State of Vermont
NATURAL RESOURCES BOARD
DISTRICT #7 ENVIRONMENTAL COMMISSION
374 Emerson Falls Road, Suite 4
St. Johnsbury, VT 05819

RE: New England Waste Services of Vermont, Inc.	Memorandum of Decision Party Status, Other and Notice of Reconvened Hearing
220 Avenue B	10 V.S.A. §§ 6001-6092 (Act 250)
Williston, VT 05495	
Application #7R0841-13	

Reconvened Hearing and Scope

The District #7 Environmental Commission is reconvening the landfill hearing for the limited and specific purpose of allowing parties to rebut and/or respond to the Solid Waste Management Faciltiy Certification (Certification) - including the related Fact Sheet and Responsiveness Summary, and to the Air Pollution Control Division Permit (APCD Permit). The scope of the reconvened hearing will be limited to these items, as they relate to Criterion 1(B) waste disposal and Criterion 1 air, respectively. The subject documents are found below:

Certification

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20043%20Solid%20Waste%20Cert%20and%20COS.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20045%20ANR%20Certification%20Fact%20Sheet%20and%20Responsiveness%20Summary.pdf

APCD Permit

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20054%20Air%20Pollution%20Control%20Permit.pdf

Reliance on the APCD Permit

The District Commission currently understands that the Applicant is relying on the above APCD permit as a presumption under Rule 19. If this is NOT the case, the Applicant shall so indicate, in writing, on or before December 3, 2018.

Preliminary Parties, Friends of the Commission

Parties and Preliminary Parties are identified in the Commission's prior Decision, below:

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/District%20Comission%20Documents/Hearing%20Schedule%20MOD%204-23-18.pdf

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These Parties and Preliminary Parties are:

- The Applicant
- The Agency of Natural Resources
- The Agency of Transportation
- The Agency of Agriculture, Food and Markets
- The Vermont Division for Historic Preservation
- Dan Gauvin, Criteria 1 and 8
- Chris & Rosemarie Roy, Criteria 1 and 8
- MRC de Memphremagog, Criteria 1, 1(B), 3, 7, and 9(K) – as it relates to the protection of water quality in Lake Memphremagog.

In addition:

- The City of Newport was admitted as a Friend of the Commission

Since the Commission's hearing, and since the Applicant's response to the Commission's hearing recess order, a number of other persons and entities have requested untimely "party", or "friend of the commission" status, or have submitted various communications that the Commission interprets as a request for status (to thus enable participation and the Commission's consideration of the information contained in the communication received). These untimely participants are summarized and organized into three "categories", A, B, and C, as further identified below:

A. Canada Government Entity:

- Magog-Orford County, Province of Quebec, by Gilles Belanger:

The correspondence from the above entity is found on the Act 250 Database at the link below, **Exhibit 048**, hereby distributed as a courtesy:

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20048%20LP%20Quebec%20Magog-Orford%20County%20Letter.pdf

B. Canada Non-Government Persons and Entities (e.g. non-profit, private)

- Appalachian Corridor
- Renaissance Lac Brome
- MCI Memphremagog Conservation Inc.
- Memphremagog Wetlands Foundation
- Turkey Hill Sugarbush Ltd.
- Parc D'environment Natural de Sutton
- Other Canadian Individuals

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The correspondence from the above persons and entities is found on the Database at the links below, **Exhibits 050a to 050g** inclusive, hereby distributed as a courtesy:

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20050a%20LP%20Appalachian%20Corridor%20Letter.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20050a%20LP%20Appalachian%20Corridor%20Letter.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20050c%20LP%20MCI%20Memphremagog%20Conservation%20Inc%20Letter.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20050d%20LP%20Memphremagog%20Wetlands%20Foundation%20Letter.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20050e%20LP%20Turkey%20Hill%20Sugarbush%20Ltd%20Letter.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20050g%20LP%20Parc%20Denvironnment%20Naturel%20de%20Sutton.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20050f%20LP%20Canada%20Various%20Communications.pdf

Note: a small number of the above communications were in French, these were translated into English by NRB staff, and the English translations are included at the link above (within Exhibit 050f). It is requested that the senders of communications in French please review the translations, and promptly notify NRB staff of any observed errors or omissions – thank you in advance.

C. USA Non-Government Persons and Entities (e.g. non-profit, private):

- DUMP, LLC
- Robert Fortunati
- Henry Coe
- Tom Stelter
- Charlie Pronto
- Other Individuals

The correspondence from the above persons and entities is found on the Act 250 Database at the link below, as **Exhibits 049a to 049n** inclusive, hereby distributed as a courtesy:

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20049a%20LP%20Fortunati%20Party%20Status%20Request.pdf

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https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20049b%20LP%20Coe%20Party%20Status%20Request.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20049c%20LP%20Coe%20Email%20dated%209-26-18.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20049d%20LP%20DUMP%20Request%20to%20Reconvene%20Hearing.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20049e%20LP%20Stelter%20Email%20dated%207-11-18.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20049f%20LP%20DUMP%20Party%20Status%20Request%201.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20049g%20LP%20DUMP%20Party%20Status%20Request%202.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20049h%20LP%20Stelter%20Party%20Status%20Request.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20049i%20LP%20Coe%20Request%20to%20Reconvene%20Hearing.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20049j%20LP%20Pronto%20Letter.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20049k%20LP%20Stelter%20Request%20to%20Reconvene%20Hearing.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20049l%20%20LP%20USA%20Various%20Communications.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20049m%20LP%20Coe%20Response%20to%20Applicant.pdf

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20049n%20LP%20DUMP%20reply%2011-6-18.pdf

It is noted that it was not possible to determine if the sender was from the USA or Canada, in the case of a small number of correspondences from individuals; in these cases the correspondence was included in both the USA and Canada "categories" (thus appears in duplicate).

Status of the Untimely Participants

A small number of the untimely persons and entities within the Category A, B, and C groups requested party status. The standard for the Commission's consideration of untimely requests is outlined within 10 V.S.A. §6085 (c)(3), below, emphasis added:

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> *(3) Timeliness. A petition for party status pursuant to subdivision (c)(1)(E) of this section must be made at or prior to an initial prehearing conference held pursuant to Board rule or at the commencement of the hearing, whichever shall occur first, unless the District Commission directs otherwise. The District Commission may grant an untimely petition if it finds that the petitioner has demonstrated good cause for failure to request party status in a timely fashion, and that the late appearance will not unfairly delay the proceedings or place an unfair burden on the parties.*
> [10 V.S.A. §6085 (c)(3)]

Pursuant to 10 V.S.A. §6085 (c)(3), the Commission has considered whether the late petitioners demonstrated good cause, and has also considered whether or not the granting of an untimely petition will unfairly delay the proceedings or place an unfair burden on the parties.

The Commission hereby denies party status to ALL such untimely petitioners who had so requested. The Commission considered all of these requests, and found that none had satisfactorily demonstrated sufficient due cause to warrant a granting of untimely party status to such individual persons or entities, as a matter of fairness, potential for delay, adherence to process, and consideration of the specific cause contained in each request.

However, the Commission also finds that limited participation under 10 V.S.A. §6085 (c)(5), below, "Friends of the Commission" should not cause unreasonable or unfair delay, and this alternate status is thus granted to all those identified under Category A, B, and C, above, though the majority had not requested this status nor Party status. The granted Friends of the Commission status allows the Commission to consider information received from these persons and entities. The Commission will allow the Friends of the Commission to submit pre-filed evidence and to submit pre-filed testimony, in the same manner that admitted Parties and Preliminary Parties will participate, as further outlined below, subject to the same procedures, deadlines etc. However, Friends of the Commission's participation at the reconvened hearing will be limited to ensure a reasonably efficient hearing, as further outlined below.

> *(5) Friends of the Commission. The District Commission, on its own motion or by petition, may allow nonparties to participate in any of its proceedings, without being accorded party status. Participation may be limited to the filing of memoranda, proposed findings of fact and conclusions of law, and argument on legal issues. However, if approved by the District Commission, participation may be expanded to include the provision of testimony, the filing of evidence, or the cross examination of witnesses. A petition for leave to participate as a friend of the Commission shall identify the interest of the petitioner and the desired scope of participation and shall state the reasons why the participation of the petitioner will be beneficial to the District Commission. Except where all parties consent or as otherwise ordered by the District Commission or by the Chair of the District Commission, all friends of the Commission shall file their memoranda, testimony, or evidence within the times allowed the parties.*
> [10 V.S.A. §6085 (c)(5)]

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Required Organization of the Untimely Participants, Hearing Information

The Commission hereby instructs and requires that ALL of the above untimely participants (identified under "categories" A, B, and C) organize and participate at the reconvened hearing as follows: EACH of the identified three categories of persons and entities, i.e. Category A, Category B, and Category C, shall work together to select a SINGLE point of contact to represent each group at the reconvened hearing. This will result in one representative for Category A, one representative for Category B, and one representative for Category C, for all of the untimely Friends of the Commission. The representative shall be the person who serves as the group's spokesperson at the reconvened hearing. In addition, the City of Newport shall please select its representative. This will allow for an organized and orderly process that does not unreasonably nor unfairly delay the application.

All participants should please be aware that the Commission will manage the hearing to ensure that all Parties and Preliminary Parties first have their opportunity to efficiently participate, after which the Friends of the Commission representative(s) may likewise do so, time allowing. To this end, all Parties and Preliminary Parties who pre-filed evidence and/or testimony (see below) will provide a brief overview presentation of these submittals (e.g. 5 minute synopsis of their pre-filed information), after which the Commission will allow cross-examination by the Parties and Preliminary Parties. Redundant or repetitive presentations and cross-examination is discouraged and will not be allowed to continue. After the admitted Parties and Preliminary Parties have concluded their presentations and cross-examination, the Friends of the Commission may do the same, through their selected representative(s), time allowing. The Commission notes that it does not intend to convene additional hearing(s) solely to enable hearing participation by the Friends of the Commission.

Pre-Filed Testimony and Exhibits, Schedule

In addition to the organization requirement identified above, for late participants, the Commission is requiring, pursuant to Rule 17, that all evidence and testimony be pre-filed, in advance of the reconvened hearing. Following are the deadlines for submittal of pre-filed evidence and testimony, and response from the Applicant. The deadlines below pertain to all Parties, Preliminary parties, and Friends of the Commission – i.e. the deadlines apply to everyone:

Deadline for Opponents to Submit Pre-Filed Evidence and Testimony: **December 20, 2018**

Deadline for Applicant's Pre-Filed Response to the Above Information: **January 18, 2019**.

Note: if the Agency of Natural Resources (ANR), as the Party which issued the permits of interest, wishes to respond to Pre-Filed Evidence and/or Testimony from Opponents, ANR shall submit any such Response by **January 18, 2019**.

All Parties, Preliminary Parties, and Friends of the Commission are reminded of the limited scope of the hearing: allowing parties to rebut and/or respond to the Solid Waste Management Faciltiy Certification (Certification) - including the related Fact Sheet and Responsiveness

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Summary, and to the Air Pollution Control Division Permit (APCD Permit), as these relate to Criterion 1(B) and Criterion 1, respectively.

Other

The Commission has some remaining questions, is continuing to consider all of the information received, and will provide its specific questions in advance of the reconvened hearing, in a separate to-be-issued memo, expecting that the Applicant (and potentially others) will then be prepared to respond at or before the hearing. Topics include leachate (disposal, City of Newport WWTF, PFAS); latest water quality information pertaining to the unlined landfill; current status and adequacy of the post-post-closure-care-fund; and conditions 90 and 93 of the ANR Certification as it relates to potential types of corrective actions, and ensuring availability of financial responsibility.

Reconvened Hearing Schedule

The limited reconvened hearing will be held on **January 22, 2019 at 5:30 P.M** at the Town of Coventry Community Center (168 Main Street, Coventry) gymnasium. In the case of adverse weather, e.g. big winter snowstorm or ice storm, and the need to cancel the scheduled hearing, or the need to continue the hearing on a second evening, the back-up and/or supplemental hearing date is **January 24, 2019 at 5:30 P.M.** All should please mark calendars with both dates, thank you.

It is lastly noted that a letter was received from MRC, and hereby distributed, **Exhibit 054**:

https://anrweb.vt.gov/PubDocs/ANR/Planning/7R0841-13/Application%20Documents/Exhibit%20054%20MRC%20Letter%20re%20Hearing%2011-16-18.pdf

It is requested that persons submitting information for the record please complete the required distribution, and contact the Coordinator with any questions about how to complete this distribution – thank you in advance.

Questions regarding the application can be directed to Kirsten Sultan at 802-751-0126.

Dated at St. Johnsbury, Vermont this 20th day of November, 2018.

By *_/s/ Eugene Reid*
Eugene Reid, Chair
District #7 Environmental Commission
Natural Resources Board

Commissioners participating in this decision: Keith Johnson, Nicole Davignon

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CERTIFICATE OF SERVICE

I hereby certify that I, Gina St Sauveur, Natural Resources Board Technician, District #7 Environmental Commission, sent a copy of the foregoing document Memorandum of Decision, Party Status, Other and Notice of Reconvened Hearing #7R0841-13 for New England Waste Services of Vermont, Inc., Williston VT by U.S. Mail, postage prepaid to the following individuals without e-mail addresses and by e-mail to the individuals with e-mail addresses listed, on this 20th day of November, 2018.

Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or e-mail below. If you have elected to receive notices and other documents by e-mail, it is your responsibility to notify our office of any e-mail address changes.

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Gina St Sauveur
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