

TO: Dennis Fekert, Solid Waste Management & Prevention Division, ANR.  
cc: Chuck Schwer, Chief Solid Waste and Prevention Division  
Peter Walke, Commissioner, Department of Environmental Conservation  
Julie Moore, Secretary, Vermont Agency of Natural Resources

FROM: Advisory Board, DUMP LLC., (Don't Undermine Memphremagog's Purity)  
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Contacts: Henry Coe, Peggy Stevens

RE: Vermont Agency of Natural Resources, Solid Waste Rules Comment

DATE: April 7, 2020

Hello Dennis Fekert,

The following comments are submitted by members of the Advisory Committee, DUMP LLC. These comments do not attempt to be fully comprehensive of the proposed changes of the Solid Waste rules proposed in the 219-page annotated draft. However, they do reflect close reading to identify issues of greatest concern at this time. The advisory committee members are all volunteers in this endeavor, most who live within the Memphremagog international watershed, with a strong interest in the impact and consequences of a statewide landfill on our region's air and waters. We offer the following comments and suggestions in the public interest of all Vermonters as well as our Quebec neighbors. We hope that you will respond to each observation, recommendation for change, or to questions posed, prior to any final decision on wording of SWM rules changes. We also request a copy of the Solid Waste Division's response summary prior to a final decision on rule changes. Thank you for providing us with this opportunity to comment upon this SWM rules change draft.

Comments as Follow:

Section 6-303 Waiver of Technical Standards: The inclusion of these conditions (A), (B) and (C) opens the door to allowing political whims of any Presidential or Governmental administration to undermine the protection of the public and environmental health that must be the primary concern of these SWM Rules. For example, vis a vis (A), the current President has turned back the Clean Air and Clean Water Acts, enacted by the previous administration in an effort to combat release of toxins into our nation's air and water by industry. If this clause 6-303 is not struck, for example, it would be permissible for the conditions imposed by the District Environmental Commission in August, 2019 on NEWSVT, banning the disposal of toxic leachate into Lake Memphremagog, to be overturned based on the current President's whim. In the language of (B), what burden of proof would be required that would allow the Secretary to "waive technical and siting requirements of these Rules"? The State of Vermont must commit to the highest and most stringent scientific standards for the protection of Vermont's environment and people, regardless of what standards the Federal government imposes, unless they be more stringent than those currently imposed by the State of Vermont.

Section 6-402. The Striking of State Material Management Plan, to be replaced with Solid Waste Implementation Plans, based upon Municipal entities, strikes the heart out of The Declaration of Purpose, Section 6-102 which is retained: “These rules establish procedures and standards to protect public health and the environment by ensuring the safe, proper, and sustainable management of solid waste in Vermont.”

The former State Material Management Plan states: Pursuant to VSA10-6604 the Secretary shall publish and adopt a Waste Management Plan that sets forth a comprehensive statewide strategy for the management of solid waste.” This is worthy, should be highlighted, and retained.

The fact that the Secretary and Agency has to our knowledge not published and adopted such a state-wide Waste Management Plan in recent years, makes it no less worthy: a goal meriting retention.

The new Section 402, as proposed, makes no attempt to define a statewide waste management plan, but immediately substitutes Solid Waste Management Plans based upon municipal entities or an association of municipal entities without an overall or statewide guide. The result is disjointed, incremental, and void of statewide waste management goals and objectives, which would serve the overall public interest. Such reversal of roles reaches absurdity when in the case of Coventry, the power of a single municipality who sees itself benefiting economically (at the expense of its environment and municipal neighbors), allows former landfill staff and/or existing staff to write its required Statewide Municipal Implementation Plan (SWIP), thereby driving much of the State’s former role in plans for the State’s only permitted landfill.

We recommend retention of language referring to a State Material Management Plan in Section 6-402, as well as retention of original language in the final two paragraphs of 6-402.

*Example: A. Pursuant to 24 V.S.A. §2202a(c)(2), each regional planning commission is required to shall work cooperatively with municipalities within the region to prepare a solid waste implementation plan for adoption by all of the municipalities within the region which are not members of a solid waste district. The plan must conform to the state solid waste management plan and describe in detail how the region will achieve the priorities established by 10 V.S.A.*

*§6604(a)(1).*

*Each solid waste district is required to adopt a solid waste implementation plan that conforms to the State waste management plan, describes in detail how the district will achieve the priorities established in 10 V.S.A. §6604(a)(1), and is in conformance with any regional plan adopted pursuant to 24 V.S.A., chapter 117.*

*§ 6-403 Review of Solid Waste Implementation Plans*

*(a) Plans or amendments thereto shall be reviewed pursuant to this section in the following instances: The Secretary shall review the solid waste implementation plan of a regional planning commission, municipality, or solid waste management district entity and evaluate the plan for conformance with the s State solid waste management plan in the following situations:*

- (1) upon any modification by the request of the SWME regional planning commission, municipality, solid waste alliance or district responsible for preparing the plan; or*
- (2) upon the Secretary’s determination that changes made to the materials*

*management plan or these Rules necessitate review of a solid waste implementation plan to determine compliance with the changes or requirements of these Rules; and*

*(3) whenever there is good cause, including significant changes or amendments to municipal solid waste implementation plans or to the State waste materials management plan.*

Section 6-403 (a): the deletion of any reference to the role of regional planning commissions in the Secretary's evaluation of SWIP's is unconscionable. Likewise, and ironically, the Secretary's role is considerably weakened by the striking of her or his authority to "evaluate the (SWIP) plan for conformance with the State Solid Waste Management Plan." Retention of original language is requested.

Sections 6-403, f., g., and h. should be retained, not annulled. For example:

*(f) The Secretary shall approve the solid waste implementation plan of a municipality, solid waste alliance, or solid waste management district upon a determination that the plan conforms to the state solid waste management plan*

*(g) In determining conformance of a submitted solid waste implementation plan with the State plan, the Secretary must find that all planning activities and items required by the State solid waste management plan have been adequately addressed or considered in the plan.*

*(h) Prior to approving the solid waste implementation plan of a municipality, solid waste alliance, or solid waste district, the Secretary must also find that the public has had an appropriate opportunity to participate in the plan's development. This finding shall be based on a demonstration of early and continual efforts by the municipality or district to notify and involve interested and potentially affected members of the public in the decisions being contemplated through the planning process.*

Section 6-504, (f), original Application for Interim Certification, we note, is written more clearly, economically, and effectively in protecting the public interest than the language for Full Certification.

Example: (14)- (20)

*(14) A closure plan that satisfies the applicable criteria of § 6-907; § 6-1007, § 6-1111, § 6-1208 or § 6-1309 of these Rules, as required for the facility type. The closure plans must include, at least:*

*(A) A description of the steps necessary to close the facility;*

*(B) A listing of labor, materials, and testing necessary to close the facility;*

*(C) An estimate of the expected year of closure;*

*(15) A schedule for final closure including, at a minimum, the total time required to close the facility and the time required for the various steps or phases in the closure process;*

*(16) A cost estimate for facility closure that satisfies the requirements of § 6-1004;*

*(17) A description of the methods for compliance with the closure requirements; and*

*(18) Any remedial action necessary prior to closure, if required by the Secretary pursuant to § 6-311.*

*(19) A post-closure plan that satisfies the criteria of § 6-1008 of these Rules.*

*(20) A closure and post-closure plan along with cost estimates, unless the application*

*is exempt as described in Subchapter 10.*

and

*(24)A plan for effective public notice of the application. Such a plan shall include:*

*i. Provisions for a notice to the general public by advertisement in at least two newspapers of general circulation in the area of the proposed facility.*

*One shall be a regional weekly paper when available.*

*ii. A listing of the names and mailing addresses of persons and entities that the applicant is required to notice as follows:*

*(i) The legislative body*

*(ii) All facilities except those specified in subsection (h)(1)(B)(ii), (iii) and (iv) of this section, all residences and landowners within one-half mile radius of the property boundary of the facility or the nearest 100 residences and landowners, whichever is the lesser number;*

*(iii) Diffuse disposal facilities, all residences and landowners within 500 feet of the proposed diffuse disposal area, and to all adjoining residences and landowners;*

*(iv) For sludge and septage storage and treatment facilities which are located at a wastewater treatment plant, except for those facilities treating the material to achieve PFRP (Process to Further Reduce Pathogens), all adjoining residences and landowners within 1000 feet of the facility; and*

*(v) For all facilities, except diffuse disposal facilities, whose applications are determined to be minor by the Secretary, all adjoining residence and landowners.*

*(vi) State agency or subdivision*

*(vii) Regional planning commission*

Section 6-507 (c) (3), Variances: Please list explicit public benefits and public costs of a waste facility and examples of how they are quantified. Cost Benefit analysis without quantification lacks merit. Moreover, effective C-B analysis requires quantitative comparison between alternative investments. Variance approval should be justified.

Section 6-507 (c) 5. (5) *Information demonstrating that the grant of a variance will not enable the applicant to generate, transport, treat, store or dispose of hazardous waste in a manner less stringent than that required by the provisions of Subtitle C of the Resource Conservation and Recovery Act of 1972, as amended, and the regulations promulgated under that Act;*

Please explain the relevance in 2020 of evaluating a variance request for less stringency to The RCRA of 1972. This 48-year-old standard, in an age of PFAS contamination (never mentioned in rules), we have to believe are the words of the waste industry. It is a “gimme”. A higher, more relevant standard or standards should be substituted.

Section 6-606 (g) Party Status. We recommend the following sentence be added:

*“In addition to persons whose property is affected, any municipality, county, regional commission or incorporated environmental, health, or educational entity located within the*

*watershed, within or without of Vermont, shall be considered to have party status.”*

We recognize this expands the typical definition of party status beyond that of affected property owners. However, in the case of a landfill having regional, if not statewide, consequences to air, water, roads, and communities, we feel it important that an Agency representing the broad public interest, works to expand rights to participate in cases of public hearings and/or appeal. If legal precedent causes pause, err on the side of the broader public’s right to participate, with the Courts sorting out differences if necessary.

Section 6-702 (a) Prohibited Areas: After the clause “Facilities are prohibited from being sited”, add words “*or expanded or permit times extended*” in the following designated areas: ....

We agree strongly in the enumeration of designated areas in which a landfill cannot be sited. In cases where a landfill is already sited in a prohibited area, or multiple-prohibited areas, such as the Casella Coventry landfill, due to grandfathering-in, or past failure to evaluate for siting, such incumbency shall not be used to justify additional expansion or extension of existing permit times, in such designated prohibition areas. We request insertion of language to capture this objective.

Sections 6-703, (a) (2), (3), (4), In addition, we object strongly to the respective “escape” clauses beginning with the words, “unless allowed ...” Such clauses in the three prohibited subsections should be removed.

Likewise, we object strongly to the identical “escape” sentences in Sections 6-701 (a), (8), (9), and (11). Beginning with the words, “This criteria does not apply....”

It is ludicrous to sanction expansion, or extension of existing permit times, beyond permits already given in prohibited zones, on the basis of irrelevant legalese “beyond the previously certified waste management boundary.” An historical property survey boundary does not an ecological zone or boundary make. Such irrelevant rationale appears to guarantee future permit approval to an incumbent waste operator who happens to own extensive acreage when that incumbent operator later applies for an expansion of landfill acreage and/or permit time extension. An historical survey property boundary normally has nothing to do with ecological differences and limitations for waste disposal and storage.

Section 6-705 (b) (2), Operational Standards. This subsection appears to have been stricken without replacement. Please explain and correct if a replacement sentence is found elsewhere. We request retention of this original sentence, together with addition of a second sentence: “A qualified third-party Clerk of the Works, paid for by ANR, will be hired for on-site monitoring and review of the entire new or expanded landfill construction process with weekly reports filed to the Solid Waste Division, ANR.”

The striking of the word “emission” in the original document leaves open the possibility that a gaseous emission may go unreported. The word “discharge” may more likely refer to a leachate breakout. There is no harm in making this distinction between gaseous emissions and liquid discharges.

Section 6-706 (c) (2) (B) Similarly, the striking of the word “spill” may allow for such an event to go unreported, as in the spill of thousands of gallons of leachate being transported to Montpelier WWTF for disposal in 2019. We urge that the word “spill” be retained.

Section 6-708 (a) and (a) (2) Corrective Action: As above, inclusion of the words “emission” and “spill” would ensure a comprehensive CAPlan in any situation.

Section 6-708 (a) (5)- We request this language be reinstated in the unfortunate event that a hazardous emission, discharge or spill should occur so egregious in nature that cessation of operations, certification suspension or revocation proceedings may be required to protect the health and safety of the public and environment.

Section 6-806 Revision to Closure and Post Closure Cost Estimates: In that, for example, recent data on the toxicity of landfill leachate, including PFAS and other CECs, suggest that the leachate will continue to be produced for many decades into the future even after the facility is closed, requiring collection, (adequate treatment technology) and disposal that does not threaten the public health and safety of that of the environment, how will this be ensured in the language of these Rules?

Section 6-905 (c) (1), The phrase “practicable steps” needs to be defined. At a minimum, reference must be made to a requirement of a statistically significant number of inspections, - announced and unannounced- to be made weekly of incoming truck container loads of solid waste. This “practicable step” is woefully inadequate and unenforced presently.

The current “practicable” step of one inspection per week of incoming truckloads of waste is woefully inadequate, given the approximate 500 truckloads per week entering the landfill now. We request higher standards be set to ensure source separation (and elimination) of highest polluting waste materials occurs (e.g. sheetrock-odors; carpeting/upholstered furniture/PFAS).

Section 6-905 (c) (2), This is a general feel-good aspirational statement, not based in reality of landfill leachate leakage exceedances in groundwater, including PFAS; storm-water run-off violations; and air quality violations, (odors leaving premises, and methane emissions un-captured.) If you are honest, enforce this statement; if not, delete it.

Section 6-1004: Additional Disposal Facility Design Standards

Section 6-1004 (h), (1), Replace phrase “may be approved” with phrase “must be prohibited”. There is no justification for approving landfill expansion while pollution violations to groundwater exist; and until they are mitigated and eliminated.

Section 6-1004 (h) (2, 3 and 4) are unnecessary and should be removed when the above language change occurs.

Section 6-1004 (i), (3), A., Daily Cover. Under the earlier section, Definitions, the word Diversion is defined. It does not permit diversion of other waste materials, such as dry or semi

dry sludge to be diverted for use as daily cover, as has been a practice in the past. A statement on third party monitoring is needed.

Section 6-1004, I, (4)A, Hydraulic Barrier Layer. A statement is needed as to how this requirement, implemented over the existing and expanded Coventry landfill, total area of 129 acres, under impermeable cover, squares with ANR research and requirements in development to review and ensure that residential and commercial surfaces over 3 acres shall be permeable, or semi-permeable in order to mitigate storm water run-off into a surface waters.

This continuous 129-acre impermeable surface area will be the largest such construction in Vermont. This section is deficient without acreage -limiting rule language.

Section 6-1004, (1), Pertaining to the leachate underdrain, a statement needs to be included requiring collection and storage of all leachate from underdrain as well as periodic testing for PFAS. To our knowledge, this has not been required in the past and only recently been undertaken. PFAS was detected in the underdrain leachate in that instance.

Section 6-1004, I, 1, (A). Insert period after word “gas”. Final word “collected” is unnecessary and nullifying to the purpose. It is waste industry language and implies that it would be permissible to allow any gas to go uncollected.

Section 6-1004, I, 1, (B), the word “all” should be inserted after word “control” in middle of the single sentence for the same reason as above.

NOTE: After Item No.6, we request consideration of the addition of a new Item 7 having to do with the need for Apparatus installation designed to monitor surface emissions (SEM), - if that apparatus does not yet exist – for measurement of un-captured methane gas emissions to the environment. Such SEM reporting should be transmitted to ANR offices in real time, 24/7.

Section 6-1004, 1, (4), Add a second sentence: A second, stand-by back-up vacuum pump-generator of equal size and capacity is required in event of failure or maintenance closure of the primary vacuum pump.

Section 6-1004, m., Final Cap System, Lined Landfill. Sub-paragraphs in this section appear to weaken storm water run-off controls rather than strengthen. Case in point is subsection 7. which eliminates the 6” minimum earthen material layer to simply a vegetative support layer that consists of earthen material capable of sustaining negative plant growth. This is laughable for it green-lights the landfill operator to seed-down over a ½” earthen base, which is literally capable of supporting germination and growth but which is absolutely susceptible to summer burn-out, wash-out in strong storms, and leachate “brown” blow-outs.

Section 6-1005, Additional Operating Standards.

Section 6-1005 A. (iii), Under Liquid Household Disposal at Landfills, the question is asked, "Why is liquid household waste permitted to be placed in a landfill?" If this is new wording, is it a mistake? We recommend the statement be removed, or at a minimum, the phrase, “other than septage” be added after the word “waste”.

Subsection (f.) Response to Leakage Rate Exceedance. As important as this standard is, it is toothless if not monitored by a third party or by ANR regulatory personnel. **The owner-operator of a landfill should not be entrusted to self-monitor and report on something of this consequence.**

Subsection (g), All SEM reporting, including for fugitive and uncaptured methane gasses should be transmitted in real time, 24/7, to ANR offices.

Subsection (h). Mining Waste: All references to permitted volumes of mining and/or fracking waste, produced in Vermont or Imported to Vermont to the landfill should be deleted in these rules. Such Mining Waste, Vermont-produced or imported into the State, including (radio-active) fracking waste and liquids should be categorically prohibited in any landfill.

Section 6-1006 Additional Application Requirements.

Section 6-1006 (a), After “disposal facility”, add ”or the addition/expansion/ or extension of permit period time of a disposal facility, shall include  
...”

Section 6-1006 (b), After “new landfill facility”, add the phrase “and/or the addition/ expansion of an existing permitted landfill, or extension of permit period of time for an existing permitted landfill, shall include the following....”

Section 6-1006 (c) Mining Waste: We feel all five sections should be deleted. Two sentences should follow the heading and read as follows: Mining wastes are prohibited in a landfill. No mining waste, including solid or liquid waste from (radio-active) fracking operations, should be permitted to be diverted from sources of origin, within or without of Vermont, then transferred for disposal to a Vermont permitted landfill.

Section 6-1005 (d) (1) (f)- pertaining to sludge disposal and the procedure that would indicate “such materials are not hazardous”, in that sludge is now known to contain CECs, including PFAS, which would add to the load of toxins in leachate and in stormwater runoff in the event sludge is used as landfill cover.

Section 6-1009, Disposal Facility Custodial Care

Section 6-1009, (3) Disposal Facility Custodial Care- it would be prudent to include language that addresses the presence of CECs, including PFAS, as these “forever” chemicals would continue to pose environmental and public health and safety threats over a very extended period of time.

Section 6-1009 (5), Surface Water System. The wording should be changed to reflect a higher environmental and safety standard, particularly as we experience larger and more frequent storm and weather events in a time of climate change. Specifically, the 25-year, 24-hour storm event standard as written, should be changed to a 100-year, 24-hour storm event. This is fundamental when planning for a contiguous 129-acre impermeable area.

## Summary Reflection:

Our interest in and response to these SWM proposed rule changes reflects DUMP's ongoing concern that the operation and management of all SWM entities be strictly monitored and enforced. Protection of our natural resources is the primary charge of the Agency of Natural Resources. This requires that all regulatory guidelines imposed by the State SWM division be written as strictly as possible.

Vermont has been a national leader in protecting the environment. Rather than retreating from this history as this draft of new rules does, Vermonters should advance proactive, long-range solid waste management plans and rules grounded in environmental science. Make no small, short-term plans. And reinstate the original 2012 rules statement, Section 6-402, "The Secretary will publish and adopt a solid waste management plan that sets forth a statewide strategy for the management of solid waste."

Upon review of the entire body of draft rules, we note with great concern the absence of any language governing the disposal of landfill leachate. If this is addressed in another document, or through another division of the SWM division of ANR, it should be stated and cross-referenced. If this is not the case, then this body of rules should incorporate rules governing the disposal of landfill leachate.

It is essential that SWM Rules relating to landfill leachate and its disposal address the reality, (acknowledged publicly by the ANR,) that municipal WWTPs where leachate is disposed are not designed for, nor capable of, filtering out heavy metals and the new class of Chemicals of Emerging Concern, including "forever" PFAS chemicals. Untreated, landfill leachate in effluent passes through WWTPs into the nearest surface water body. Yet, this practice is currently permitted by ANR (even as it is antithetical to Vermont's Clean Water legislation). Further, in the case of the Lake Champlain and Lake Memphremagog watersheds- whose waters receive effluent from Vermont WWTP's and also flow north- protection of these watersheds is not only essential to Vermonters but to our Quebec neighbors, as these are drinking water resources for hundreds of thousands of citizens as well as habitat for fish and wildlife species.

In our effort to provide citizen oversight to the permitting, operations and management of the NEWSVT Coventry landfill, DUMP filed an appeal of ANR's granting of a permit for 51-acre landfill expansion in the Fall of 2018. In that appeal process, DUMP has become intimately familiar with ANR documents provided during the legal discovery period. A review of communications has revealed interactions between the State and local-entity level players and with the NEWSVT landfill operators, some of which raise legitimate ethical concerns important to the public.

We assert it is imperative that there be not even a perception of collaboration between regulators and industry. Drafting, implementation and oversight of SWM rules and requirements must be a fully transparent and public process. We have read and re-read the full body of these draft rules. In so doing, any objective evaluation would have to conclude that the majority of changes proposed demonstrate a weakening of environmental protection for the public. Throughout, there are examples of oversight responsibility and regulation from current SWM rules, proposed to be

eliminated or weakened, that must be retained. To wit, attention needs to be paid to ensuring that the role of public oversight, and of the ACT 250 District Environmental Commissions in oversight, be maintained.

We are left to wonder, unfortunately, if the private waste industry has had an outsized role in formulation of these draft changes - from the striking of all ANR responsibilities to develop a comprehensive statewide plan for solid waste, with overarching guiding criteria, to the many instances of escape clauses and ambiguous, non-enforceable language (i.e. “practicable”) when it comes to specific rules. Examples of this weakening of regulations, even “capture” of public regulators by a cross-section of private industry, is not uncommon at the federal and state level. We welcome the Solid Waste Division’s explanation and proof that this is not the case here.

Solid Waste Management rules need to keep pace with the burgeoning understanding of the increasing environmental threats inherent in managing and disposal of solid waste in 2020. No better opportunity exists for ANR to assure the public of its role as an objective protector of the environment. It is imperative that performance standards governing the operation and management of any SWM entity, including the recently permitted expansion of the NEWSVT Coventry landfill, be as or more, strict than current State SWM rules. Lamentably, this draft version does not come close to that charge.