



Julie S. Moore, Secretary
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901

October 12, 2023

Re: Violations of Permit No. 3-1406 and State Law – New England Waste Services of Vermont, Inc.’s Leachate Treatment Pilot Study Plan

Dear Secretary Moore:

Conservation Law Foundation, Vermont Natural Resources Council, and Just Zero submit the following letter in response to New England Waste Services of Vermont, Inc.’s (NEWSVT) recent troubling violations of its pending application for a major amendment to its Pretreatment Discharge Permit No. 3-1406 regarding the Leachate Treatment Pilot Study Plan (Pilot Plan) proposal affiliated with its landfill in Coventry, Vermont. Our organizations call on the Agency of Natural Resources (Agency) to take immediate enforcement actions against NEWSVT, require NEWSVT to cease the treatment facility’s operations, and establish proper and required permit procedure that allows for meaningful public comment and review of the Pilot Plan and a thorough Agency review and decision on the Pilot Plan.

Our organizations recently learned that NEWSVT unlawfully avoided public and agency review procedures by constructing and fully operating its proposed Pilot Leachate Treatment System to remediate contaminated leachate at Coventry Landfill for per- and polyfluoroalkyl substances (PFAS) without receiving a permit amendment required by law. NEWSVT’s brazen actions are in blatant disregard of its Pretreatment Discharge Permit No. 3-1406 and State law—illegally stripping away the public and the Agency’s opportunity to participate in ensuring the safety and effectiveness of the Pilot Plan.

In December 2022, when the Department of Environmental Conservation (DEC) renewed NEWSVT’s Pretreatment Leachate Discharge Permit, No. 3-1406, DEC required that NEWSVT commence the process to propose, construct, and implement a Pilot Leachate Treatment System to treat leachate for PFAS. The terms of that Pretreatment permit are explicit: NEWSVT was required to submit a draft Pilot Plan detailing their proposed treatment system, and the draft would subsequently be “subject to review and approval by the Secretary.”¹

¹ VERMONT AGENCY OF NATURAL RESOURCES, DEP’T OF ENVTL. CONSERV., PRETREATMENT DISCHARGE PERMIT, PERMIT NO. 3-1406 8 (Dec. 21, 2022) [hereinafter *Permit No. 3-1406*].

In addition, Permit No. 3-1406 stipulated that the Pilot Leachate Treatment System would begin “in accordance with the approved Plan.”² In requiring the draft Pilot Plan to go through a public review before becoming finalized, the Agency established a process to provide communities most invested in and affected by the leachate treatment with ample opportunity to meaningfully participate and weigh in on the proposal. However, none of this occurred. Instead, NEWSVT flippantly circumvented this legally required process and decided to construct and start operating the treatment system without public review or final agency approval.

Specifically, on April 27, 2023, NEWSVT submitted their proposed Pilot Plan, which came in the form of a draft application to DEC for a major amendment to Permit No. 3-1406—thus subject under State law to a minimum of thirty days for notice and comment, with the right for any person to request a public hearing on the proposed permit amendment.³ ANR never formally approved the proposed Pilot Plan submitted in April. It is our understanding that the Agency conducted some technical review of the Pilot Plan and shared recommended revisions with NEWSVT. The next step would have been for NEWSVT to make those changes and resubmit the proposed Pilot Plan, which the Agency would then review and put on notice for public comment as an amendment to Permit No. 3-1406. This did not happen. Rather, NEWSVT never responded to the Agency’s recommended revisions; it just constructed the facility and began operating it without obtaining the required Agency approval.

The PFAS epidemic is a global environmental and public health crisis and the existing system of managing PFAS-contaminated landfill leachate through wastewater treatment facilities is wholly inadequate to protect public health and the environment. These facilities are ill-equipped to remove the diverse and complex range of contaminants, including PFAS, in leachate prior to discharge into Vermont’s surface waters. The result of this ineffective management is that PFAS-contaminated wastewater makes its way into our lakes, streams, and rivers. These dangerous PFAS chemicals subsequently bioaccumulate and threaten the environment and public health at-large.

The urgent need to treat landfill leachate for PFAS is not an excuse for NEWSVT’s trampling on both the public’s rights and the Agency’s procedural safeguards around the proposed treatment system. Rather, the necessity and significance of installing a system to safely and effectively treat Coventry’s leachate for PFAS makes it even more essential that the public have a meaningful opportunity to participate in the Pilot Plan’s approval—a right to which they are entitled by law—and that NEWSVT adhere to the Secretary’s formal review and obtain a permit amendment for the facility as required by law.

² See PERMIT NO. 3-1406, *supra* note 1 at 9 (specifying that “[b]y no later than one year following the effective date of this permit, the Permittee shall have the leachate treatment and/or pretreatment technology(s) installed and begin the [Pilot Leachate Treatment System] *in accordance with the approved Plan*” (emphasis added)).

³ See 10 V.S.A. §§ 7711–12, 17(a) (specifying that major amendments are subject to the same procedures applicable to the original permit decision under the chapter and when the chapter requires, the Secretary must “provide a public comment period . . . [which] shall be at least 30 days . . . [and]” that a person can request a public meeting on a draft decision).

Our organizations continue to commend the Agency for proactively requiring NEWSVT to implement such a PFAS treatment program for the Coventry landfill's contaminated leachate. Beyond setting positive precedent for the nation, the Agency has committed to using data generated from the Pilot Leachate Treatment System to inform its development of a Technology Based Effluent Limit and/or treatment standard-criteria for the discharge of PFAS in landfill leachate. For that reason, there is a lot on the line to get this project right the first time around, and to uphold the public's procedural rights to review and comment on the proposed treatment through the permit amendment process.

To be clear, NEWSVT's proposed draft Pilot Plan—which NEWSVT put into operation prior to notice, public comment, and Agency approval—raises several serious public health and environmental concerns. First, the Pilot Plan relies on a new technology (foam fractionation) for which the supporting literature is extremely thin, without the added safeguard of using multiple treatment technologies (a treatment train) at the backend to ensure the broadest scope of PFAS are remediated. Second, the Pilot Plan does not include any air monitoring of PFAS post-treatment, even though evidence shows this treatment technology sends PFAS emissions into the atmosphere. Third, the Pilot Plan never specified what NEWSVT intended to do with the residuals from the treatment process, which contain high concentrations of PFAS. This is a gaping question mark with potentially huge public health and environmental consequences. The public had, and has, the right to fully weigh in on the above concerns, as well as others.

In accordance with the purpose and objectives of Vermont's Uniform Environmental Law Enforcement Act, 10 V.S.A. 8001 *et seq.*, our organizations call on the Agency to immediately direct NEWSVT to cease operations of the Pilot Leachate Treatment System, penalize NEWSVT for their actions, reestablish the required procedure that will allow for meaningful public comment and review of the Pilot Plan proposal, followed by an Agency decision on the Pilot Plan.⁴ Finally, to be absolutely clear: our motive here is the protection of Vermont's environment, the communities and individuals impacted by the contaminants at issue, and upholding Vermont's law and process for all Vermonters.

Thank you for your thoughtful and prompt attention to this matter. We remain available to discuss these issues at any time.

Respectfully submitted,

/s/ Elena Mihaly, Esq.

⁴ See 10 V.S.A. § 8001 (detailing the Legislature's findings to "standardize and enhance the enforcement powers of the Secretary of Natural Resources . . . in order to: (1) enhance the protection of environmental and human health afforded by existing laws; (2) prevent the unfair economic advantage obtained by persons who operate in violation of environmental laws; (3) provide for more even-handed enforcement of environmental laws; (4) foster greater compliance with environmental laws; (5) deter repeated violation of environmental laws; and (6) establish a fair and consistent system for assessing administrative penalties.")



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CC:

Ed McNamara, General Counsel, Vermont Agency of Natural Resources
Senator Chris Bray, Chair, Senate Committee on Natural Resources and Energy
Senator Ginny Lyons, Chair, Senate Committee on Health and Welfare
Representative Amy Sheldon, Chair, House Committee on Environment and Energy