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Frank P. Richards

ADMINISTRATIVE ORDER

NEW HAMPSHIRE STATE OF DEPARTMENT OF ENVIRONMENTAL SERVICES

TO

NORTH COUNTRY ENVIRONMENTAL SERVICES INC



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Robert R. Scott, Commissioner

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

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

**ADMINISTRATIVE ORDER
No. 21-010 WMD**

July 16, 2021

A. INTRODUCTION

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

B. PARTIES

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

C. STATEMENTS OF FACTS AND LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25. NHDES received a response to LOD #WMD 21-009, from NCES dated April 30, 2021. In its response, NCES asserted that it was not operating outside of the *final permitted limits* of the landfill at the Facility. NCES cited significant settling of waste between current operations and final limits of waste at closure. NCES also cited Env-Sw 1005.01(a) in its response to the LOD.
26. Env-Sw 1005.01(a) states “[a] facility shall not exceed the capacity limits specified in its permit or, in the case of a permit-exempt facility, the capacity limits specified by the exemption, if any.”
27. Env-Sw 1005.01(b) states “[a] facility shall operate in a manner consistent with the design limitations of the facility and associated equipment.”
28. To date, NHDES has no record of receiving the written report of the incident requested in the LOD. NHDES has no record of receiving weekly reports of efforts by NCES to come into compliance with the Permit, as modified.
29. The Facility is subject to the requirements of RSA chapter 149-M; the Solid Waste Rules; and the Permit, as modified.

D. DETERMINATION OF VIOLATIONS

1. NCES violated Env-Sw 806.02(b); and the Permit, as modified; by placing waste outside the permitted vertical limits of the landfill at the Facility; as identified in Condition (3) of the modification dated August 15, 2014, and Conditions (10) and (11) of the modification dated October 9, 2020.
2. NCES violated Env-Sw 1005.09; and the Permit, as modified; by failing to notify NHDES of the violations of the Solid Waste Rules; and the Permit, as modified.
3. NCES violated Env-Sw 1005.01(b); and the Permit, as modified; by operating the landfill in a manner inconsistent with the design limitations of the Facility.
4. NCES violated Env-Sw 1105.04(a); and the Permit, as modified; by failing to operate the Facility in compliance with the Solid Waste Rules, and the terms and conditions of the Permit, as modified.

E. ORDER

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

1. NCES shall immediately cease placing waste outside the permitted vertical and lateral limits of the landfill.
2. **Within 30 days of the date of this Order**, NCES shall:
 - a. conduct a survey of the landfill at the Facility, and submit to NHDES a comparison of the existing grades to the permitted vertical and lateral limits approved for operation; and
 - b. submit to NHDES an incident report that includes the information required by Env-Sw 1005.09(c), including a plan and schedule for relocating all waste to within the permitted limits approved for operation.

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

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

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

F. APPEAL

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

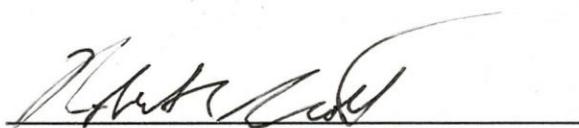
Information about the Council, including a link to the Council’s rules, is available at <http://nhec.nh.gov/> (or more directly at <http://nhec.nh.gov/waste/index.htm>). Copies of the rules also are available from the NHDES Public Information Center at (603) 271-2975.

G. OTHER PROVISIONS

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

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

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



Robert R. Scott, Commissioner
Department of Environmental Services

cc: NHDES Legal Unit
CT Corporation System, *registered agent*, 2 ½ Beacon Street, Concord, NH 03301-4447 (*cert. mail*)

cc: Public Information Officer, NHDES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Bethlehem Select Board, Town Clerk, and Administrative Assistant
Laurel Pushee, Solid Waste Management Bureau, WMD/NHDES
John Gay, NCES
Kevin Roy, NCES