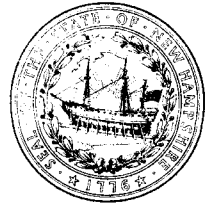




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

Hebron-Bridgewater Refuse District
Attn: Terence Murphy
297 Mayhew Turnpike
Bridgewater, NH 03222

Re: 290 Dick Brown Road, Bridgewater, NH

**ADMINISTRATIVE ORDER
No. 09-085 WMD**

December 3, 2009

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division, to the Hebron-Bridgewater Refuse District pursuant to RSA 149-M:15. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division (“DES”), 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. Hebron-Bridgewater Refuse District (the “District”) is a duly-constituted solid waste management district within the State of New Hampshire having a mailing address of 297 Mayhew Turnpike, Bridgewater, NH 03222.

C. STATEMENTS OF FACTS AND LAW

1. RSA 149-M authorizes DES to regulate the management and disposal of solid waste. Pursuant to RSA 149-M:7 the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Sw 100 - 2100 (the “Solid Waste Rules”) to implement this program.¹
2. The District operates a waste incinerator, collection, transfer, and storage facility on property located at 290 Dick Brown Road in Bridgewater, New Hampshire (the “Property”). The District previously operated a municipal solid waste unlined landfill (“MSWLF”) on the Property.
3. RSA 149-M:9 states “No person shall construct, operate, or initiate closure of a public or private facility without first obtaining a permit from the DES.”
4. RSA 149-M:7, XIV authorizes DES to establish minimum standards for closing all solid waste facilities according to type of waste disposed of, and to establish state closure guidelines for all facility owners and operators which includes, but is not limited to, monitoring, restoration,

¹ Prior to October 28, 2005, the Solid Waste Rules were codified as Env-Wm 100-300, 2100-3700.

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

correction and compliance procedures which may be necessary in the maintenance of a closed landfill facility.

5. The landfill on the Property is subject to federal and state closure requirements and post-closure requirements in accordance with 40 CFR 258, Env-Sw 807 and Env-Sw 1106.

6. RSA 149-M:9, X, authorizes DES to require evidence of financial responsibility necessary to protect the public health and welfare and the environment; and insure that appropriate measures will be taken in the event that operations at a MSWLF are abandoned, interrupted, or stopped.

7. Env-Sw 1400 establishes requirements for solid waste facilities to provide financial assurance for the cost of facility closure, including in the case of a landfill, the cost of required post-closure care.

8. On October 9, 2001 DES issued Letter of Deficiency ("LOD") No. WMD 01-039. LOD No. WMD 01-039 was issued to the Town of Bridgewater for failing to provide DES with information necessary to demonstrate that adequate funds would be available for the costs of closure and post-closure care for the MSWLF on the Property. DES requested that the Town of Bridgewater submit the necessary information within thirty days of receipt of the LOD.

9. On November 14, 2001, DES personnel inspected the Property. During the inspection, DES was informed that the District had been stockpiling ash from the incinerator adjacent to the MSWLF on the Property.

10. DES sent additional correspondence to the District on May 10, 2002; August 16, 2002; May 21, 2003; May 4, 2004; May 4, 2005 and on May 12, 2006 notifying the District that the annual financial assurance information required by 40 CFR 258.74 and Env-Sw 1403.04(b) had not been received by DES.

11. As of the date of this Order, DES has not received the required financial assurance documentation from the District.

12. On July 26, 2002 DES received a draft document submitted by the District outlining future activities on the Property. The District stated in the draft document that it would be hiring an engineering firm to help develop a plan for the closure of the MSWLF.

13. On August 14, 2002, the District informed DES that it had ceased disposing of waste at the MSWLF on the Property.

14. On September 27, 2002, DES staff met with District representatives to discuss permitting issues and closure requirements for the MSWLF on the Property.

15. On October 31, 2002, DES sent a letter to the District summarizing the issues discussed during the meeting on the Property held on September 27, 2002. In the letter, DES reiterated that an engineering firm familiar with the landfill closure process in New Hampshire should be hired to prepare a preliminary and a final grading plan for the MSWLF on the Property.

16. On March 10, 2003, DES received a letter from the District informing DES that CMA Engineers, Inc. of Portsmouth, New Hampshire had been hired to provide engineering services, assist with permits, and prepare a hydrogeologic study associated with the closure of the MSWLF on the Property. In the letter, the District proposed to close the MSWLF on the Property by September of 2004.

17. On March 21, 2003, DES received a scope-of-work proposal from the District for conducting a hydrogeologic study of the MSWLF on the Property.

18. On April 4, 2003, DES sent a letter to the District approving the scope-of-work proposal subject to additional requirements. In the letter, DES also requested a plan from the District to manage the ash pile and reminded the District it was required to submit a closure schedule for the MSWLF on the Property.

19. As of the date of this Order, DES has not received the requested plan to manage the ash pile located on the Property.

20. On October 7, 2003, DES sent a follow-up letter to the District noting that DES had not received a hydrogeologic report for the MSWLF on the Property as provided for in the scope-of-work approved on April 4, 2003.

21. On August 14, 2007, DES staff revisited the Property and met with officials from the District. During the inspection, District officials informed DES that the MSWLF on the Property had been closed in 2005 using design plans prepared by CMA Engineers, Inc. and that the work was conducted by a local contractor. District officials were reminded at that time that landfill closure projects require DES approval and that an established closure procedure is required by federal law and the Solid Waste Rules.

22. DES was also informed by the District during the inspection on August 14, 2007 that it had been chipping construction and demolition debris ("C&D") and using the chipped C&D as ground cover at the incinerator on the Property. DES staff informed the District that chipped C&D is a solid waste that must be disposed of at a permitted facility.

23. RSA 149-M:4, IV-a defines C&D debris, in part, as non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads.

24. Pursuant to RSA 149-M:4, IV-a and Env-Sw 102.42, C&D debris includes, but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals.

25. On September 4, 2007, DES sent a letter formally notifying the District that DES had not been informed of the closure of the MSWLF on the Property in 2005. DES requested that the District submit the following: a letter from a qualified engineer certifying that closure of the MSWLF on the Property was completed in accordance with the Solid Waste Rules and approved

closure plans; an approved Notice of Intent to Construct; record drawings of the completed cap; and a copy of an approved post-closure monitoring and maintenance plan.

26. DES also reminded the District in the letter dated September 4, 2007 that the chipped C&D on the Property is a solid waste and must be managed as a solid waste, and requested that the District submit a plan to DES within 45 days of receipt of the letter with a schedule for the proper removal and disposal of the chipped C&D.

27. On October 31, 2007, DES received e-mail correspondence from the District informing DES that the chipped C&D debris was being "slowly removed" from the Property and clean wood put in its place.

28. On November 1, 2007, DES received e-mail correspondence from the District informing DES that the chipped C&D debris would "most likely" be completely removed by the following spring and that updates would be provided to DES as progress was made.

29. On August 1, 2008, DES staff revisited the Property. DES personnel observed chipped C&D spread on the ground behind the incinerator and in the recyclables stockpile area. DES staff observed a significant quantity of painted wood, particle board and other construction materials containing adhesives, with noticeable amounts of plastic and metal on the Property.

30. As of the date of this Order, DES has not received the requested plan and schedule for removal of the chipped C&D from the Property, and its proper disposal.

31. On August 26, 2008, District officials met with DES staff and showed DES staff the closure design plans prepared by CMA Engineers, Inc. that were used to close the MSWLF on the Property in 2005. The closure design plans were marked "preliminary."

32. As of the date of this Order, DES has not received the requested documentation certifying that the closure of the MSWLF on the Property was completed in accordance with RSA 149-M:9 and the Solid Waste Rules.

D. DETERMINATION OF VIOLATIONS

1. The District violated 40 CFR 258, Env-Sw 807.03(b)(12) and Env-Sw 1403.04(b) by failing to provide proof of financial assurance for the cost of facility closure and the cost of required post-closure care for the MSWLF on the Property.

2. The District violated Env-Sw 1106.01 by failing to submit to DES a Notice of Intent to Close the MSWLF prior to undertaking construction of the landfill closure plan.

3. The District violated Env-Sw 1106.01 and Env-Sw 1104.03 by failing to obtain approval from DES prior to commencing closure construction of the MSWLF.

4. The District violated RSA 149-M:9 and Env-Sw 1106.03 by failing to close the MSWLF in accordance with the Solid Waste Rules and an approved closure plan in conformance with Env-Sw 1106.04.

5. The District violated Env-Sw 1104.06 by failing to employ a qualified professional engineer to oversee construction during the MSWLF cover project.
6. The District violated Env-Sw 1104.07(a) by failing to submit status reports on construction of the Landfill cover to the DES.
7. The District violated Env-Sw 807.05(k) and Env-Sw 1104.07 (f)(1) by failing to provide record drawings of the closed MSWLF to DES.
8. The District violated Env-Sw 1104.07(f)(2) by failing to provide an engineer's certification to DES following completion of the MSWLF cover project.
9. The District violated RSA 149-M:9, II, for unlawfully disposing of the chipped C&D on the Property.
10. The District violated Env-Sw 405.02(c) by failing to properly manage the chipped C&D observed on the Property.
11. The District violated Env-Sw 902.04(a) by failing to properly dispose of the ash pile located on the Property.

E. ORDER

Based on the above findings and determinations, DES hereby orders the District as follows:

1. **The District shall immediately** cover the ash pile and divert stormwater away from the ash pile for so long as it remains on the Property.
2. **Within 30 days of the date of this Order**, the District shall submit to DES a scope of work proposal prepared by a qualified professional engineer to investigate and document the MSWLF capping system. The scope of work proposal shall include, but not be limited to, work required to determine and report the following: as-built cross sections of the MSWLF detailing the crown, side slopes, toe of slope, and drainage swales (if any) drawn in accordance with standard engineering practices; a detailed assessment of the type of wastes buried within the MSWLF; a final grading plan drawn in accordance with Env-Sw 1103.05; all test pit logs; a description of the proposed construction/action sequence and methods for accomplishing implementation of the plan with anticipated compliance dates; and a detailed assessment on whether the materials used in the construction of the MSWLF capping system meet the minimum requirements for a landfill capping system pursuant to Env-Sw 805.10.
3. **The District shall implement the scope-of-work plan** only after receiving written approval from, and as conditioned by, DES according to the approved schedule. A qualified, professional engineer shall oversee all field activities identified in the approved scope-of-work plan and submit a signed and stamped report to DES for review and comment.
4. **Within 30 days of the date of this Order**, the District shall submit to DES an ash sampling plan. The ash sampling plan shall include an estimate of the volume of the ash pile, the number of ash samples to be collected, and the parameters to be used in the testing of the samples.

5. **Within 60 days after receiving DES approval of the ash sampling plan**, the District shall submit a report documenting the quality of the ash, including the analytical test results by a certified laboratory, and a proposed schedule for proper disposal of the ash at an authorized facility. The District shall implement the disposal of the ash only after receiving written approval from, and as conditioned by, DES according to the approved schedule.
6. **Within 60 days of the date of this Order** the District shall submit proof that all of the C&D on the Property has been removed to an authorized facility. Documents substantiating that all C&D has been completely removed from the Property shall include: invoices identifying the type and weight of the material removed; date(s) the material was removed; the name and address of the disposal facility; and a letter signed by District officials attesting to the fact that all C&D was properly managed during its removal from the Property.
7. **Within 60 days of the date of this Order** the District shall submit proof of financial assurance for the MSWLF using an authorized mechanism identified in Env-Sw 1403.03.
8. The District shall send all correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Douglas Kemp, Waste Management Specialist III
DES-WMD Solid Waste Management Division
P.O. Box 95, Concord, NH 03302-0095
(603) 271-2925
e-mail: douglas.kemp@des.nh.gov

All questions regarding the proof of financial assurance requirements pursuant to Env-Sw 1403 shall be directed to Ms. Laura Kieronski at 603-271-0675 or laura.kieronski@des.nh.gov.

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://des.nh.gov/organization/commissioner/legal/rules/index.htm> (scroll to end of page). Appealing the Order does not automatically relieve the District of the obligation to comply with the Order.

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. The District remains obligated to comply with all applicable requirements, in particular RSA 149-M and the Solid Waste Rules. DES will continue to monitor the District's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

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

~~COPY~~ *for Michael Wills, AS 4. Comm.*
Thomas S. Burack, Commissioner
Department of Environmental Services

cc: DES Legal Unit

ec: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Hebron Select Board
Bridgewater Select Board
Pamela Hoyt-Denison, P.E., Adm., DES-WMP
Michael Guilfooy, P.E., Adm., DES-SWMB
Douglas Kemp, DES-SWMB
Laura Kieronski, DES-SWMB