

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WASTE MANAGEMENT COUNCIL

APPEAL OF NORTH COUNTRY ALLIANCE FOR BALANCED CHANGE

Docket No. _____

**PETITION FOR APPEAL FROM A DECISION OF THE
NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES**

Pursuant to RSA 21-O:14, I-a(a), Ec-Wst 201.01, and Ec-Wst 203.01, North Country Alliance for Balanced Change (NCABC or “Appellant”), through its attorneys, BCM Environmental & Land Law, PLLC, appeals the New Hampshire Department of Environmental Services’ (the “Department”) April 3, 2025 decision to deny an application for a Standard Permit for Solid Waste Landfill submitted by Granite State Landfill, LLC, a subsidiary of Casella Waste Systems, Inc. (GSL or “Applicant”) for its proposed landfill on the private road of Douglas Drive in Dalton and Bethlehem, New Hampshire (“Landfill” or “Proposal”). While the Department reached the correct result, its decision was nonetheless unlawful and unreasonable because it failed to identify all the bases upon which the application was incomplete.

I. APPELLANT

North Country Alliance for Balanced Change

P.O. Box 553

Littleton, NH 03561

(617) 797-2495

board@northcountryabc.net

II. APPELLANT’S REPRESENTATIVE

Amy Manzelli, Esq.

BCM Environmental & Land Law, PLLC

3 Maple Street
Concord, NH 03301
(603) 225-2585
manzelli@nhlandlaw.com

III. JURISDICTION

Pursuant to RSA 21-O:9, V and RSA 21-O:14, I-a, the Waste Management Council (the “Council”) is authorized to hear appeals of Department decisions.

IV. STANDING

The Appellant has standing under RSA 21-O:14’s “person aggrieved” standard that applies to appeals brought before the Council. Per RSA 21-O:14, I-a(a), “[a]ny *person aggrieved* by a department decision may, in addition to any other remedy provided by law, appeal such decision by submitting a notice of appeal to the council having jurisdiction over the subject matter of the appeal within 30 days of the date of the decision.” (Emphasis added.) The notice of appeal must include facts and/or law sufficient to establish that the appellant has standing to bring the appeal. Ec-Wst 203.03(c)(4)(b).

For purposes of RSA 21-O:14, I-a(a), a “person aggrieved” is a person who can show some direct, definite interest in the outcome of the proceeding. *Appeal of N.H. Dep’t of Envtl. Servs.*, 176 N.H. 379, 386 (2023). In determining whether an appellant has such an interest, the tribunal must conduct a factual inquiry. *Joyce v. Town of Weare*, 156 N.H. 526, 529 (2007). Under RSA 677:15’s similar “person aggrieved” standard, factors that the tribunal considers are: “the proximity of the plaintiff’s property to the site for which approval is sought; the type of change proposed; the immediacy of the injury claimed; and the plaintiff’s participation in the administrative hearings.” *Johnson v. Town of Wolfeboro Planning Bd.*, 157 N.H. 94, 99 (2008).

Standing does not extend “to all persons in the community who might feel that they are hurt by the administrative action.” *Appeal of N.H. Dep’t of Envtl. Servs.*, 176 N.H. at 386 (quoting *Golf Course Investors of NH v. Town of Jaffrey*, 161 N.H. 675, 680 (2011)) (internal quotation marks omitted). However, standing can be established based on present or future harm. *Id.* at 388.

NCABC has a direct, definite interest in the outcome of this proceeding. NCABC is located in New Hampshire’s Great North Woods—Coos and northern Grafton counties—with particular focus on Forest Lake, Burns Pond, the Ammonoosuc and Johns rivers, and the surrounding communities of Dalton, Whitefield, Littleton, and Bethlehem. NCABC works to advance initiatives and policies that balance the North Country’s natural attributes and economic interests, with particular focus on clean water and air, climate protection, and public health. Given the overlap of the Proposal with many of NCABC’s focus areas and concerns, NCABC has a clear direct, definite interest in the Landfill.

What is more, NCABC represents the interests of its individual members. Many of NCABC’s members and Board of Directors own property in the vicinity of the proposed landfill and recreate in the natural resources that would be impacted by the landfill. Further, NCABC has been highly involved in the administrative proceedings surrounding the landfill, submitting numerous letters to the Department, many of which were supported by experts hired by NCABC.

V. DECISION BEING APPEALED

On April 3, 2025, the Department, through Michael J. Wimsatt, Director of the Waste Management Division, issued a “Denial by Dormancy of Standard Permit Application” (the “Denial”) related to GSL’s Standard Permit Application No. 2023-66600 (the “Application”). A complete copy of the Denial is attached as **Exhibit A**. The Department issued the Denial on the basis that, pursuant to Env-Sw 102.65 and Env-Sw 304.06, the Application had not been

completed within twelve (12) months of the Department first notifying GSL that the Application was incomplete, rendering the Application dormant. The Department had issued its first notice of incompleteness on February 28, 2024, meaning that GSL had to fully complete its application by February 28, 2025 to avoid dormancy. Because GSL did not submit the information necessary to complete the application within one (1) year of the Department's initial determination of incompleteness (i.e., by February 28, 2025), the Application was deemed denied in accordance with Env-Sw 304.06(d) and Env-Sw 305.03(b)(6).

The Department provided two (2) reasons for determining that the Application remained incomplete:

1. The information submitted does not include a site report that demonstrates that the location of the proposed facility complies with all applicable siting requirements and that the site is a suitable location for the proposed facility as required by Env-Sw 314.03(a)(5). In addition, the maps, figures, and hydrogeological report submitted as part of the site report initially provided by the applicant on October 23, 2023 as Volume 2, Parts 1 & 2 (WMD Log No. 2023-66600-02 and -03) were not updated to demonstrate compliance with the re-adopted Part Env-Sw 804, *Siting Requirements*, of the Rules, which became effective on December 21, 2024.
2. The information submitted also does not include copies of the documents that demonstrate that the applicant and their successors and assigns will have a legal right for the use of the properties as proposed in the application as required by Env-Sw 314.03(a)(3).

While the Appellant concurs with the Department's decision to deny the Application based on dormancy and agrees with the Department's two bases for concluding that the Application remained incomplete, the Appellant asserts that there were additional grounds for incompleteness that should have been included in the Denial, as set forth in detail below.

VI. RELIEF REQUESTED BY APPELLANT

The Appellant requests that the Council affirm the Denial including those additional bases listed by the Appellant below.

VII. STATEMENT OF FACTS AND LAW

As set forth in Section V, *supra*, the Department only provided two (2) grounds for deeming the Application incomplete. However, as shown in detail below, the Application was incomplete on numerous other fronts, and these additional fronts should have been reflected in the Denial. Pursuant to Env-Sw 305.03(a)(2), a Department denial must “[s]tate the specific reason(s) for the denial.” Further, under Env-Sw 304.06(d), “[t]he applicant shall submit *all information* required to complete an incomplete application within one year from the date the application is initially determined incomplete in writing to the applicant by the department.” (Emphasis added.) Therefore, the Department was required to identify *all* the reasons why the Application was incomplete, and by not doing so, the Department’s decision was unlawful and unreasonable. Additional bases on which the Department should have concluded that the Application was incomplete include but are not limited to:

1. **Landowner Requirement; Easements and Rights-of-Way:** While the Department correctly identified that the information submitted by the Applicant did not include copies of documents that demonstrated a legal right to use the properties as proposed in the Application as required by Env-Sw 314.03(a)(3), the Application’s deficiency is even more extensive in this regard. Beyond providing the agreements, the Applicant had to demonstrate *complete ownership* of the entire facility pursuant to Env-Sw 804.06. *See* #2. The Applicant also had to demonstrate that all easements and rights-of-way met applicable requirements and clearly identify all easements and rights-of-way in its plans. *See* Env-Sw 1003.02, 1003.03; *see also* #8 below. Based on the information available for public review, the Application did not satisfy these requirements.

2. **Ownership of Douglas Drive:** Related to #1, the Applicant failed to demonstrate full ownership of Douglas Drive—which would have served as the site’s sole ingress and egress—pursuant to Env-Sw 1003.03(a) and Env-Sw 804.06. It is important to note that, for landfills such as the Proposal, *ownership* is required. Access, such as an easement or right-of-way, which may be sufficient for other types of solid waste facilities, does not meet the ownership requirement for landfills. Env-Sw 804.06 (“A new landfill shall be sited only on property which is owned by the permittee.” [old rule]) (“A landfill or landfill expansion shall be sited only on property which is owned by the permittee.” [new rule]).

3. **Agreements with Leachate Disposal Facilities:** Pursuant to Env-Sw 806.05(b)(3) [old rule] / 806.05(c)(2) [new rule], the Applicant was required to have written agreements with at least two (2) leachate treatment/disposal facilities to manage the leachate generated from the Landfill during its active life. While the Applicant provided a list of *proposed* facilities to accept leachate, it did not produce written agreements with any of these facilities. The Applicant’s final submittal dated February 27, 2025 (the “Final Submittal”) merely provided that “[a]pproved locations for leachate disposal are listed in Section 4.1.3 of the Operating Plan.” Final Submittal, Ex. 5 at 49. Therefore, this requirement remained incomplete.

4. **Reliability, Expertise, Integrity, & Competence:** According to RSA 149-M:9, IX(a) and Env-Sw 303.13–303.15, the Applicant had to demonstrate sufficient reliability, expertise, integrity, and competence to operate the Landfill. The Applicant both made misrepresentations in this regard in the Application, severely lacks sufficient reliability, expertise, integrity, and competence due to its extensive environmental noncompliance and many violations of environmental laws, and never provided the requirement statement of why, given its chronic violations of environmental laws, DES should grant a permit anyways. The onus was on the

Applicant to provide accurate and complete information about its eligibility, and it failed to do so in the Application.

Settlement Agreement with Bethlehem: Env-Sw 303.14(b)(8) specifically provides that, as part of its compliance certification, the Applicant had to certify that it was “in compliance with all terms and conditions under every ... settlement agreement relating to programs implemented by the department.” The Applicant’s parent company, Casella, entered into settlement agreements with the Town of Bethlehem in relation to the NCES Landfill. *See* Settlement Agreements, attached as **Exhibit B**. Part of the agreements was that Casella (nor any of its subsidiaries) would not attempt to site another landfill in Bethlehem. The Proposal is partially in Bethlehem, so the Applicant was violating the settlement agreements by attempting to site the Landfill there. The settlement agreements are related to the solid waste program implemented by the Department (and makes numerous references to the Department and related approvals/permitting), so the Applicant misrepresented again by certifying that it was in compliance with Env-Sw 303.14(b)(8).

5. **Public Benefit Analysis:** The Applicant had to prove that the Proposal met the public benefit requirement of RSA 149-M:11. This means that the Landfill itself—not affiliated facilities and entities—must have met the public benefit requirement on its own merits. Therefore, the Department should have stricken and not considered portions of the Application concerning the Applicant’s affiliated facilities and entities, namely a proposed new, separate recycling facility in an unknown location. When these outside considerations are stripped from the Application, the Applicant’s public benefit analysis is left wanting and does not provide a sufficient basis for the Department to determine that the Landfill would provide a substantial public benefit and thereby satisfy RSA 149-M:11.

6. **Risk Assessment for Leachate Contamination of Water Resources:** The Application lacked information to characterize the risk assessment for leachate contamination to water resources, especially groundwater. Without this data—which is critically important given the Landfill would generate leachate for decades near Forest Lake, the Ammonoosuc River, and other water resources—the Department could not have known the fate and transport of leaking leachate.

7. **Bethlehem Wrongfully Excluded as Host Municipality:** Host municipalities are afforded special treatment under the solid waste scheme. *See e.g.*, Env-Sw 314.08 [old rule]; Env-Sw 304.08(c)(2) [new rule]. Bethlehem was not treated as a host municipality for purposes of the state permitting process even though part of the Proposal would have been within Bethlehem and Bethlehem and its residents would have been exposed to the negative consequences of the Landfill. According to the Final Submittal, the Applicant did provide notice to Bethlehem under Env-Sw 303.07(c)(3) as a municipality with abutters, but it still did not treat Bethlehem as a host municipality under Env-Sw 303.07(b)(1). Final Submittal, Cover Letter at 2.

8. **Hunter Farm Road:** Hunter Farm Road is a public way that spans the proposed site and has never been discontinued. The Application made no provision for the fact that a public way runs through the proposed site. Notably, no work may be done in a highway right-of-way without permission from municipal officials. *See* RSA 236:9; *see also* RSA 41:11. The public also maintains rights to pass over and use Hunter Farm Road as a public way. The legal existence of Hunter Farm Road creates limitations on construction on and around it, which were not addressed in the Application.

9. **Peak vs. Residual Shear Strength:** The Application erroneously used peak shear strength rather than residual (post-peak) strength when dealing with liners on sloped surfaces.

10. **Financial Assurance Plan:** As the Department explained in its October 22, 2024 letter of incompleteness, the financial assurance plan included as part of the Application contained inconsistencies that had to be resolved before the Application could have been considered complete. *See* Env-Sw 314.12, 1403. Though the Final Submittal did provide information about bonding and having the bond held in a Standby Trust, it did not seem to relate back to and resolve the inconsistencies the Department requested the Applicant to resolve throughout the entire Application.

11. **Failure to Obtain Local Approvals:** As mentioned above, part of the Proposal is located within Bethlehem. Because Bethlehem has a zoning ordinance and site plan review regulations, the Applicant is subject to those municipal legal requirements. Further, in fact, the Application can *never* meet these municipal requirements because of Bethlehem's zoning ordinance and settlement agreements with Casella. The Applicant would also need to obtain municipal approvals pursuant to RSA 674:41 from both Bethlehem and Dalton for constructing facilities on a private road, which the Applicant has refused to do. The Application did not indicate that the Applicant has obtained or sought any such local approvals.

12. **Lack of Compliance with New Rules:** In its Final Submittal, the Applicant itself admitted that the Application remained incomplete. In response to the Department's request that the Applicant provide additional information as to whether the Proposal complied with the updated version of Chapter Env-Sw 800, the Applicant explained that "there are references throughout the text of the documents that refer the reader to various attachments in the application. *Many of these attachments have not been updated to comply with the new Rules* and are expected to be prepared and as discussed with NHDES staff, will be submitted to NHDES-WMD as part of the technical review process." Final Submittal, Cover Letter at 3–4 (emphasis

added). The fact that these attachments were not updated to comply with the new rules reveals that the Application—on its face—was incomplete.

In sum, the Department reached the correct result in denying the Application based on dormancy, but the way in which it reached that conclusion was unlawful and unreasonable because it failed to identify several additional bases upon which the Application was incomplete. The Appellant in no way challenges the two bases upon which the Department concluded the Application was incomplete, but as demonstrated above, the Application was deficient on numerous other grounds that should have been identified in the Denial. The Department's Denial should be modified to reflect *all* areas of incompleteness.

VIII. CONCLUSION

For the reasons set forth above, the Appellant respectfully requests that the Waste Management Council affirm the Denial with the additional bases upon which the Application was incomplete, including those listed in Section VII, *supra*.

Respectfully submitted,

**NORTH COUNTRY ALLIANCE FOR
BALANCED CHANGE**

By its Attorneys,

BCM Environmental & Land Law, PLLC

Dated: May 5, 2025

/s/ Amy Manzelli, Esq.
By: Amy Manzelli, Esq. (Bar No. 17128)
3 Maple Street
Concord, NH 03301
(603) 225-2585
manzelli@nhlandlaw.com

CERTIFICATION

I certify that, pursuant to Ec-Wst 201.01(a), on this date the foregoing was submitted in PDF format to appeals@des.nh.gov and within five (5) business days, the original and one copy will be delivered by First Class Mail to:

Waste Management Council
Attn: Appeals Clerk
Department of Environmental Services
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

I also hereby certify that on this date I have sent by electronic mail copies of this Notice of Appeal, including Exhibits, to all people listed below as required by Ec-Wst 203.01(d) and in accordance with Ec-Wst 201.03:

Michael J. Wimsatt
P.G. Director, Waste Management Division
michael.wimsatt@des.nh.gov

Toni King
Regional Environmental & Compliance Manager, Granite State Landfill LLC
toni.king@casella.com

Board of Selectmen, Town of Bethlehem
selectman1@bethlehemnh.org
selectman2@bethlehemnh.org
selectman3@bethlehemnh.org
selectman4@bethlehemnh.org
selectman5@bethlehemnh.org
admin@bethlehemnh.org

Town Clerk
Town of Bethlehem
townclerk@bethlehemnh.org

Board of Selectmen
Town of Littleton
vpotter@townoflittleton.org

Town Clerk
Town of Littleton
abrousseau@townoflittleton.org

Board of Selectmen

Town of Whitefield
administrativeassistant@whitefieldnh.org

Town Clerk, Town of Whitefield
townclerk@whitefieldnh.org

Courtney Bowler
Chair, Ammonoosuc River LAC
cf.bowler90@gmail.com

Tracie Sales
Rivers Coordinator, NHDES
tracie.j.sales@des.nh.gov

Michael Marchand
NH Fish & Game, Nongame & Endangered Species
michael.marchand@wildlife.nh.gov

Sabrina Stanwood
NH Div. of Forests & Lands, Natural Heritage Bureau
sabrina.stanwood@dncr.nh.gov

Maddie Severance
NH Div. of Forests & Lands, Natural Heritage Bureau
nhbreview@dncr.nh.gov

Nicholas Sanders
NHDOT Traffic
Nicholas.Sanders@dot.nh.gov

K. Allen Brooks
NHDOJ
Kelvin.A.Brooks@doj.nh.gov

Joshua Harrison
NHDOJ
Joshua.C.Harrison@doj.nh.gov

Samuel Nicolai, P.E.
Granite State Landfill, LLC
samuel.nicolai@casella.com

Marc Morgan
Granite State Landfill LLC
marc.morgan@casella.com

Robert J. Grillo, P.E.
CMA Engineers
rgrillo@cmaengineers.com

Adam Sandahl, P.E.
CMA Engineers
asandahl@cmaengineers.com

Timothy J. White, P.G.
Sanborn Head & Associates, Inc.
twhite@sanbornhead.com

James O'Rourke, P.G.
NHDES
james.w.orourke@des.nh.gov

Jaime Colby, P.E.
NHDES
jaime.colby@des.nh.gov

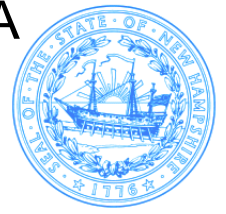
Mary Daun, P.E.
NHDES
mary.f.daun@des.nh.gov



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner

EXHIBIT A



VIA EMAIL ONLY

April 3, 2025

Toni King, Regional Environmental & Compliance Manager
Granite State Landfill LLC
c/o Casella Waste Systems, Inc.
25 Green Hill Lane
Rutland, VT 05702
Email: toni.king@casella.com

SUBJECT: Proposed Granite State Landfill (GSL), 172 Douglas Drive, Dalton, NH

Denial by Dormancy of Standard Permit Application

Standard Permit Application for Granite State Landfill, initially received October 31, 2023 and assigned Application No. 2023-66600

Dear Toni King:

The New Hampshire Department of Environmental Services, Waste Management Division (NHDES) is notifying you that pursuant to the New Hampshire Solid Waste Rules (the Rules), the below-described application for a solid waste landfill in Dalton, NH is incomplete and became dormant on February 28, 2025. As defined by Env-Sw 102.65 of the Rules, a dormant application is one for which the applicant fails to submit the information required to complete the application within 12 months of the date NHDES first notified the applicant that the application is incomplete. Pursuant to Env-Sw 304.06, "[a]n incomplete application that becomes a dormant application as defined in Env-Sw 102 shall be deemed denied without further action by the department." The application as of February 28, 2025, consisted of the following submittals:

- Granite State Landfill, LLC. (16 October 2023). Volume 1, Sections I-IV, Identification, Facility Description, Status of Other Permits/Approvals, and Legal Notifications and Agreements. Received October 31, 2023. Assigned WMD Log No. 2023-66600-01.
- Granite State Landfill, LLC. (16 October 2023). Volume 2, Part 1, Section V, Site Report with Attachments V(1)-V(4). Received October 31, 2023. Assigned WMD Log No. 2023-66600-02.
- Granite State Landfill, LLC. (16 October 2023). Volume 2, Part 2, Section V, Site Report Attachments V(5)-V(6). Received October 31, 2023. Assigned WMD Log No. 2023-66600-03.
- Granite State Landfill, LLC. (16 October 2023). Volume 3, Section VI, Preliminary Facility Design Plans and Specifications. Received October 31, 2023. Assigned WMD Log No. 2023-66600-04.
- Granite State Landfill, LLC. (16 October 2023). Volume 4, Section VII, Operating Plan. Received October 31, 2023. Assigned WMD Log No. 2023-66600-05.
- Granite State Landfill, LLC. (16 October 2023). Volume 5, Sections VIII-X, Closure Plan, Financial Report, and Performance History. Received October 31, 2023. Assigned WMD Log No. 2023-66600-06.
- Granite State Landfill, LLC. (16 October 2023). Volume 6, Sections XI-XIII, Public Benefit, Signatures, and Fee Calculation Form. Received October 31, 2023. Assigned WMD Log No. 2023-66600-07.

www.des.nh.gov

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

- Granite State Landfill, LLC. (16 October 2023). Volume 7, Full Size Plans for Design Drawings and Closure Plan. Received October 31, 2023. Assigned WMD Log No. 2023-66600-08.
- CMA Engineers, Inc. (8 December 2023). Supplemental Submittal – Certified Mail Receipts. Received December 12, 2023. Assigned WMD Log No. 2023-66600-09.
- CMA Engineers, Inc. (3 January 2024). Supplemental Submittal – Certified Mail Receipts. Received January 3, 2024. Assigned WMD Log No. 2023-66600-10.
- CMA Engineers, Inc. (6 February 2024). Supplemental Submittal – Certified Mail Receipts, and Additional Information for Hydrogeological Report, Traffic Study Report, and Geotechnical Report. Received February 8, 2024. Assigned WMD Log No. 2023-66600-11.
- CMA Engineers, Inc. (12 February 2024). Supplemental Submittal – Delivery Confirmations. Received February 12, 2024. Assigned WMD Log No. 2023-66600-12.
- Granite State Landfill, LLC. (19 April 2024). Response to NHDES Incomplete Application (Part 1: Exhibits 1-8; Part 2: Exhibits 9-16). Received April 22 and 25, 2024. Assigned WMD Log No. 2023-66600-13.
- Cleveland, Waters and Bass, PA. (22 April 2024). Submittal of Additional Information Responding to NHDES Incomplete Application Correspondence. Received April 22, 2024, stamped “confidential” by the applicant, and described in the Cleveland, Waters and Bass cover letter as “confidential business information, as that term is defined in Env-C 208.03(a)....”.
- Cleveland, Waters and Bass, PA. (17 June 2024). Submittal of Additional Information Responding to NHDES Incomplete Application Correspondence. Received June 17, 2024, stamped “confidential” by the applicant, and described in the Cleveland, Waters and Bass cover letter as “confidential business information, as that term is defined in Env-C 208.03(a)....”. Assigned WMD Log No. 2023-66600-14.
- Granite State Landfill, LLC. (23 August 2024). Response to NHDES Incomplete Application. Received August 28, 2024. Assigned WMD Log No. 2023-66600-15.
- Granite State Landfill, LLC. (26 November 2024). Response to NHDES Incomplete Application (#2023-66600). Received November 26, 2024. Assigned WMD Log No. 2023-66600-16.
- Cleveland, Waters and Bass, PA. (27 February 2025). Submittal of Additional Information Responding to NHDES Incomplete Application Correspondence. Received February 27, 2025, and stamped “confidential” by the applicant, and described in the Cleveland, Waters and Bass cover letter as “confidential business information, as that term is defined in Env-C 208.03(a)....”.
- Granite State Landfill, LLC. (27 February 2025). Response to NHDES Incomplete Application. Received February 27, 2025. Assigned WMD Log No. 2023-66600-17.

NHDES issued letters deeming the application incomplete on February 28, 2024; June 24, 2024; October 22, 2024; and January 27, 2025. These letters requested information necessary to deem the application complete. The letters also provided notice of the dormancy deadline. Based upon its review of your most recent submittals, NHDES has determined that the application remains incomplete for the following reasons:

1. The information submitted does not include a site report that demonstrates that the location of the proposed facility complies with all applicable siting requirements and that the site is a suitable location for the proposed facility as required by Env-Sw 314.03(a)(5). In addition, the maps, figures, and hydrogeological report submitted as part of the site report initially provided by the applicant

on October 23, 2023 as Volume 2, Parts 1 & 2 (WMD Log No. 2023-66600-02 and -03) were not updated to demonstrate compliance with the re-adopted Part Env-Sw 804, *Siting Requirements*, of the Rules, which became effective on December 21, 2024.

2. The information submitted also does not include copies of the documents that demonstrate that the applicant and their successors and assigns will have a legal right for the use of the properties as proposed in the application as required by Env-Sw 314.03(a)(3).

The February 28, 2024 incompleteness determination letter explained that the submitted legal agreements were heavily redacted, preventing NHDES review. Each of the subsequent incompleteness determination letters reiterated that copies of the legal agreements as required by Env-Sw 314.03 needed to be provided. The legal agreements submitted by the applicant failed to fulfill application requirements because they were heavily redacted and referenced other legal agreements, which were not provided. For instance, the Access Agreement and Option to Purchase Real Estate dated December 11, 2018, ("Option Agreement") included in Attachment IV(3) of Volume 1 of the Standard Permit Application for a Solid Waste Landfill dated October 16, 2023 (WMD Log No. 2023-66600-01) was heavily redacted. These redactions rendered it unable to fulfill permit application requirements.

Similarly, the applicant submitted a Memorandum of Understanding (MOU), under separate cover by Cleveland, Waters and Bass. NHDES received this MOU on April 22, 2024. The document was undated and unsigned. The applicant later submitted a signed version of the MOU (updated MOU), with signatures dated April 15, 2024, under separate cover by Cleveland, Waters and Bass, as indicated above. The updated MOU was received by NHDES on June 17, 2024 (WMD Log No. 2023-66600-14). However, the updated MOU does not fulfill application requirements because it was heavily redacted and references and relies on the terms of the Option Agreement, an April 23, 2019 amendment to that agreement, and a September 9, 2019 second amendment to that agreement, copies of which NHDES did not receive from the applicant. Additionally, the Option Agreement was between the current property owners and North Country Environmental Services, Inc. ("NCES"). In the applicant's April 19, 2024 response letter, the applicant references the modifications to the Option Agreement via the updated MOU and other amendments and that under the modified Option Agreement, the applicant has the right to acquire certain property. However, NHDES did not receive a copy of any assignment agreement between NCES and the applicant.

Finally, a separate submittal dated February 27, 2025, was provided under separate cover by Cleveland, Waters and Bass. NHDES received this document on February 27, 2025. While the applicant provided a short memorandum and an "interpolated agreement" discussing the legal agreements, no copies of such agreements were provided as required by Env-Sw 314.03(a)(3). Therefore, it does not satisfy application requirements.

As discussed, the following information was referenced in the documents submitted by the applicant but was not provided:

- An April 23, 2019 amendment to the Option Agreement referenced in Item B of the updated MOU;
- A September 9, 2019 amendment to the Option Agreement referenced in Item B of the updated MOU; and
- The assignment of rights from NCES to the applicant as referenced in Item D of the updated MOU.

Because the applicant did not submit information necessary to complete the application within one year of NHDES's initial determination of incompleteness, the application has been deemed denied in accordance with Env-Sw 304.06(d) and Env-Sw 305.03(b)(6). Any person aggrieved by this decision can file an appeal with the NH Waste Management Council (Council). Any such appeal must be filed directly with the Council in accordance with the Council's rules, [Env-WMC 204](#), *Appeals: Filing; Notice; Parties and Representatives; Scheduling; Motions*. 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 on the [Waste Management Council's website](#).

If you have any questions regarding this letter, please contact me.

Sincerely,



Michael J. Wimsatt, P.G., Director

Waste Management Division

Tel.: (603) 271-1997

Email: michael.j.wimsatt@des.nh.gov

ec: Select Board, Town of Dalton, email: selectmen@townofdalton.com and townadmin@townofdalton.com
Town Clerk, Town of Dalton, email: town.clerk@townofdaltonnh.gov
Board of Selectmen, Town of Bethlehem, email: selectman1@bethlehemnh.org selectman2@bethlehemnh.org;
selectman3@bethlehemnh.org; selectman4@bethlehemnh.org; selectman5@bethlehemnh.org;
admin@bethlehemnh.org
Town Clerk, Town of Bethlehem, email: townclerk@bethlehemnh.org
Board of Selectmen, Town of Littleton, email: vpotter@townoflittleton.org
Town Clerk, Town of Littleton, email: abrousseau@townoflittleton.org
Board of Selectmen, Town of Whitefield, email: administrativeassistant@whitefieldnh.org
Town Clerk, Town of Whitefield, email: townclerk@whitefieldnh.org
Courtney Bowler, Chair, Ammonoosuc River LAC, email: cf.bowler90@gmail.com
Tracie Sales, Rivers Coordinator, NHDES, email: tracie.j.sales@des.nh.gov
Michael Marchand, NH Fish & Game, Nongame & Endangered Species, email: michael.marchand@wildlife.nh.gov
Sabrina Stanwood, NH Div. of Forests & Lands, Natural Heritage Bureau, email: sabrina.stanwood@dncr.nh.gov
Maddie Severance, NH Div. of Forests & Lands, Natural Heritage Bureau, email: nhbreview@dncr.nh.gov
Nicholas Sanders, NHDOT Traffic, email: Nicholas.Sanders@dot.nh.gov
K. Allen Brooks, NHDOJ, email: Kelvin.A.Brooks@doj.nh.gov
Joshua Harrison, NHDOJ, email: Joshua.C.Harrison@doj.nh.gov
Samuel Nicolai, P.E., Granite State Landfill, LLC., email: samuel.nicolai@casella.com
Marc Morgan, Granite State Landfill LLC, email: marc.morgan@casella.com
Robert J. Grillo, P.E., CMA Engineers, email: rgrillo@cmaengineers.com
Adam Sandahl, P.E., CMA Engineers, email: asandahl@cmaengineers.com
Timothy J. White, P.G., Sanborn Head & Associates, Inc., email: twhite@sanbornhead.com
James O'Rourke, P.G., NHDES
Jaime Colby, P.E., NHDES
Mary Daun, P.E., NHDES

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

This Settlement Agreement and Mutual Release of All Claims ("Agreement"), dated as of November 9th, 2018, is made between the Town of Bethlehem, by and through its duly elected Board of Selectmen (the "Town"), and North Country Environmental Services, Inc. ("NCES") (together with the Town, the "Parties").

Recitals

- A. NCES owns and operates a municipal solid waste landfill on Trudeau Road within the Town's boundaries (the "Landfill").
- B. NCES filed an application for the abatement of its property taxes with the Town on February 27, 2018 (the "Abatement Application").
- C. The Town denied the Abatement Application on June 25, 2018.
- D. On June 26, 2018, the Town initiated a lawsuit (the "2018 Action") seeking declaratory relief with respect to some of the terms of the Parties' November 22, 2011, settlement agreement (the "2011 Settlement Agreement"). By the Parties' agreement, the Town filed a motion for voluntary nonsuit of the 2018 Action, which the court granted on July 27, 2018.
- E. NCES then filed an appeal of the Town's denial of the Abatement Application with the New Hampshire Board of Tax and Land Appeals ("BTLA") on August 31, 2018 (Docket No. 29055-17PT), (the "BTLA Appeal").
- F. The Parties have negotiated the proposed terms of a settlement of the BTLA Appeal, the issues raised in the 2018 Action, and other disputes between the Parties.
- G. This Agreement contains the terms negotiated by the Parties.

Terms and Conditions

NOW, THEREFORE, in consideration of the mutual covenants set forth below and of other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **NCES Abatement Application.** The Town shall immediately grant the abatement sought by the Abatement Application. NCES waives its right to collect any interest that would have otherwise been due to it under RSA 76:17-a.

2. Landfill Expansion Within District V.

- 2.1 The Town shall state publicly and in writing that it does not oppose the expansion of the Landfill in District V (as defined by the Town's 2018 zoning ordinance) known as "Stage VI," which is reflected on the plan attached to this Agreement as Attachment B. The limit of waste of Stage VI shall be confined within the boundary of District V as depicted in Attachment B, just as the limit of waste in Stage V is presently confined within the northern boundary of District V. The Town acknowledges and agrees that the placement of waste up to the boundary of District V as depicted in Attachment B will necessitate the alteration of the terrain immediately outside the District V boundary to provide physical and utility access and adequate support and stability to the perimeter of Stage VI. NCES's alteration of this terrain shall be in accordance with permits granted by the New Hampshire Department of Environmental Services ("NHDES").
- 2.2 NCES acknowledges and affirms (a) the restrictions on development set forth in Paragraph 5 of the 2011 Settlement Agreement and (2) that any expansion of the Landfill beyond Stage VI, as described in this Section 2, would require an amendment to the 2011 Settlement Agreement and to the Town zoning ordinance, both of which would require Town Meeting approval.

3. Future Property Tax Determination. In accordance with paragraph 8 of the 2011 Settlement Agreement, the Parties shall continue to employ the methodology (the "BTLA Formula") prescribed by the New Hampshire Board of Tax and Land Appeals in Docket Nos. 19709-02PT / 20384-03PT / 21064-04PT (the "BTLA Order") to determine the value of the parcels of real property owned by NCES and on which the Landfill and any Landfill infrastructure are sited (collectively, the "Property") for purposes of assessing ad valorem real property taxes. The Parties agree to the following terms for the application of the BTLA methodology for each tax year after the 2017 tax year (each of which, a "Tax Year").

3.1 Average Tipping Fees. The Town shall use as the "Tip Fee" in the BTLA Formula (as illustrated in the calculations on pages 13, 14, 19, and 20 of the BTLA Order) for each Tax Year the average tipping fee NCES received for each ton of waste deposited in the Landfill over the preceding calendar year (the "Tax Year Average Tip Fee").

3.1.1 In calculating the Tax Year Average Tip Fee, all tipping fees and tonnages of waste received from Casella Waste Systems, Inc. ("Casella") or any entity having Casella as its ultimate parent company or with the same ownership or management as Casella (each of which, an "Affiliate") shall be excluded.

3.1.2 For the period commencing on the date this Agreement is executed by NCES and all of the Town's selectmen and continuing until December 31, 2018 (the "2018 Floor Period"), NCES shall calculate the average tipping fee it receives for each ton of waste deposited in the Landfill, excluding tipping fees

EXHIBIT B

and tonnages of waste received from any Affiliate. If the calculated average tipping fee for the 2018 Floor Period is less than \$67 per ton, then in the calculation of the 2019 Tax Year Average Tip Fee the tonnage NCES received during the 2018 Floor Period will be deemed to have yielded an average tipping fee of \$67 per ton (the “\$67 Floor”).

3.1.3 Except as provided in Section 3.1.5, in any Tax Year after 2019, the Tax Year Average Tip Fee shall not be less than the \$67 Floor.

3.1.4 Subject to Sections 3.1.4.1 and 3.1.4.2, if at any time NCES receives a final standard permit or a permit modification from NHDES approving the design and construction of Stage VI and any and all appeal periods have expired without an appeal of such approvals (a “Stage VI Approval”), the Tax Year Average Tip Fee for the Tax Year in which such appeal periods expire, and for each Tax Year thereafter, shall not be less than \$85 per ton (the “\$85 Floor”).

3.1.4.1 If NCES, in its sole, unreviewable discretion, determines that conditions or restrictions set forth in a Stage VI Approval make development of Stage VI infeasible or uneconomic, then it may elect not to proceed with the development of Stage VI and the \$67 Floor shall remain in effect.

3.1.4.2 In the alternative, NCES, in its sole, unreviewable discretion, may elect to pursue modification of such conditions or restrictions through NHDES or through an appeal or other legal challenge, and if NCES receives an order or approval granting modifications that, in its sole, unreviewable discretion, make development of Stage VI feasible and economic, and all appeal periods have expired without an appeal of such order or approval, then the Tax Year Average Tip Fee for the Tax Year in which such appeal periods expire, and for each Tax Year thereafter, shall not be less than the \$85 Floor.

3.1.5 If NHDES denies NCES’s application for a Stage VI Approval or there is a successful appeal or other legal challenge to a Stage VI Approval, the \$67 Floor shall not be applied in the calculation of the Tax Year Average Tip Fee from the time of such denial or of the order in such appeal or legal challenge.

3.2 Affiliate Tonnage Depletion Rate. The tonnage of solid waste received by NCES from any Affiliate shall be included in the “Depletion Rate (Tons)” as that term is used in the BTLA Formula.

3.3 3.5% Escalator. The Town shall apply the assumed 3.5% increase in tipping fees adopted on page 10 of the BTLA Order to the Tax Year Average Tip Fee for each Tax Year to determine the present value of the Property (as illustrated in the calculations on pages 13, 14, 19, and 20 of the BTLA Order) for that Tax Year.

4. **Host Community Payment.** The Parties acknowledge and affirm that the host community payment paid by NCES to the Town is \$.75 (seventy-five cents) per ton, as described in Paragraph 3 of the 2011 Settlement Agreement.
5. **Dismissal.** Within seven days after the Parties sign this Agreement, counsel for the Town and for NCES shall execute and file with the BTLA such documents as are necessary to dismiss the BTLA Appeal with prejudice.
6. **Mutual Releases.** Each of the Parties (on behalf of themselves and their respective agents, representatives, parents, affiliates, subsidiaries, shareholders, directors, officers, employees, agents, representatives, successors, and assigns, as the case may be) (each, a "Releasing Party") releases and forever discharges the other Party (and their respective agents, representatives, parents, affiliates, subsidiaries, shareholders, directors, officers, employees, agents, representatives, successors, and assigns, as the case may be) (each, a "Released Party") of all claims that the Releasing Party made or could have made in the BTLA Appeal or the 2018 Action, including, without limitation, all manner of action or actions, cause or causes of action, suits, debts, damages, claims, demands, judgments, or executions whatsoever, whether known or unknown, whether under statute or in contract, tort, or otherwise, and whether in law or in equity, that the Releasing Party ever had or has now against any Released Party arising from the subject matter of the BTLA Appeal or the 2018 Action.
7. **Miscellaneous.**
 - 7.1 **No Admission.** This Agreement is not to be construed as an admission of liability on the part of any Party, and each Party expressly denies such liability.
 - 7.2 **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect unless such invalidity or unenforceability frustrates the purpose of the Agreement. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and full effect to the extent not held invalid or unenforceable, unless such invalidity or unenforceability frustrates the purpose of the Agreement.

EXHIBIT B

- 7.3 **Multiple Counterparts.** This Agreement may be executed in identical counterparts, which shall constitute one agreement when signed by all of the Parties' representatives.
- 7.4 **Additional Documents and Acts.** Each Party agrees to execute and deliver, from time to time, such additional documents and instruments and to perform such additional acts as may be reasonably necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.
- 7.5 **Governing Law.** This Agreement shall be governed, construed, and interpreted by, and in accordance with, New Hampshire law without regard to its conflicts of law rules or rulings.
- 7.6 **Representations.** Each Party to this Agreement represents that the Party is duly authorized to execute this Agreement and to enter into the settlement described herein. The Parties agree that one of the purposes of this Agreement is to "buy peace" and that this paragraph 7.6 is a substantial inducement for each of the Parties' entering into this Agreement.
- 7.7 **Fully Integrated Agreement.** The Parties agree that this Agreement sets forth their entire agreement, superseding all prior negotiations and agreements regarding the subject matter of this Agreement, whether written or oral with the exception of the 2011 Settlement Agreement. There are no collateral or outside agreements of any kind between the Parties other than those expressly reflected herein.
8. **Understanding of Agreement.** THE PARTIES WARRANT THAT THEY HAVE READ THIS SETTLEMENT AGREEMENT WITH MUTUAL RELEASES, HAVE DISCUSSED IT WITH THEIR RESPECTIVE COUNSEL, UNDERSTAND ITS TERMS, AND ARE EXECUTING IT VOLUNTARILY AND OF THEIR OWN FREE WILL.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

North Country Environmental Services, Inc.,

Date:

11/7/18

By:



Its Authorized Representative

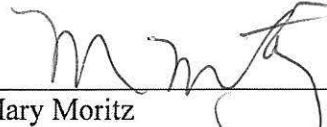
Brian Oliver

Signatures Continue on Next Page

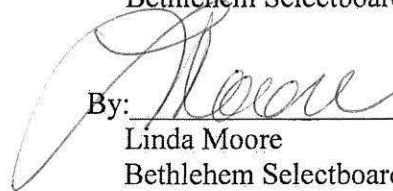
EXHIBIT B

Town of Bethlehem,

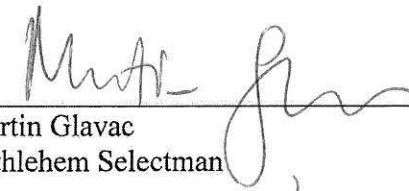
Date: 11/9/2018

By: 
Mary Moritz
Bethlehem Selectboard Chair

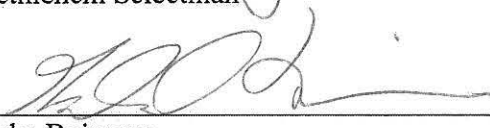
Date: 11/9/2018

By: 
Linda Moore
Bethlehem Selectboard Vice-Chair

Date: 11/9/2018

By: 
Martin Glavac
Bethlehem Selectman

Date: 11/9/2018

By: 
Gabe Boisseau
Bethlehem Selectman

Date: 11/9/2018


By: 
Richard Ubaldo
Bethlehem Selectman

EXHIBIT B

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

This Settlement Agreement and Mutual Release of All Claims ("Agreement"), dated as of November 22, 2011, is made between the Town of Bethlehem (the "Town") and North Country Environmental Services, Inc. ("NCES") (together with the Town, the "Parties").

Recitals

- A. NCES owns and operates a municipal solid waste ("MSW") landfill on Trudeau Road within the Town's boundaries (the "Landfill").
- B. NCES and the Town are parties to the consolidated cases entitled *North Country Environmental Services, Inc. v. Town of Bethlehem, Bethlehem Planning Board, and Bethlehem Zoning Board of Adjustment*, Docket No. 215-2001-EQ-00177, and *Town of Bethlehem v. North Country Environmental Services, Inc.*, Docket No. 215-20090EQ-00025, in the Grafton Superior Court (the "Litigation").
- C. On October 17, 2011, the Parties mediated their dispute pursuant to N.H. Superior Court Rule 170 (as amended effective July 1, 2011) and reached an agreement on the essential terms of a settlement.
- D. On October 21, 2011, the Parties' counsel executed a Memorandum of Understanding ("MOU") memorializing the essential terms upon which the Parties had agreed at the mediation; a copy of the MOU is attached as Attachment 1.
- E. The MOU expressly contemplated the drafting and execution of an agreement setting out the detailed provisions of the settlement.
- F. This Agreement constitutes the agreement contemplated by the MOU.

Terms and Conditions

NOW, THEREFORE, in consideration of the mutual covenants set forth below and of other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. **Residential MSW Pickup and Disposal.** Commencing with approval of this Agreement and the Zoning Amendments (as that term is defined in paragraph 4 below) by the voters of the Town at a special town meeting (the "Ratification and Approval Vote") and continuing until all the Landfill's current and future disposal capacity as approved by the New Hampshire Department of Environmental Services ("NHDES") has been exhausted (this period, the "Post-Settlement Life of the Facility"), NCES shall provide to all residences within the Town curbside pickup and disposal of MSW and curbside pickup of commingled recyclables at no charge to the Town or its residents. The frequency with which NCES will provide pickup services will be agreed upon from time to time with the Town, but NCES shall provide such services weekly unless the Town agrees to less

EXHIBIT B

frequent pickups after consultation with NCES. For purposes of this paragraph, NCES' capacity shall be exhausted when it can no longer receive MSW for disposal at the Landfill under its NHDES permits. To the extent that the Bethlehem Village District has independent authority over management of solid waste generated within its borders, it may elect whether to accept the pickup and disposal services provided by NCES under this paragraph. Nothing in this Agreement shall affect the obligation of commercial or industrial enterprises within the town to provide, at their own cost, for the pickup and disposal of the wastes they generate. During the Post-Settlement Life of the Facility, the Landfill will be available for disposal of wastes generated by commercial and industrial enterprises within the Town pursuant to the terms of such agreements as may be negotiated from time to time between any such enterprise and NCES.

2. **Trudeau Road Transfer Station.** During the Post-Settlement Life of the Facility, NCES will, at no charge to the Town or its residents, accept at its transfer station on Trudeau Road for processing or disposal all wastes that are generated by residents of the Town and that NCES is then permitted by NHDES to accept at the transfer station; provided, however, that NCES shall not accept MSW, construction and demolition debris, or any waste generated by any commercial or industrial enterprise at the transfer station. NCES shall operate its transfer station with its own employees for twenty-five hours each week, including 8:00 a.m. to 12:00 noon on Saturdays.
3. **Host Community Payment.** During the Post-Settlement Life of the Facility, NCES will pay the Town a host community payment at the rate of \$0.25 (twenty-five cents) for each ton of waste NCES accepts for disposal in the Landfill through December 31, 2017, and at the rate of \$0.75 (seventy-five cents) for each ton of waste NCES accepts for disposal in the Landfill commencing on January 1, 2018. The host community payment shall not be paid in connection with the placement of daily cover or material approved as alternative daily cover by NHDES. NCES shall make host community payments for each calendar quarter within thirty days of the end of such quarter. For each calendar year, NCES shall, within thirty days of the end of such year, provide the Town with an annual report of all waste disposed of in the Landfill for that year. Such report shall be generated by the "PC Scales" software or any equivalent replacement software used by NCES to track the number of tons of waste accepted for disposal in the Landfill. Within thirty days of its receipt of each report the Town shall be entitled to notify NCES in writing of its appointment of a qualified representative to audit the tonnages of waste accepted by NCES for that year. NCES shall provide such representative access to all records of its waste acceptance as may be reasonably necessary to enable the representative to verify the tonnages included in the report. Under no circumstances shall NCES be required to provide the Town access to records containing financial or any other proprietary business information, including, without limitation, fees charged for waste disposal.
4. **Enlargement of and Exemption Within District V.** Consistent with Paragraph 6 of this Agreement, the Town will place before a special town meeting, in accordance with all applicable statutory provisions but as promptly as reasonably possible, amendments to the Town's zoning ordinance in the form of Attachment 2 to this Agreement to enlarge

EXHIBIT B

the area of Zoning District V from 51 acres to 61 acres as depicted on the plan in Attachment 3 to this Agreement ("District V") and to exempt from the Town's "Aquifer Ordinance" the development and operation of a solid waste landfill within District V (together, the "Zoning Amendments"). The Town agrees that the intent and effect of the Ratification and Approval Vote will be to create a vested right in NCES to landfill throughout District V except to the extent expressly stated in Paragraph 5e of this Agreement. The Town agrees that any amendment to its zoning ordinance taking effect after the Ratification and Approval Vote shall not be applicable within District V if application of any such amendment would have the effect of prohibiting or restricting in any way NCES's use of District V for landfilling as provided for in this Agreement.

5. **Restrictions on Development.** Upon, and only upon, the Ratification and Approval Vote, NCES agrees on behalf of itself and its affiliates, successors, and assigns to the following restrictions upon the expansion of the Landfill and the development of future landfill capacity:
- a. NCES shall not expand the landfill or develop or operate any other landfill capacity within the Town's boundaries and outside of District V.
 - b. NCES shall not acquire any real property within the Town's boundaries for the purpose of developing or operating a landfill on such property.
 - c. NCES shall not seek or acquire any federal, state, or local permits to develop or operate a landfill within the Town's boundaries and outside of District V.
 - d. The final closed and capped elevation of the Landfill shall not exceed 1,483 (one thousand, four hundred and eighty-three) feet above the North American Vertical Datum of 1988 (NAVD88) at any location on NCES's property. NCES shall be entitled to deposit waste within those areas of the Landfill site where subsidence has taken place during ongoing landfilling activities. NCES shall not substantially discontinue ongoing landfilling operations for the purpose of allowing subsidence of the waste mass at the Landfill or remove the final cap placed over any landfill cell for the purpose of disposing of waste within airspace created by subsidence of the waste mass. Nothing in this Agreement shall prevent NCES from removing the cap in place at the time of the execution of this Agreement for the purpose of placement of an overliner and construction of airspace for Stage IV Capacity as approved by NHDES by permit modification of August 27, 2010, a copy of which is attached as Attachment 4 to this Agreement.
 - e. NCES shall not expand the Landfill into the two cross-hatched portions of its property as depicted on Attachment 5 to this Agreement, such areas being comprised of (1) the 7.16-acre area of land abutting Trudeau Road and formerly owned by Castello and Vaughn and (2) the approximately 4.33-acre area of land in the northeast corner of the 48.28-acre parcel as shown on a subdivision plan approved by the Town planning board in 1985 and recorded in the Grafton County Registry of Deeds as Plan #2598 (together, the "Infrastructure-Only

EXHIBIT B

Areas"). Within the Infrastructure-Only Areas, NCES shall be permitted to maintain, construct, or replace any infrastructure that is accessory to the land use of landfilling. A metes and bounds description of Infrastructure-Only Areas is set out in Attachment 6 to this Agreement.

- f. NCES shall grant a conservation easement by deed in the form of Attachment 7 on the approximately thirty-seven acres of NCES's property lying generally to the north of District V and described more particularly by metes and bounds within Attachment 7. Within thirty days after the Ratification and Approval Vote the Town shall notify NCES in writing whether the conservation easement is to be granted to the Town or to an entity that is unaffiliated with the Town, is organized, in whole or in part, for the purpose of administering and enforcing conservation easements, and has reasonable experience in the administration and enforcement of such easements. NCES shall, within fourteen days of receiving such written notice from the Town, execute and deliver to the Town a deed in the form of Attachment 7 naming as the grantee either the Town or the entity identified in such notice.
 - g. Once the 2,050,000 cubic yards of disposal capacity approved by NHDES Standard Permit No. DES-SW-SP-03-002 ("Stage IV Capacity") is exhausted, NCES shall not use mechanically stabilized earthen ("MSE") berms or any equivalent structure along the perimeter of any Landfill cell so as to enable it to dispose of additional waste on established sideslopes. NCES shall not use MSE berms in connection with the construction of any Landfill cell to accommodate Stage IV Capacity. Without modifying the foregoing provisions of this paragraph 5g, and for the avoidance of doubt, nothing in this Agreement shall prevent NCES from using conventional berming methods, including, without limitation, compacted earthen materials, riprap, and erosion matting, in the construction of any Landfill cell if such methods constitute reasonable and appropriate elements of the design of any such cell based on such factors as the terrain, sound construction techniques, cost, and landfill stability.
- 6. **Special Town Meeting.** The Town will convene a special town meeting as promptly as reasonably possible to seek the Ratification and Approval Vote.
 - 7. **Board of Selectmen Support.** The Town's board of selectmen agrees to support publicly the approval of this Agreement and the Zoning Amendments by the Town's voters.
 - 8. **Property Taxes.** During the Post-Settlement Life of the Facility the Town will continue to use the methodology prescribed by the New Hampshire Board of Tax and Land Appeals ("BTLA") in Docket Nos. 19709-02PT / 20384-03PT / 21064-04PT to determine the value of the parcels of real property owned by NCES and on which the Landfill and any landfill infrastructure are sited for purposes of assessing ad valorem real property taxes. NCES agrees that it will not seek the introduction of legislation amending New Hampshire law, including N.H. RSA 72:12-a, so that the Landfill will be

EXHIBIT B

exempt from ad valorem real property taxes. For the tax year commencing April 1, 2011, NCES will pay the Town property taxes on such parcels in an amount of the greater of \$200,000 or the tax payable under the BTLA methodology described in this paragraph.

9. **Dismissal.** Within seven days after the Ratification and Approval Vote, counsel for the Town and for NCES shall execute and file with the Grafton Superior Court the form of docket markings in Attachment 8 to this Agreement. The Parties agree that the dismissal of the Litigation pursuant to such filing shall not vacate any court orders entered in the Litigation and that neither of them shall appeal any such order to the New Hampshire Supreme Court.
10. **No Exactions Claim.** The Parties agree that nothing in this Agreement constitutes an unlawful exaction, and NCES agrees that it shall not seek a judicial declaration or any other form of relief premised upon a claim that any provision of this Agreement is an unlawful exaction.
11. **Mutual Releases.** Upon, and only upon, the Ratification and Approval Vote, each of the Parties (on behalf of themselves and their respective agents, representatives, parents, affiliates, subsidiaries, shareholders, directors, officers, employees, agents, representatives, successors, and assigns, as the case may be) (each, a "Releasing Party") releases and forever discharges the other Party (and their respective agents, representatives, parents, affiliates, subsidiaries, shareholders, directors, officers, employees, agents, representatives, successors, and assigns, as the case may be) (each, a "Released Party") of all claims that the Releasing Party made or could have made in the Litigation, including, without limitation, all manner of action or actions, cause or causes of action, suits, debts, damages, claims, demands, judgments, or executions whatsoever, whether known or unknown, whether under statute or in contract, tort, or otherwise, and whether in law or in equity, that the Releasing Party ever had, has now, or may ever have against any Released Party arising from the subject matter of the Litigation.
12. **Miscellaneous.**
 - 12.1 **No Admission.** This Agreement is not to be construed as an admission of liability on the part of any Party, and each Party expressly denies such liability.
 - 12.2 **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect unless such invalidity or unenforceability frustrates the purpose of the Agreement. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and full effect to the extent not held invalid or unenforceable, unless such invalidity or unenforceability frustrates the purpose of the Agreement.
 - 12.3 **Multiple Counterparts.** This Agreement may be executed in identical counterparts, which shall constitute one agreement when signed by all of the Parties.

- 12.4 **Additional Documents and Acts.** Each Party agrees to execute and deliver, from time to time, such additional documents and instruments and to perform such additional acts as may be reasonably necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.
- 12.5 **Governing Law/Forum Selection.** This Agreement shall be governed, construed, and interpreted by, and in accordance with, New Hampshire law without regard to its conflicts of law rules or rulings. The Parties agree that any litigation concerning the subject matter of this Agreement shall take place exclusively in the Grafton Superior Court. Each of the Parties agrees to submit to such jurisdiction for all purposes hereunder.
- 12.6 **Representations.** Each Party to this Agreement represents that the Party is duly authorized to execute this Agreement and to enter into the settlement described herein. The Parties agree that one of the purposes of this Agreement is to "buy peace" and that this paragraph 12.6 is a substantial inducement for each of the Parties' entering into this Agreement.
- 12.7 **Fully Integrated Agreement.** The Parties agree that this Agreement sets forth their entire agreement, superseding all prior negotiations and agreements, whether written or oral, including the MOU. There are no collateral or outside agreements of any kind between the Parties other than those expressly reflected herein.
13. **Understanding of Agreement.** THE PARTIES WARRANT THAT THEY HAVE READ THIS SETTLEMENT AGREEMENT WITH MUTUAL RELEASES, HAVE HAD AN OPPORTUNITY TO DISCUSS IT WITH COUNSEL, UNDERSTAND ITS TERMS, AND ARE EXECUTING IT VOLUNTARILY AND OF THEIR OWN FREE WILL.

EXHIBIT B

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

Date: North Country Environmental Services, Inc.,

By: _____
Its Authorized Representative

Date: TOWN OF BETHLEHEM,

By: _____
David Lovejoy, Chairman,
Bethlehem Selectboard

Date:

By: *Gerard Blanchard* 11-21-11
GERALD Gerard Blanchard
EN3 Bethlehem Selectboard

Date:

By: _____
Michael Culver
Bethlehem Selectboard

Date:

By: *Cassandra Lalame* 11-21-11
Cassandra Lalame
Bethlehem Selectboard

Date:

By: *Alecia Loveless* 11-21-11
Alecia Loveless
Bethlehem Selectboard