Dear Ms. Gauthier,

As stated in NHDES’ letter dated April 22, 2022, we are issuing NHDES’ Response to Public Comments on the Type I-A Permit Modification Application (No. 2020-48625) to expand the Mt. Carberry Secure Landfill under separate cover. Find NHDES’ responses attached.

If you have questions concerning the attached, please contact me.

Regards,
Jaime

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I. Introduction

On April 2, 2020, the New Hampshire Department of Environmental Services (NHDES) received an application from the Androscoggin Valley Regional Refuse Disposal District (AVRRDD or the District) to modify Permit No. DES-SW-88-029 for expansion of AVRRDD’s Mt. Carberry Secure Landfill located on Bean Brook Road in Success, New Hampshire. The proposed expansion, called Phase IIIA, would add approximately 4,992,000 cubic yards of capacity and extend the facility’s life expectancy by about 16.3 years into 2041. The applicant also submitted an application for waiver of Env-Sw 804.03(e) regarding a wetlands setback, Env-Sw 805.05(j) regarding penetrations in the existing landfill liner system, and Env-Sw 805.07(b)(1) regarding the 24-hour leak detection time within the existing landfill liner system. On April 22, 2022, NHDES issued its decision to approve the requested permit modification and waivers. This document addresses concerns raised by the public during the public comment period and hearing on the application for expansion.

NHDES held a public hearing on the application in Berlin, NH on December 16, 2021 and kept the public comment period/hearing record open through January 7, 2022. During the public hearing and public comment period, NHDES received comments on various aspects of the application.

NHDES considered all public comments in evaluating whether the proposed expansion meets applicable criteria for issuance of the requested permit modification, as further detailed below. To avoid redundancy in this document, NHDES has not responded individually to each and every comment received. Instead, the agency has summarized and consolidated individual comments that expressed similar thoughts or concerns, and responded to the consolidated comments. The consolidated comments and responses are organized and grouped by focus area as shown in the Table of Contents of this document. The consolidated comments are shown in italic type. The responses are shown in regular type.

Throughout this document there are many references to the New Hampshire Solid Waste Rules (Env-Sw 100 et seq.).1 The Solid Waste Rules, adopted pursuant to RSA 149-M, establish provisions for all types of solid waste facilities, from transfer stations to landfills, and were developed with the express purpose of minimizing risks to the environment, public health and safety by assuring proper management of solid waste. Relative to permit decisions, the Solid Waste Rules provide the criteria by which permit modifications shall be

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1 The New Hampshire Solid Waste Rules (Env-Sw 100 et seq.) are available online at: https://www.des.nh.gov/organization/commissioner/legal/rules/index.htm#solid
granted or denied. Review of AVRRDD’s application proceeded according to these rules and is documented in the Application Review Summary, issued concurrently with the Record of Modification to a Solid Waste Management Facility Permit and this Response to Public Comments. Both of those documents, as well as this document, are available via NHDES’ OneStop Data and Information retrieval system at https://www.des.nh.gov/onestop/index.htm.

Where applicable in the responses below, NHDES has noted Solid Waste Rule and permit requirements that relate to the subject of individual comments. NHDES has also noted, where applicable, when comments expressed concerns regarding subjects outside the purview of NHDES’ solid waste permitting authority.

II. Permitting, Design & Operations

1. Permitting

   a. Regarding the application package, specifically the 2009 hydrogeologic report by Sevee & Maher Engineers, Inc. (attached to the Mt. Carberry application), one commenter noted the following:
      
      • The use of the 99th percentile upper confidence limit (UCL) on the mean of the distribution of hydraulic conductivity measurements in Table 2-2 may be excessively precautionary. EPA recommends the use of the 95th percentile UCL in its 2002 guidance for estimating pollutant exposure at waste sites (https://www.epa.gov/sites/default/files/2016-03/documents/upper-conf-limits.pdf). I encourage AVRRDD’s consultants to revise this calculation, but just by “eyeball” of the data in Table 2-2, I would suspect that the 95th UCL is about half of the 99th, and so this change would increase estimated travel times to vulnerable surface waters by a factor of two.
      
      • There is a typo on page 2-27. Using Darcy’s equation [velocity=(conductivity times gradient)/(porosity)], the seepage velocity in (shallow) bedrock is 51.7 feet per YEAR, not 50 feet per DAY as the report states.

   NHDES notes that the EPA report referenced by the commenter is for hazardous waste sites, which the Mt. Carberry Secure Landfill is not. However, NHDES has provided these comments to AVRRDD and its consultant.

   b. We urge NHDES to carefully scrutinize the environmental, health, and community impacts associated with the proposed Landfill expansion, including but not limited to the vulnerability of groundwater and surface water sources; the presence of toxics, including per- and polyfluorinated alkyl substances (“PFAS”) in landfill leachate; air pollution...
associated with landfill gases, including methane (which can never be completely captured while a landfill is operational), and with truck traffic; and noise and odors.

NHDES reviewed the application in accordance with the applicable Solid Waste Rules and the Solid Waste Management Act, RSA 149-M. NHDES’ review is summarized in the Application Review Summary issued concurrently with the decision. NHDES’ consideration of groundwater and surface waters is addressed through the siting criteria in Env-Sw 804 and Env-Sw 1003. NHDES’ consideration of landfill leachate is addressed in Env-Sw 805.06 and Env-Sw 806.05. NHDES’ consideration of methane is addressed in Env-Sw 806.07; in addition, the Permittee must obtain the required air permits from NHDES, consistent with Env-Sw 101.02(d). Traffic is considered in accordance with Env-Sw 1004.02 and Env-Sw 1005.03. Noise and odors are variably addressed throughout the Solid Waste Rules; for example, Env-Sw 1005.01 requires the permittee to control to the greatest extent practicable nuisance conditions. In addition, NHDES has added a permit condition requiring the permittee to include in its quarterly reports complaints received and how they are addressed, and an annual odor control evaluation.

c. NHDES should delay a final decision until after October 2022, when it has a new, updated State Waste Plan. NHDES cannot reasonably render a substantial public benefit determination under RSA 149-M:11, III(c) on the basis of a state waste plan issued nearly two decades ago.

NHDES is obligated to issue a decision within the timeframes established in RSA 149-M and RSA 541-A, and has done so.

2. Design & Siting

a. What does a wetlands setback waiver mean? I did not hear this covered at the hearing. Why?

A request for waiver is a request to waive, or set aside, a particular rule and use an alternative method or procedure to comply with the intent and purpose of the waived rule. At the hearing, AVRRDD’s representatives briefly identified the need for a waiver to the wetland setback requirement in Env-Sw 804.03(e). AVRRDD has requested a reduced setback to a wetland that is co-located with part of the facility’s drainage system to ensure more efficient and effective design of the landfill. See NHDES’ review of the waiver request in Attachment B of the Application Review Summary issued concurrently with the NHDES’ decision to approve the expansion. NHDES has approved the requested waiver.
3. Operations

a. **Hotline number did not work.**

NHDES is not aware of a hotline number for this facility. To contact the facility, please call (603) 752-3342 or (603) 752-4388. In consideration of this comment, NHDES has added a condition to the facility permit to include contact information on the facility’s existing public-facing webpage.

b. **I was not allowed to take a tour of the landfill.**

Landfill tours are given at the discretion of the permittee.

c. **How do they plan on making sure they don’t have so many spills like they have had in the past with their leachate pipe system? It looks like they plan to use the same system?**

Leachate spills were reported in 2016 at the facility, and in 2018 at the Shelby Street sump. AVRRDD does plan to continue using the same system downstream of the Phase IIIA expansion. The facility’s operating plan and the Solid Waste Rules require periodic inspection and maintenance of these systems, and repair as needed.

d. **I urge DES to require that AVRRDD conduct more extensive (and more successful!) loadchecking of wastes coming to it, and that DES should do its own spot surveillance, as staff and resources allow, to help ensure that additional quantities of hazardous chemicals do not enter the landfill. I may be ignorant of all the disparate parts of the DES Code, but I don’t see any language in Env-Hw or in Env-Sw that tracks the federal requirements (40 CFR §258.20) for operators to implement a load-checking program.**

Env-Sw 803.04(a)(2) requires permittees to comply with 40 CFR §258.20, *Procedures for excluding the receipt of hazardous waste*. Further, Env-Sw 1005.02 requires regularly inspecting the waste received and managed at a facility to prohibit unauthorized use, and Env-Sw 1105.09 requires incoming wastes to be inspected and unauthorized wastes to be rejected. The facility’s operating plan also includes provisions regarding waste inspection, specifically in Section 3, which requires operators to inspect each load during tipping and placement.

e. **I also urge DES to look into whether, given all the improvements in recent years in developing cheaper real-time sensors for air pollutants, whether it now makes sense to require MSW operators (again, all operators in the state, not just Carberry) to examine via**
sensor some or all incoming loads for unusually high levels of volatile chemicals, before the material is dumped and can never be undone.

Current rules do not specifically require such monitoring. NHDES has noted this comment for consideration during future rulemaking.

III. Impacts to Surrounding areas

4. Odor

a. A commenter expressed concern that AVRRDD has not always been responsive to odor complaints. The commenter requested that, as the landfill expands, landfill gas wells be installed sooner, installed more frequently, and/or installed in a larger number.

NHDES has added to the permit modification two requirements relative to this comment: inclusion of complaints with quarterly operations reports, and an annual odor control evaluation. NHDES anticipates that more frequent review of complaints, including odor complaints, will assist AVRRDD in identifying issues with its odor control practices and expanding landfill gas control systems in a timely manner.

b. Will [the expansion] effect the near Alpine Brook shown on their map? What are the rules for this? How close is it to the Alpine Brook?

NHDES does not anticipate that the expansion will affect Alpine Brook. Alpine Brook is approximately 360 feet from the existing landfill and approximately 990 feet from the proposed expansion. The NH Solid Waste Rules address siting relative to surface water protection in multiple parts, including Env-Sw 804.03 and Env-Sw 1003.04. These rules establish minimum requirements, including compliance with RSA 483 relative to protection of rivers. While the minimum distance required between the footprint of a landfill and a perennial surface water body shall not be less than 200 feet, Env-Sw 804.03(b) requires that a landfill and all associated leachate storage units be located only in areas where potential adverse effects to surface water quality, due to erosion sedimentation, siltation, flood, or discharge of contaminants, can be prevented or minimized and mitigated by facility design.

c. How close will it be to the Appalachian Conservancy and the State Forest land if it gets approved?

The existing and proposed landfill footprints are about three-quarters of a mile from the Appalachian Trail Conservancy, about 1 mile from the Mahoosuc Gateway conservancy, and about 3.5 miles from the nearest State park or forest.
IV. Solid Waste Management Diversion & System Capacity

5. Out-of-State Waste

a. NHDES should capitalize on the AVRRDD proposal as an opportunity to transition to solid waste management that solves the State’s problem with out-of-state waste and enables achievement of the State’s Waste Reduction Goal and Waste Management Hierarchy.

NHDES should preclude AVRRDD’s importation of out-of-state waste and work with AVRRDD to establish a greater role for the Facility for New Hampshire waste generators.

NHDES takes note of the concerns related to increasing waste diversion from disposal, reducing reliance on landfills, honoring the waste management hierarchy, and reducing the importation of out-of-state waste.

With regard to increasing waste diversion and reducing reliance on landfills, NHDES continues to use the tools at its disposal to advance these goals. Specific to the Mt. Carberry decision, NHDES has included a provision, consistent with the public benefit determination required in accordance with RSA 149-M:11, that encourages AVRRDD to assist in reducing the disposal of MSW and C&D debris, and assist generators in reducing their reliance on landfilling. NHDES notes that, while least preferred, landfilling is a part of the waste management hierarchy and certain wastes, such as asbestos, are most properly disposed at a lined landfill.

Regarding out-of-state waste, AVRRDD has applied for an expansion of its existing operation and proposes no change to its unlimited service area. While NHDES cannot specifically prohibit importation of waste not generated in New Hampshire, NHDES did include a condition in the permit for expansion requiring that disposal capacity be made available to New Hampshire generators. All waste received at the facility, regardless of source, is required to conform with the list of approved wastes specified in the permit.

6. Need for expansion

a. Why does Mt Carberry need to expand?

AVRRDD states in the application that it has requested an expansion so that it can continue to serve the waste disposal needs of its member communities, consistent with the goals of the AVRRDD solid waste district.
7. Need for additional capacity

a. **NHDES should delay operations of the proposed landfill expansion until there is a disposal capacity need, assess the short- and long-term need for disposal capacity based on recent amendments to RSA 149-M:2, and consider a larger waste management role for AVRRDD.**

NHDES assessed disposal capacity need in accordance with RSA 149-M:11; see Attachment A of the Application Review Summary issued concurrently with the decision. NHDES has added provisions to the permit modification to encourage AVRRDD to continue increasing its role in diverting MSW and C&D from disposal.

b. **AVRRDD’s methodology for assessing disposal capacity need, and a rate for filling that disposal capacity, is flawed and must be corrected to address the state’s new waste reduction goal.**

NHDES agrees that the waste disposal reduction goals in RSA 149-M:2 need to be taken into consideration in assessing disposal capacity need. NHDES made its determination of public benefit in consideration of RSA 149-M:11 and the therein referenced RSA 149-M:2 and RSA 149-M:3. See Attachment A of the Application Review Summary issued concurrently with NHDES’ decision on the application.

c. **NHDES also should revisit the rate of landfilling proposed by AVRRDD, making every effort to preserve capacity for as long as possible.**

AVRRDD did not propose a change in its landfilling rate. Provided that AVRRDD complies with the approved annual fill rates, operational life, and other relevant conditions, NHDES determined the facility will meet the public benefit criteria of RSA 149-M:11. NHDES notes that the population that AVRRDD serves is likely to grow, and AVRRDD proposed to hold its fill rate steady. NHDES anticipates that this may contribute to an overall per capita reduction in waste disposal.

d. **NHDES must impose clear, unambiguous permit conditions that will achieve the State’s Waste Reduction Goal and Waste Management Hierarchy.** NHDES has imposed permit conditions intended to promote waste reduction. Those conditions, however, have consistently been so vague and ambiguous as to render the conditions ineffective. We urge NHDES to adopt a condition that prohibits, by 2027, the landfilling of wastes that can otherwise be recycled – paper fibers, glass, metals, and plastics. We urge a similar condition prohibiting, by 2027, the landfilling of compostable food waste.
NHDES takes note of these recommendations. The applicant did not request such prohibitions on waste disposal, and current law does not prohibit these wastes from disposal in a landfill. While the legislature has stated its preference to “discourage the disposal of recyclable materials in landfills or processing of recyclable materials in incinerators,” it also states that “‘goal’ shall not establish a mandate.” Thus, NHDES has included permit conditions that advance this goal without establishing a mandate.

e. **NHDES should consider its Environmental Equity Policy in assessing the impacts of the proposed Phase IIIA expansion. NHDES should provide outreach to residents in Success, Berlin, and other nearby communities to inform them about AVRRDD’s proposal, including any increased role the facility may serve, and to receive public comments and address concerns raised in comments as part of the permitting process.**

NHDES used its authority provided under RSA 149-M to ensure fair and equitable treatment of all New Hampshire citizens in evaluating the application and deciding to approve the application with conditions. As required by Env-Sw 304.08, Public Hearing and RSA 149-M:11,IV(a), NHDES specifically considered the concerns of citizens living near the Landfill in evaluating whether the expansion meets the criteria for providing a public benefit. NHDES made substantive efforts to assure that citizens affected by the decision were aware of the opportunity to express their concerns and submit comments for NHDES to consider, regardless of their socioeconomic group. These efforts are detailed in the Application Review Summary issued concurrently with the decision.

NHDES received comments from citizens, municipalities, and advocacy groups. NHDES believes that the outreach was successful and considered all of these comments in its determination.