

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between the State of New Hampshire Department of Environmental Services (“Department”), through its attorneys, the Office of the Attorney General (collectively, the “State”) and North Country Environmental Services, Inc. (“NCES”), through its attorneys Cleveland, Waters and Bass, P.A. (the Department and NCES collectively, the “Parties”).

WHEREAS, the Department issued Administrative Order No. 21-010 WMD (“Administrative Order”) to NCES on July 16, 2021, alleging violations of administrative rules regarding the placement of waste outside permitted limits at the NCES Bethlehem, New Hampshire landfill and ordering the relocation of waste to within permitted limits, among other things;

WHEREAS, NCES contests the Department’s construction of the phrase “permitted vertical...limits” as used in Env-Sw 806.02(b) and filed its *Notice of Appeal and Request for Partial Expedited Review* of the Administrative Order with the New Hampshire Waste Management Council pursuant to RSA 21-O:14 on August 16, 2021 claiming that the Administrative Order was unlawful and unreasonable;

WHEREAS, on August 16, 2021, NCES additionally filed its *Petition for Writ of Certiorari and for Declaratory Judgment* against Department Commissioner Robert R. Scott related to the Department’s Administrative Order; and

WHEREAS, the Department continues to evaluate whether waste placed outside permitted limits at the NCES Bethlehem landfill may be harmful to the environment, human health and/or safety;

NOW THEREFORE, in consideration of the foregoing and mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

- (1) NCES shall withdraw its appeal to the Waste Management Council docketed as *North Country Environmental Services, Inc. Appeal*, No. 21-08 WMC without prejudice;
- (2) NCES shall withdraw its complaint against Commissioner Robert Scott in the Merrimack Superior Court captioned as *North Country Environmental Services, Inc. v. Robert R. Scott, Commissioner, New Hampshire Department of Environmental Services* No. 217-2021-CV-00434 without prejudice;
- (3) The Department shall withdraw Administrative Order No. 21-010 WMD without prejudice;
- (4) NCES admits that it has placed waste beyond permitted final waste closure grades at the NCES Bethlehem landfill, as depicted on the survey attached within Exhibit A, entitled “October 5, 2021 Drone Site Survey Volume Remaining.”

- (5) The Parties further agree to undertake the actions set forth herein and agree to the following terms and conditions:
- (a) On November 1, 2021, NCES submitted engineering analyses stamped by a qualified professional engineer reviewing and evaluating the current conditions, stability, settlement, and design capabilities and limitations of the NCES landfill in Bethlehem, New Hampshire, in response to the specific requirements for the engineering analyses set forth within Exhibit B, Department's Acknowledgment of Submittal related to the Incident Report pursuant to Administrative Order No, 21-010 WMD, dated October 7, 2021;
 - (b) After the Department's review of the submitted analyses, the Department shall determine whether the waste allegedly in excess of permitted limits shall be relocated, in whole or in part;
 - (c) If the Department determines that waste relocation, in whole or in part, to within the alleged permitted limits may be more harmful to the environment, human health, and/or safety, than leaving the waste in place as depicted on the engineering analyses submitted by NCES to the Department in accordance with ¶(5)(a), then the Department may allow the waste, in whole or in part, to remain in place upon successful application by NCES for a permit modification to revise the facility operating plan, including the fill sequencing plan and related engineering analyses and designs; and
 - (d) If the Department determines that waste must be relocated, in whole or in part, (i) the Department may take any action it deems necessary and the Department specifically retains all of its enforcement authorities under and subject to applicable statutes and rules, including, but not limited to, RSA 149-M, to address the violations and to order the relocation of some or all waste allegedly placed outside of permitted limits to locations within such permitted limits, (ii) NCES may appeal or otherwise challenge as permitted by law that determination and any such order, and (iii) any waste relocated in a given year shall be excluded from the calculation of the amount of waste NCES may accept in that year under its permit;
- (6) This settlement agreement and the determinations made herein and any subsequent decisions or orders contemplated herein made by the Department subsequent to this settlement agreement shall not relieve NCES of liability for civil penalties due to alleged placement of waste outside permitted limits from the date waste was first allegedly placed outside of permitted limits or for any other violations. The Department and the State of New Hampshire expressly reserve the right to seek civil penalties and other remedies for all such alleged violations;

- (7) Nothing herein shall be interpreted as freeing any party from compliance with, or as modifying any party's rights, authority, or obligations under, applicable statutes and rules or as a waiver or release of any party's claims or defenses;
- (8) The Parties represent and warrant that the individuals executing this Settlement Agreement are empowered and authorized to bind the party for whom they have signed; and
- (9) The Parties agree that this Settlement Agreement may be signed in counterparts.

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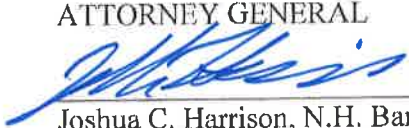
IN WITNESS HEREOF, each of the parties hereto have executed this Settlement Agreement or has caused this Settlement Agreement to be duly executed and delivered in its name on its behalf, all as of the day and year indicated next to each respective signature.

NEW HAMPSHIRE DEPARTMENT OF
ENVIRONMENTAL SERVICES

By its Attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: 11/23/2021


Joshua C. Harrison, N.H. Bar #269564
Assistant Attorney General
Environmental Protection Bureau
Office of the Attorney General
33 Capitol Street
Concord, New Hampshire 03301
(603) 271-3679
Joshua.C.Harrison@doj.nh.gov

NORTH COUNTRY ENVIRONMENTAL
SERVICES, INC.

By and through its Attorney,

CLEVELAND WATERS & BASS, P.A.

Date: 11-22-21

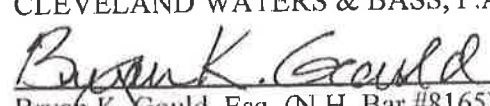

Bryan K. Gould, Esq. (N.H. Bar #8165)
Cleveland Waters and Bass, P.A.
Two Capital Plaza, 5th Floor
P.O. Box 1137
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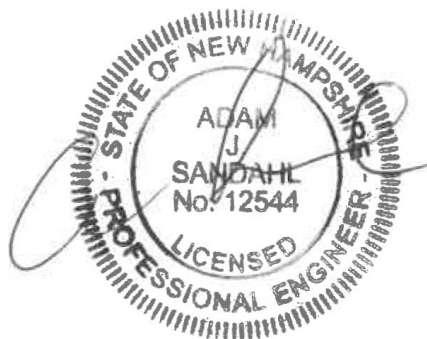
EXHIBIT A

**DES Waste Management Division
29 Hazen Drive; PO Box 95
Concord, NH 03302-0095**

**Administrative Order (21-010 WMD)
Quarterly Report Submittal
North Country Environmental Services Landfill
581 Trudeau Road
Bethlehem, NH 03574**

**NHDES Site #: 123456789
Project Type: SW-LNDFILL
Project Number: 0021939**

Prepared For:
North Country Environmental Services
1855 VT Route 100
Hyde Park, VT 05655
Phone Number (802) 651-5454
RP Contact Name: John Gay
RP Contact Email: john.gay@casella.com



Prepared By:
CMA Engineers, Inc.
35 Bow Street
Portsmouth, NH 03801
Phone Number: (603) 431-6196
Contact Name: Adam Sandahl, P.E.
Contact Email: asandahl@cmaengineers.com

Date of Application: October 15, 2021



CMA ENGINEERS, INC.

CIVIL | ENVIRONMENTAL | STRUCTURAL

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Portsmouth
New Hampshire
03801-3819

P: 603 | 431 | 6196

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October 15, 2021

Ms. Laurel Pushee (via email)
Solid Waste Management Bureau
Waste Management Division
New Hampshire Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095

**Re: North Country Environmental Services Landfill
Lined Landfill – Bethlehem, NH
Administrative Order (21-010 WMD) - Quarterly Report Submittal
CMA #665**

Dear Ms. Pushee:

On behalf of North Country Environmental Services, Inc. (NCES), CMA Engineers is providing the enclosed quarterly survey as required by Condition E(4) of the above referenced order. The survey evaluates the current landfill topography against the permitted horizontal and vertical limits of the landfill.

Please feel free to contact me at (603) 627-0708 or asandahl@cmaengineers.com with any questions.

Very truly yours,

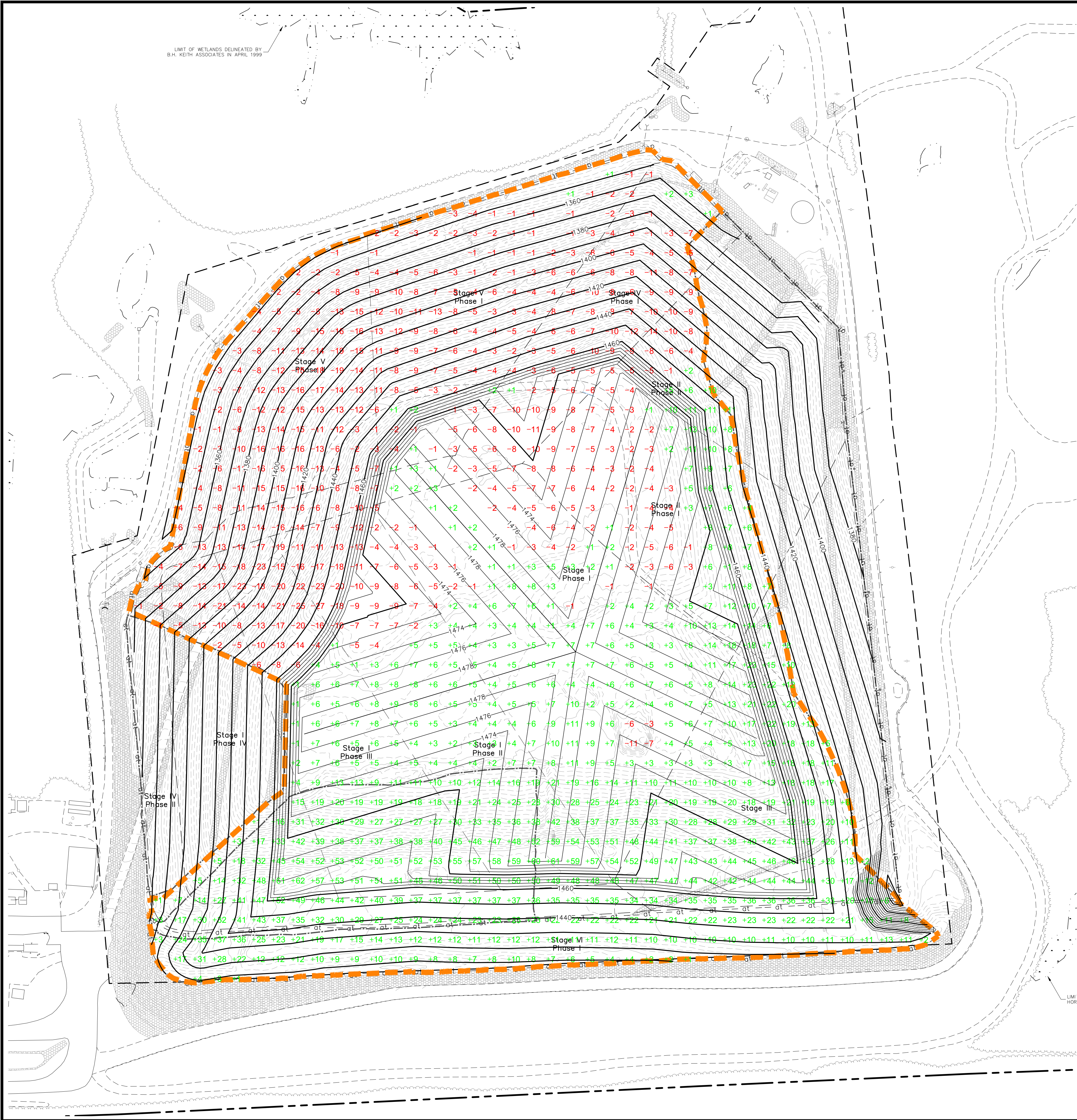
CMA ENGINEERS, INC.

Adam J. Sandahl, P.E., BCEE
Project Manager

Cc: Joe Gay, North Country Environmental Services, Inc. (via email)
Kevin Roy, North Country Environmental Services, Inc. (via email)
Samuel Nicolai, North Country Environmental Services, Inc. (via email)
Brian Oliver, North Country Environmental Services, Inc. (via email)
Bob Grillo, CMA Engineers (via email)
NHDES Onestop

Enclosures:

1. October 5, 2021 Volume Remaining Plan



Notes:

- 1. Upper surface is top of waste grades from the Stage VI closure plan, with 3:1 side slopes.
- 2. Lower surface is a composite surface developed from a field survey completed on October 5, 2021 with an Intel Falcon 8+ unmanned aerial vehicle (UAV) combined with site survey completed on August 9, 2021 for areas containing higher vegetation by Horizons Engineering, Inc. The surface was then lowered by (1) ft to create and existing top of waste surface for comparison purposes.
- 3. Localized ground control points were used to adjusted the UAV flight data to the coordinate system and vertical datum.
- 4. The Horizontal datum is the New Hampshire State plane coordinate system (NAD83) and the Vertical datum is the North American Vertical datum of 1988 (NAVD88).
- 5. The volume calculation is based on a comparison of the above surfaces.

Capacity Notes:

Remaining Capacity	
Gross calculated volume remaining:	
Sum of all (+) tick marks	648,465 CY
Pre-Settlement	
Gross calculated pre-settled waste:	
Sum of all Top (-) tick marks	(46,022 CY)
Sum of all Side Slope (-) tick marks	(151,443 CY)

Legend:

	October 5, 2021 2' Contour
	October 5, 2021 10' Contour
	Top of Waste Closure Grades
	Approximate Property Line
	Limit of Landfill District V Zone
	Spot Remaining Fill Thickness (ft)
	Spot Pre-Settlement Thickness (ft)
	Anchor Trench
	Volume Boundary

designed by:
RUG

drawn by:
ATR

approved by:

date:
October 2021

project no:
665

file name:

scale:
1"=100'

0 100 200'

North Country Environmental Services
Bethlehem New Hampshire

2021 Quarterly
Volume Update

October 5, 2021 Drone Site Survey
Volume Remaining

sheet:
1

of
1

no.

revision

date

by

CMA
ENGINEERS

Civil/Environmental/Structural

Portsmouth, NH • Manchester, NH • Portland, ME
603/431-6196 • 603/627-0708 • 207/541-4223

c m a e n g i n e e r s . c o m

EXHIBIT B



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



VIA EMAIL ONLY

October 7, 2021

North Country Environmental Services, Inc.

Joe Gay

P.O. Box 9

Bethlehem, NH 03574

Email: john.gay@casella.com

**Subject: North Country Environmental Services, Inc., 581 Trudeau Road, Bethlehem, NH
Solid Waste Permit No. DES-SW-SP-003-002**

**Acknowledgment of Submittal: INCIDENT REPORT PURSUANT TO NHDES
ADMINISTRATIVE ORDER 21-010 WMD, report dated August 30, 2021**

Dear Mr. Gay:

The New Hampshire Department of Environmental Services, Waste Management Division (NHDES) acknowledges receipt of North Country Environmental Services (NCES) incident report and relocation plan, as required pursuant to NHDES Administrative Order 21-010 (the AO). After review of the document, NHDES has determined that additional information, as detailed below, is needed regarding the assessment of hazards, the measures taken to prevent recurrence, and to describe the waste relocation plan.

(1) Assessment of Actual or Potential Hazards

Env-Sw 1005.09(c)(4)d. requires an assessment of actual or potential hazards to the environment, safety and human health related to the incident. Additional information is needed for NHDES to review the assertions made in the submittal. Please provide the following engineering evaluations for the current landfill configuration:

- Stability analyses, to include global stability for the static and seismic conditions as well as sloughing (e.g., infinite slope); and
- Settlement analyses, to include estimated rates of settlement for the top deck and side slopes and projections of when waste (including cover materials but excluding final cap consistent with Env-Sw 102.10) will settle to the permitted limits identified in Condition (7) of the Permit Modification dated October 9, 2020.

Please also provide engineering reviews, analyses, and conclusions regarding the compatibility of the current landfill configuration with the facility's:

- Leachate management system's design capabilities and limitations;
- Storm water management system's design capabilities and limitations; and
- Landfill gas management system's design capabilities and limitations.

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-2925 • Fax: (603) 271-2456 • TDD Access: Relay NH 1-800-735-2964

(2) Measures to Reduce, Eliminate and Prevent Recurrence

Env-Sw 1005.09(c)(5) requires that the incident report include measures the permittee has or intends to apply to reduce, eliminate, and prevent a recurrence of the incident or situation. Please provide details of the preventative measures NCES has taken or will take to assure additional overfills will not occur in this or other phases of the landfill.

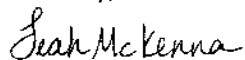
(3) Waste Relocation Plan

AO Item 2.b. requires a waste relocation plan. The incident report submitted on August 30, 2021 included a preliminary relocation plan that provided a general idea of how waste would be managed if waste relocation proceeds. However, additional information indicating the location and sequence of waste placement is necessary. The plan, as submitted, cannot be implemented without additional details and considerations. NHDES anticipates that a final waste relocation plan will be prepared consistent with and include items similar to those for a fill sequencing plan (see Env-Sw 805.11) Waste relocation plan sequencing must be developed in consideration of the landfill's stability, and the capabilities and limitations of the leachate and storm water management systems.

Please provide the additional information as identified above in items 1-3, in writing, ***as soon as possible***.

Should you have any questions or concerns related to this letter and the instructions provided herein, please contact me using the information provided in the signature below. Thank you again for your continued efforts, as we work towards compliance of the facility.

Sincerely,



Leah McKenna, Administrator
Solid Waste Management Bureau
Waste Management Division
Email: leah.l.mckenna@des.nh.gov

cc: Mark Johnson, Casella Waste Systems, email: mark.johnson@casella.com
Kevin Roy, Casella Waste Systems, email: kevin.roy@casella.com
Joshua Harrison, Esq., NHDOJ, email: joshua.c.harrison@doj.nh.gov
Bryan Gould, Esq., Cleveland Waste & Bass, email: gouldb@cwbp.com