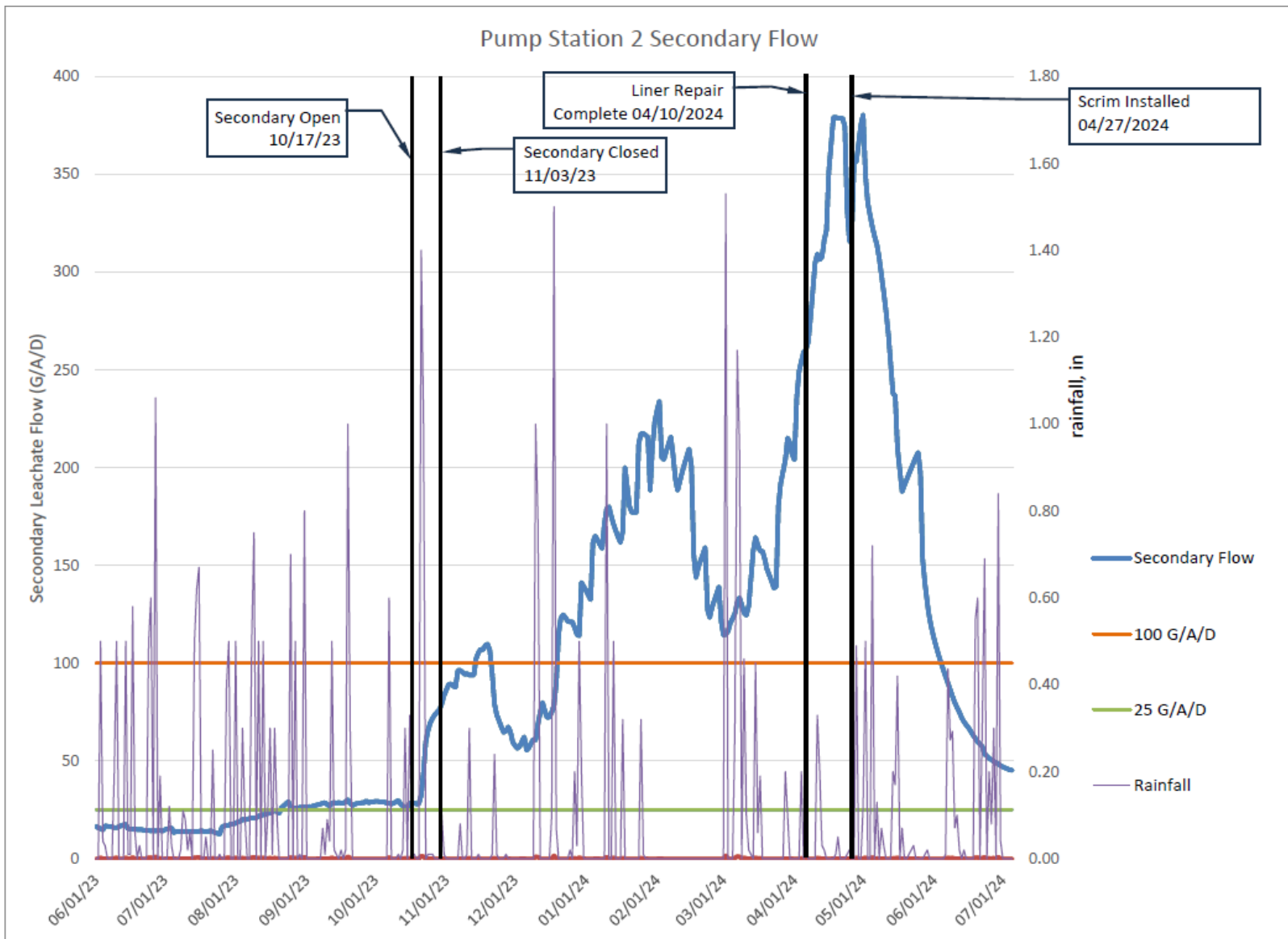
July 15, 2024 CMA Engineers, Inc. LOD Response re: Action Items 4 & 5, page 2 (emphasis added).

200. On Respondents' own and without submitting any investigation report or proposed response action plan to the Department in accordance with N.H. Admin. R. Env-Sw 806.08(k)(3) and 806.09(e)-(f), Respondent welded a patch over the hole and replaced the primary leachate collection system materials, including soils on April 10, 2024.

201. The existence of a hole in the primary liner is a situation involving imminent and substantial risk to human health and the environment.

202. Between April 9, 2024 and July 14, 2024, Respondent did not file an incident report regarding the identification of the hole in the primary liner in violation of N.H. Admin. R. Env-Sw 1005.09(a)-(b).

203. Along with the July 15, 2024 report, Respondent submitted a chart with the timeline of secondary leachate system flows for Pump Station #2 along with the dates of construction involving the tie-in, and dates of repair of the hole in the liner. The chart is provided below:



July 15, 2024 CMA Engineers, Inc. LOD Response re: Action Items 4 & 5.

204. As the chart depicts, around the time of the primary liner tie-in construction, secondary flow numbers dramatically increased upwards to 100 G/A/D averaged flow rates.

205. The first time the rolling 30-day average G/A/D secondary flow associated with Pump Station #2 exceeded the 100 G/A/D average was on November 15, 2023.

206. As discussed above, starting on November 15, 2023, Respondent was required to investigate the causes of the excess secondary flow, submit a proposed response action plan

outlining the potential cause(s), and implement the response action plan, as approved by the Department.

207. Respondent did not investigate the excess secondary flow averages or submit an investigation report/proposed response action plan from November 15, 2023 until July 15, 2024.

208. As depicted in the above chart, the secondary leachate system flow dipped below 100 G/A/D for a short time after its initial exceedance of the 100 G/A/D average, yet remained greater than the 25 G/A/D average reportable threshold, and then climbed above the 100 G/A/D average again mid-to-late December 2023 where it remained above 100 G/A/D and steadily climbed to 380 G/A/D average by May 2024.

209. The 30-day rolling secondary leachate system flow average dipped below 100 G/A/D for a short time as well but by December 20, 2023, it remained above 100, except for the few days noted above, until June 2024.

210. Respondent's failure to comply with N.H. Admin. R. Env-Sw 806.08(k) and 806.09 by not reporting the 30-day rolling average exceedances of 25 G/A/D, failing to investigate the causes of the 100 G/A/D exceedances, and failing to submit a proposed response action plan for approval between November 2023 and July 2024, prevented a timely investigation from being performed and prevented the Department from becoming involved and directing an appropriate response action per N.H. Admin. R. Env-Sw 806.09(g).

211. During this period of inaction by the Respondent, the hole in the primary liner discussed above likely went unnoticed for months and hundreds of thousands of gallons of leachate were managed by the secondary leachate collections system that otherwise may not have reached the secondary leachate system.

212. N.H. Admin. R. Env-Sw 1005.01(b) requires a permittee to operate its landfill in accordance with the design limitations of the facility.

213. Primary liner design standards require that liners be 60 mils thick. N.H. Admin. R. Env-Sw 805.04(b)(1).

214. For some time prior to April 9, 2024, the primary liner associated with Pump Station #2 and the Stage VI Phase II expansion was not 60 mils thick due to the hole in the primary liner.

215. Accordingly, Respondent violated N.H. Admin. R. Env-Sw 1005.01(b) by failing to operate NCES Landfill in accordance with the design limitations of the facility for some time prior to April 9, 2024 until the hole was welded on April 9 or 10, 2024.

216. Respondent caused significant excess flow of leachate to occur within the secondary leachate system between approximately November 2023 and June 2024.

217. Respondent's facility is not designed to be operated with such high flows within the secondary leachate system.

218. Accordingly, Respondent also violated N.H. Admin. R. Env-Sw 1005.01(b) by failing to operate NCES Landfill in accordance with the design limitations of the facility with respect to the secondary leachate system flows.

c. Related Violations

219. The administrative rules require that a Respondent's quarterly reports include the calculation of the 30-day rolling average secondary leachate flow as follows:

- (1) 30-day average G/A/D flow rates less than or equal to 25 G/A/D (Env-Sw 806.08(h)(2); 806.08(d)(4), and 806.08(k)(1));
- (2) 30-day average G/A/D flow rates greater than 25 G/A/D (Env-Sw 806.08(h)(2), 806.08(d)(4), and 806.08(k)(2)); and

(3) 30-day average G/A/D flow rates greater than 100 G/A/D (Env-Sw 806.08(h)(2), 806.08(d)(4), and 806.08(k)(3)).

220. Respondent's quarterly reports between Quarter 3 of 2023 and Quarter 2 of 2024 provided daily secondary leachate system flow rates and weekly average secondary leachate system flow rates but did not include the calculated 30-day rolling average flow rates.

221. For 2023 Q3 and Q4 and 2024 Q1 and Q2, Respondent violated N.H. Admin. R. Env-Sw 806.08(h)(2), 806.08(k), and Env-Sw 806.08(d)(4) on four occasions by not providing within the quarterly reports the 30-day rolling G/A/D average calculation secondary leachate system flow rates.

222. Pursuant to N.H. Admin. R. Env-Sw 806.08(d)(1)(c) and Env-Sw 806.08(h)(2), where the hydraulic head of leachate on the primary liner is 12 inches or greater, a permittee is required to measure the hydraulic head on each subsequent day until the hydraulic head is less than 12 inches and report that information in the quarterly reports.

223. Respondent failed to measure and record the hydraulic head daily after measuring 12 inches or more of hydraulic head on the primary liner associated with Pump Station #3 on the day prior, on the following four days: September 6, 2023, September 15, 2023, and October 5-6, 2023.

224. Accordingly, Respondent violated N.H. Admin. R. Env-Sw 806.08(h)(2) by failing to record and report daily hydraulic head figures after measuring 12 inches or greater of hydraulic head on the primary liner on four occasions.

225. For the year between July 2023 and the end of June 2024, Respondent has not controlled the production of leachate at NCES Landfill to the greatest extent practicable.

226. As stated herein, Respondent has caused extreme levels of leachate hydraulic head to accumulate on the primary liner across multiple stages of the facility and caused

significant amounts of leachate to reach the secondary leachate system and to be pumped off the secondary liner.

227. For the times relevant to this complaint, Respondent removed 4,940,850 gallons from NCES Landfill in Q3 of 2023, 4,083,367 gallons in Q4 of 2023, 5,184,026 gallons in Q1 of 2024, and 5,693,749 gallons in Q2 of 2024, for a total of 19,901,992 gallons between 2023 Quarter 3 and 2024 Quarter 2.

228. During prior operating years, NCES Landfill averaged between approximately 7 and 9 million gallons of leachate per year.

229. Respondent has not undertaken its operating and construction practices with an effort to control the production of leachate to the greatest extent practicable, which has resulted in leachate generation doubling and nearly tripling NCES Landfill's historical average leachate production rates.

230. Accordingly, for the year between July 2023 and the end of June 2024, Respondent failed to operate NCES Landfill in a manner that controls the production of leachate to the greatest extent practicable in violation of N.H. Admin. R. Env-Sw 1005.01(d)(7).

IV. Violations Related to Overlay Liner Drilling and Punctures

231. As part of the Stage IV permit to expand landfill operations over the existing Stage I landfill mass, NCES was required to place a leachate collection system between the Stage I landfilled waste and the waste to be placed thereon as part of Stage IV. This liner has become known as the "overliner" or "overlay liner."

232. Following Respondent's investigations into the above-referenced leachate exceedances, Respondent reported to the Department that beginning in 2014 Respondent

installed eleven (11) landfill gas management wells, which penetrated both liners of the overlay liner to reach the landfill waste beneath.

233. Specifically, the following landfill gas wells were installed and decommissioned, or remain active, as set forth below:

Well Number	<u>Installation Date</u>	<u>Decommissioning Date/Active</u>
GW-88	9/9/2014	December 2017
GW-102	4/24/2015	March 2019
GW-103	4/23/2015	December 2020
GW-105	4/30/2015	July 2024
GW-113	5/12/2016	October 2022
GW-134	8/8/2018	May 2023
GW-146	9/17/2020	ACTIVE
GW-148	9/15/2020	February 2024
GW-202	2/7/2024	ACTIVE
GW-206	6/27/2024	ACTIVE

234. Several of these landfill gas wells were part of approved permit modifications for landfill gas system expansion and construction projects to improve the gas collection system at NCES landfill due to expanded operations and rising waste mass.

235. The installation of the above landfill gas wells through the overlay liner was contrary to approved designs and operating plans.

236. Despite puncturing the overlay liner repeatedly, Respondent did not provide verbal notification or submit incident reports to the Department as required by N.H. Admin. R. Env-Sw 1005.09(b) and (c).

237. Respondent did not complete an incident report for these punctures until July 15, 2024.

238. Respondent violated N.H. Admin. R. Env-Sw 1005.09(b) and (c) beginning September 9, 2014 through July 15, 2024 by failing to provide required verbal and written incident reports.

239. Solid waste facilities are required to obtain Department approval prior to making modifications to the design, construction, operation, or closure of a facility.

240. Respondent repeatedly drilled gas wells through a required and approved overlay liner system without any approval for such modifications from the Department.

241. As such, Respondent violated N.H. Admin. R. Env-Sw 315.03 on at least eleven (11) different occasions between 2014 and 2024, as detailed above.

242. Solid waste facilities are also required to submit its plans and specifications with “all calculations and design related documents required to support and verify the adequacy of the proposed design and construction.”

243. The Department did receive permit modification applications for three of the wells identified above: GW-88, GW-102, and GW-103. However, the Respondent’s submittals to the Department related to the above-referenced landfill gas wells did not include information regarding the location of the overlay liner system or identify that the wells would puncture the overlay liner.

244. As such, on three occasions, Respondent violated N.H. Admin. R. Env-Sw 1103.05(h) by failing to provide plans and specifications with all required calculation and design related documentation required to support and verify the adequacy of the proposed landfill gas well design and construction with respect to the overlay liner.

245. Solid waste facilities are also required to ensure that it implements quality assurance controls during construction.

246. Respondent failed to implement quality assurance controls during construction of the 11 above-referenced landfill gas wells resulting in the penetration of the overlay liner on each

such occasion. Accordingly, Respondent violated N.H. Admin. R. Env-Sw 1104.04(c) on 11 occasions between 2014 and 2024.

247. N.H. Admin. R. Env-Sw 1104.07(a) additionally requires that for construction projects, permittees shall submit biweekly construction reports outlining certain information contained in N.H. Admin. R. Env-Sw 1104.07(b).

248. The Department did not receive from Respondent any biweekly reports for the installation of at least seven wells: GW- 113, GW-134, GW-146, GW-148, GW-172, GW-202, and GW-206.

249. As such, Respondent violated N.H. Admin. R. Env-Sw 1104.07(a) on at least seven occasions by not submitting biweekly construction reports for the above-mentioned wells.

250. Solid waste facilities are also required, within 90 days following completion of construction activities, to (1) submit applicable record drawings in accordance with N.H. Admin. R. Env-Sw 303 and 1103.05 that explicitly identify all features different than the features provided in approved plans and specifications and (2) provide written certification that the facility, as built, meets or exceeds all applicable requirements of the permit including approved plans and specifications. N.H. Admin. R. Env-Sw 1104.07(f).

251. The Department did not receive the above-listed information with respect to 3 wells: GW-172, GW-202, and GW-206.

252. Accordingly, Respondent violated N.H. Admin. R. Env-Sw 1104.07(f) on at least 3 occasions by not submitting the information required within 90 days after well construction completion.

253. Next, facilities are required to report to the Department “as soon as practicable,” all instances in which a facility sustains damage during construction, “which has the potential to

adversely affect the integrity of facility operations, life expectancy, or performance.” N.H. Admin. R. Env-Sw 1104.07(e). For any such instance, the facility is required to provide a written damage and repair report detailing the incident. *Id.*

254. Punctures of the overlay liner had the potential adversely affect the integrity of facility operations and/or its life expectancy and performance.

255. The Department did not receive any notification of the overlay puncture damage incidents and did not receive any written damage reports and repair reports for any of the 11 overlay liner punctures.

256. As such, Respondent violated N.H. Admin. R. Env-Sw 1104.07(e) on 11 occasions.

257. Facilities are also required to “operate in a manner consistent with the design limitations of the facility and associated equipment.” N.H. Admin. R. Env-Sw 1005.01(b).

258. Respondent’s puncture of the overlay liner with gas wells over a period of ten years and subsequent operation of the facility constitutes a failure to operate the facility in a manner consistent with the design limitations of the facility and associated equipment, particularly the leachate management system.

259. Accordingly, Respondent violated N.H. Admin. R. Env-Sw 1005.01(b) by failing to operate its facility in a manner consistent with the design limitations of the facility and associated equipment by puncturing the overlay liner on 11 occasions and subsequently operating the facility from 2014-2024.

V. Violations Related to Daily Cover Requirements

260. Permittees of municipal solid waste landfills are required to place daily cover material over all exposed waste, at a minimum, at the end of each operating day.

261. On November 22, 2022, the Department performed a site inspection of NCES Landfill prior to the start of NCES Landfill's daily operations and observed areas of exposed waste in multiple locations on the working areas of the NCES Landfill.

262. From November 21 to November 22, 2022, Respondent failed to place daily cover material over all exposed waste at the end of the operating day.

263. Accordingly, Respondent violated N.H. Admin. R. Env-Sw 806.03(c) from November 21 to November 22, 2022.

264. Respondent also violated N.H. Admin. R. Env-Sw 1005.01(d) by failing to operate the facility in a manner that controls the conditions set out in N.H. Admin. R. Env-Sw 1005.01(d) to the greatest extent practicable through its failure to apply daily cover at the end of the operating day.

CLAIMS

CLAIMS RELATED TO PLACEMENT OF WASTE BEYOND PERMITTED LIMITS

COUNT I: VIOLATION RELATED TO PLACING WASTE OUTSIDE PERMITTED LIMITS

265. The allegations in the preceding paragraphs are incorporated herein by reference.

266. For at least 256 days, Respondent violated N.H. Admin. R. Env-Sw 806.02(b) by placing waste outside of the permitted limits of NCES Landfill.

267. For at least 256 days, Respondent violated N.H. Admin. R. Env-Sw 1105.04(a)-(b) by failing to operate its facility in compliance with RSA 149-M, the solid waste rules, and the terms and conditions of its 2014 Permit by placing waste outside of the permitted limits of NCES Landfill.

268. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**COUNT II: FAILURE TO TIMELY PROVIDE INCIDENT REPORT RELATED TO
EXCEEDANCE OF PERMITTED LIMITS**

269. The allegations in the preceding paragraphs are incorporated herein by reference.

270. Respondent violated N.H. Admin. R. Env-Sw 1005.09(c) by failing to timely provide an incident report related to the exceedance of permitted limits.

271. Respondent failed to provide an incident report between at least April 30, 2021 and August 30, 2021 when Respondent provided the Department with a written incident report.

272. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

CLAIMS RELATED TO MAY 2021 LEACHATE DISCHARGE

**COUNT III: FAILURE TO CONTAIN LEACHATE IN LEAK TIGHT
CONTINGENCY STORAGE AREAS**

273. The allegations in the preceding paragraphs are incorporated herein by reference.

274. For at least 93 days, Respondent violated Env-Sw 805.06(g)(3)(a) by failing to have leak-tight contingency storage areas as part of its leachate management system.

275. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**COUNT IV: FAILURE TO OPERATE LEACHATE CONTAINMENT SYSTEM IN
A MANNER TO CONTROL SPILLS**

276. The allegations in the preceding paragraphs are incorporated herein by reference.

277. For at least 93 days, Respondent violated Env-Sw 1005.01(d)(6) by failing to operate and maintain the NCES Landfill facility in a manner that controls spills to the greatest extent possible, including associated equipment.

278. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**COUNT V: FAILURE TO HAVE FUNCTIONING HIGH-WATER ALARM WITHIN
LEACHATE MANAGEMENT SYSTEM**

279. The allegations in the preceding paragraphs are incorporated herein by reference.

280. For at least 93 days, Respondent violated N.H. Admin. R. Env-Sw 805.06(p) by not having functioning high-water alarms as part of its leachate management system. The lack of a high-water alarm contributed, in part, to the May 2021 leachate release.

281. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**COUNT VI: FAILURE TO SUBMIT AN INCIDENT REPORT CONTAINING ALL
REQUIRED INFORMATION REGARDING THE LEACHATE DISCHARGE**

282. The allegations in the preceding paragraphs are incorporated herein by reference.

283. Respondent violated Env-Sw 1005.09(c) by failing to submit a required incident report related to the leachate discharge that contained all information required by Env-Sw 1005.09(c).

284. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day from at least May 9, 2021 to August 2, 2021.

COUNT VII: FAILURE TO TIMELY SUBMIT LEACHATE ANALYTICAL RESULTS

285. The allegations in the preceding paragraphs are incorporated herein by reference.

286. Respondent violated N.H. Admin. R. Env-Sw 806.08(i) by failing to file leachate analytical results within 30 days of receipt from July 10, 2021 through December 16, 2021 with respect to the April 2021 analytical results and August 20, 2021 through December 16, 2021 with respect to the July 2021 analytical results.

287. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**CLAIMS RELATED TO THE PRIMARY AND SECONDARY LINER AND LEACHATE
SYSTEMS**

**COUNT VIII: FAILURE TO OPERATE AND MAINTAIN NCES LANDFILL IN A
MANNER THAT CONTROLS THE PRODUCTION OF LEACHATE TO THE
GREATEST EXTENT PRACTICABLE**

288. The allegations in the preceding paragraphs are incorporated herein by reference.

289. Respondent has violated N.H. Admin. R. Env-Sw 1005.01(d)(7) by failing to operate and maintain NCES Landfill, including associated equipment and containers, in a manner that controls the production of leachate to the greatest extent practicable for the reasons stated herein.

290. For over a year across multiple stages of NCES Landfill, Respondent has created a situation where: (1) there were approximately 417 instances of leachate hydraulic head exceedances on the primary liner over approximately 221 days with some instances reaching nearly nine feet of leachate stored on the primary liner; (2) secondary leachate system flow rates have soared to upwards of 380 gallons per acre per day pulled off of the secondary liner, and; (3) the amount of leachate pulled out of NCES Landfill has doubled and tripled over the four quarters of the of Q3 2023 to Q2 2024 as compared to prior years.

291. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**COUNT IX: VIOLATION OF PERMIT DUE TO LEACHATE ON PRIMARY LINER IN
EXCESS OF 12-INCHES**

292. The allegations in the preceding paragraphs are incorporated herein by reference.

293. Respondent violated N.H. Admin. R. Env-Sw 1105.04(a)-(b) by failing to comply with Condition (16)(c) of its 2020 Permit and its Operating Plan by failing to keep the leachate

hydraulic head on the primary liner less than 12 inches during routine operations on 417 instances over 221 different days between July 1, 2023 and June 30, 2024.

294. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

COUNT X: FAILURE TO OPERATE NCES LANDFILL IN ACCORDANCE WITH THE DESIGN LIMITATIONS OF THE FACILITY

295. The allegations in the preceding paragraphs are incorporated herein by reference.

296. Respondent violated Env-Sw 1005.01(b) by failing to operate NCES Landfill in accordance with the design limitations of the facility by storing significantly more leachate on the primary liner than it was designed to handle, by failing to remove leachate from the primary liner, and by causing significant excess secondary leachate system flows.

297. With respect to the amount of leachate on the primary liner, the violations lasted from approximately July 10, 2023 to at least June 5, 2024.

298. With respect to the significant secondary leachate system flow rates, the violations lasted from approximately November 2023 to June 2024.

299. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

COUNT XI: FAILURE TO SUBMIT VERBAL AND WRITTEN INCIDENT REPORTS REGARDING HYDRAULIC HEAD EXCEEDANCES ON THE PRIMARY LINER

300. The allegations in the preceding paragraphs are incorporated herein by reference.

301. Respondent violated N.H. Admin. R. Env-Sw 1005.09(a)-(c) on 417 instances over 221 days between July 1, 2023 and approximately June 12, 2024, by failing to verbally report and provide written incident reports regarding instances in which hydraulic head existed on the primary liner at depths of 12-inches or more in violation of the rules and 2020 Permit.

302. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**COUNT XII: FAILURE TO MEASURE AND RECORD HYDRAULIC HEAD ON THE
PRIMARY LINER AT LEAST ONCE PER MONTH**

303. The allegations in the preceding paragraphs are incorporated herein by reference.

304. Respondent violated N.H. Admin. R. Env-Sw 806.08(d)(1)(a) by failing to measure and record the hydraulic head on the primary liner at least once per month during the month of November 2023.

305. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**COUNT XIII: FAILURE TO MEASURE, RECORD, AND REPORT WITHIN
QUARTERLY REPORTS, THE HYDRAULIC HEAD ON THE PRIMARY LINER
DAILY UNTIL LEACHATE HYDRAULIC HEAD IS LESS THAN 12 INCHES**

306. The allegations in the preceding paragraphs are incorporated herein by reference.

307. Respondent violated N.H. Admin. R. Env-Sw 806.08(d)(1)(c) and N.H. Admin. R. Env-Sw 806.08(h)(2) by failing to measure, record, and report the leachate hydraulic head on the primary liner daily following an instance of hydraulic head of 12 inches or more until hydraulic head elevations are less than 12 inches and by failing to report the results within the quarterly reports.

308. These violations occurred on the following four days: September 6, 2023; September 15, 2023; and October 5-6, 2023. This data was not provided in the 2023 Q3 Report or the 2023 Q4 Report.

309. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**COUNT XIV: FAILURE TO MEASURE AND RECORD FLOW IN THE SECONDARY
LEACHATE SYSTEM AT LEAST ONCE PER WEEK**

310. The allegations in the preceding paragraphs are incorporated herein by reference.

311. Respondent violated N.H. Admin. R. Env-Sw 806.08(d)(3)(a) by failing to measure and record the secondary leachate system flow rates at least once per week for six weeks between October 31, 2023 and December 22, 2023.

312. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**COUNT XV: FAILURE TO CALCULATE AND RECORD THE SECONDARY
LEACHATE SYSTEM AVERAGE FLOW RATES BASED ON THE 30-DAY PERIOD
PRECEDING THE LAST MEASUREMENT**

313. The allegations in the preceding paragraphs are incorporated herein by reference.

314. Respondent violated N.H. Admin. R. Env-Sw 806.08(d)(4) by failing to calculate and record the average flow rates in the secondary leachate system occurring during the 30-day period preceding the last measurement from approximately July 10, 2023 through June 14, 2024.

315. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**COUNT XVI: FAILURE TO REPORT INSTANCES WHERE THE 30-DAY ROLLING
AVERAGE OF SECONDARY LEACHATE FLOW EXCEEDED 25 G/A/D**

316. The allegations in the preceding paragraphs are incorporated herein by reference.

317. Between August 21, 2023 and June 12, 2024, Respondent violated N.H. Admin. R. Env-Sw 806.08(k)(2) and violated N.H. Admin. R. Env-Sw 1105.04(a)-(b), the 2020 Permit, and Operating Plan §4.1.3 on 558 occasions by failing to report to the Department the 30-day average secondary leachate system flows in excess of 25 G/A/D within one week of identification of the exceedance.

318. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**COUNT XVII: FAILURE TO CONDUCT INVESTIGATION AND SUBMIT AN
INVESTIGATION REPORT AND PROPOSED RESPONSE ACTION PLAN
REGARDING INSTANCES WHERE THE 30-DAY ROLLING AVERAGE SECONDARY
LEACHATE SYSTEM FLOW RATES EXCEEDED 100 G/A/D**

319. The allegations in the preceding paragraphs are incorporated herein by reference.

320. Respondent violated N.H. Admin. R. Env-Sw 806.08(k)(3), Env-Sw 806.09(e)-(f), Env-Sw 1105.04(a)-(b), the 2020 Permit, and Operating Plan §4.1.3 by failing to undertake an investigation and submit an investigation report and proposed response action plan to the Department following instances of secondary leachate system flow above the 30-day rolling average of 100 G/A/D.

321. For Pump Station #2, Respondent failed to conduct the required investigation from November 15, 2023 through at least April 8, 2024 in violation of the above rules and the 2020 Permit for at least 146 days.

322. For Pump Station #2, Respondent failed to submit an investigation report/proposed response action plan from November 15, 2024 through July 14, 2024 in violation of above rules and 2020 Permit, for 242 days.

323. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day for each violation.

**COUNT XVIII: FAILURE TO PROVIDE THE SECONDARY LEACHATE SYSTEM 30-
DAY AVERAGE FLOW RATES WITHIN QUARTERLY REPORTS**

324. The allegations in the preceding paragraphs are incorporated herein by reference.

325. Between July 1, 2023 and June 30, 2024, Respondent violated N.H. Admin. R. Env-Sw 806.08(d)(4), Env-Sw 806.08(k)(1)-(3), and Env-Sw 806.08(h)(2) by failing to report

the required secondary leachate system 30-day average flow rates within four different quarterly reports.

326. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

COUNT XIX: VIOLATION OF N.H. ADMIN. R. ENV-SW 1005.01(b) AND ENV-SW. 805.04(b)(1) REGARDING HOLE IN THE PRIMARY LINER

327. The allegations in the preceding paragraphs are incorporated herein by reference.

328. Respondent failed to operate NCES Landfill's primary liner system in accordance with the design limitations of the facility by failing to have a primary liner that was 60 mils thick in accordance with N.H. Admin. R. Env-Sw 805.04(b)(1) due to the existence of the hole in the primary liner identified on April 9, 2024.

329. Accordingly, Respondent failed to operate its facility in accordance with the facility's design limitations due to the creation of the hole in the primary liner for some time prior to April 9, 2024 through April 10, 2024 in violation of N.H. Admin. R. Env-Sw 1005.01(b).

330. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

COUNT XX: FAILURE TO SUBMIT AN INCIDENT REPORT REGARDING THE HOLE IN THE PRIMARY LINER

331. The allegations in the preceding paragraphs are incorporated herein by reference.

332. Between April 9, 2024 and July 15, 2024, Respondent violated N.H. Admin. R. Env-Sw 1005.09(a) and (b) by failing to verbally inform the Department of the hole in the primary liner as soon as practicable.

333. Between April 16, 2024 and July 15, 2024, Respondent violated N.H. Admin. R. Env-Sw 1005.09(a) and (c) by failing to submit an incident report to the Department regarding the hole in the primary liner within 5 working days of the discovery of the hole in the liner.

334. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

CLAIMS RELATED TO PUNCTURE OF OVERLAY LINER

COUNT XXI: FAILURE TO REPORT

335. The allegations in the preceding paragraphs are incorporated herein by reference.

336. On 11 occasions, Respondent did not provide verbal notification or submit written incident reports to the Department as required by N.H. Admin. R. Env-Sw 1005.09(b) and (c). Respondent failed to submit the incident reports from the date of installation as set forth in the table in the preceding paragraphs to July 15, 2024, with respect to each installed well.

337. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

COUNT XXII: FAILURE TO OBTAIN APPROVAL PRIOR TO MAKING DESIGN, CONSTRUCTION, AND OPERATION MODIFICATIONS

338. The allegations in the preceding paragraphs are incorporated herein by reference.

339. Respondent violated N.H. Admin. R. Env-Sw 315.03 on at least 11 occasions between 2014 and 2024 by drilling gas wells through the designed and approved overlay liner system without obtaining Department approval for such modifications.

340. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**COUNT XXIII: FAILURE TO PROVIDE REQUIRED PLANS AND SPECIFICATIONS
FOR THREE GAS WELL INSTALLATIONS**

341. The allegations in the preceding paragraphs are incorporated herein by reference.

342. For three wells, Respondent violated N.H. Admin. R. Env-Sw 1103.05(b) by failing to provide plans and specifications with all required calculation and design related documentation required to support and verify the adequacy of the proposed landfill gas well design and construction with respect to the overlay liner.

343. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**COUNT XXIV: FAILURE TO IMPLEMENT QUALITY ASSURANCE CONTROLS
DURING CONSTRUCTION OF THE ELEVEN GAS WELLS DRILLED THROUGH
OVERLAY LINER**

344. The allegations in the preceding paragraphs are incorporated herein by reference.

345. Respondent violated N.H. Admin. R. Env-Sw 1104.04(c) on 11 occasions between 2014 and 2024 by drilling and puncturing the gas wells through the overlay liner thereby failing to implement quality assurance controls during construction.

346. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

COUNT XXV: FAILURE TO SUBMIT BIWEEKLY CONSTRUCTION REPORTS

347. The allegations in the preceding paragraphs are incorporated herein by reference.

348. As detailed above, Respondent violated N.H. Admin. R. Env-Sw 1104.07(a) on seven occasions by failing to submit required biweekly construction status reports. The violations occurred from approximately the date of each respective well installation as detailed herein through July 2024.

349. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**COUNT XXVI: FAILURE TO SUBMIT INFORMATION REQUIRED BY N.H. ADMIN.
R. ENV-SW 1104.07(f)**

350. The allegations in the preceding paragraphs are incorporated herein by reference.

351. For three wells, as described herein, Respondent failed to submit the record drawings and certifications as required by N.H. Admin. R. Env-Sw 1104.07(f). Accordingly, Respondent violated N.H. Admin. R. Env-Sw 1104.07(f) on three such occasions from the date of 90 days after well installation as detailed herein through July 2024, respectively.

352. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**COUNT XXVII: FAILURE TO REPORT CONSTRUCTION DAMAGE AND PROVIDE
WRITTEN DAMAGE AND REPAIR REPORTS RELATIVE TO OVERLAY LINER
PUNCTURES**

353. The allegations in the preceding paragraphs are incorporated herein by reference.

354. Respondent violated N.H. Admin. R. Env-Sw 1107.07(e) by failing to provide construction damage notification and written damage and repair reports as soon as practicable from the date of each well installation as detailed herein through July 2024, respectively.

355. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

**COUNT XXVIII: FAILURE TO OPERATE FACILITY IN A MANNER CONSISTENT
WITH DESIGN LIMITATIONS OF THE FACILITY AND ASSOCIATED EQUIPMENT**

356. The allegations in the preceding paragraphs are incorporated herein by reference.

357. Respondent violated N.H. Admin. R. Env-Sw 1005.01(b) by failing to operate its facility and in a manner consistent with the design limitations of the facility and associated

equipment by puncturing the overlay liner on 11 occasions and subsequently operating the facility. Such violations occurred from the date of each well installation as detailed herein through July 2024, respectively.

358. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

CLAIMS RELATED TO APPLICATION OF DAILY COVER

COUNT XXIX: FAILURE TO APPLY DAILY COVER

359. The allegations in the preceding paragraphs are incorporated herein by reference.

360. From November 21 to November 22, 2022, Respondent failed to place daily cover material over exposed waste at the end of the operating day.

361. Respondent violated N.H. Admin. R. Env-Sw 806.03(c) from November 21 to November 22, 2022.

362. Respondent also violated N.H. Admin. R. Env-Sw 1005.01(d) by failing to operate the facility in a manner that controls the nuisance conditions set out in N.H. Admin. R. Env-Sw 1005.01(d) to the greatest extent practicable.

363. Pursuant to RSA 149-M:15, IV, Respondent is liable for a civil penalty of up to \$25,000 for each continuing day of each violation.

PRAYERS FOR RELIEF

WHEREFORE, the State respectfully requests that this Honorable Court:

- A. Order Respondent to pay civil penalties for the violations of RSA 149-M and the administrative rules as alleged herein up to the maximum allowed by law; and
- B. Grant such other relief as this Court deems just and equitable.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL
SERVICES

By its attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Dated: January 9, 2026

/s/ Joshua Harrison
Joshua C. Harrison, NH Bar #269564
Assistant Attorney General
Environmental Protection Bureau
Office of the Attorney General
New Hampshire Department of Justice
1 Granite Place - South
Concord, New Hampshire 03301
(603) 271-3679
Joshua.C.Harrison@doj.nh.gov