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**State of Vermont  
Natural Resources Board  
District 7 Environmental Commission**

RE : New England Waste Services Of Vermont, Inc                      Application 7R0841-13  
10 VSA 6085(C)(5)

PRE-FILED TESTIMONY AND POSITIONS OF “FRIEND” DUMP, LLC

Consistent with the District Commission’s Memorandum of Decision dated November 20, 2018, DUMP, LLC, a grassroots citizen organization consisting of residents of the North East Kingdom came together out of common concerns about the continued operation, and proposed expansion, of the New England Waste Services of Vermont’s (NEWSVT) landfill in Coventry, and proceeding pro se in the present matter, hereby provides pre-filed testimony and positions in anticipation of the District Commission’s evidentiary hearing scheduled for January 22, 2019.

DUMP argues that the NEWSVT planned 51.2-acre land and related 1,076 airspace expansion of the Coventry Landfill is “a substantial change” to a pre-existing development that has struggled and failed to meet conditions of Land Use Permit #7R0841-8.

DUMP contends that the ANR Air Pollution Control Division Permit and Solid Waste Management Facility Certification were improvidently issued and thus cannot be considered as presumptive evidentiary proof, pursuant to Act 250, Rule 19, that the expansion and operation of the landfill for an additional 10-year period will not result in undue air and water pollution.

DUMP will show through hydrologist reports, well monitoring results, ANR Complaint Report Forms, and e-mail communications that non-compliance with applicable statutory and regulatory provisions which ANR is mandated to implement in issuance of its approvals has and “will likely result in, or substantially increase the risk of, undue water... [and] air pollution... (Act 250 Rule 19(f)(2).

Among other arguments, DUMP will demonstrate:

- The inaccuracy in the Agency of Natural Resources (ANR) permit FINDINGS as it pertains to environmental violations pertaining to pollution of Air.
- A significant and growing issue with odors, an indication of ongoing air pollution. In the 14 years since Land Use Permit #7R0841-8 – including Phase IV – was issued, NEWSVT and its parent company, Casella, have failed to control odors and gas emissions, and properly respond to residents who are forced to live with foul odors.
- How ANR staff has failed to cite the landfill with violations for situations that have been confirmed. In other words, oversight has not been what it should be when it comes to air quality issues. The result is an inaccurate assessment of the landfill’s impact.
- How the Coventry facility, referred to as “state of the art” in the Act 250 Land Use Permit for the 45-acre landfill expansion in 2004, has experienced serious system failures, causing pollution.

- 1 • Well monitoring tests show contaminants have migrated in a direction that calls to  
2 question the groundwater flow exhibits accompanying hydrology studies by Waite-  
3 Heindel.  
4
- 5 • Casella admits it may not be able to keep its commitments for capping landfills.  
6
- 7 • PFAS contaminants have migrated a distance from the lined landfill that is greater than  
8 the required buffer distance of 300 feet.  
9
- 10 • Waite-Heindel project a number of compliance wells will exceed Groundwater  
11 Enforcement Standards in 10 years, two years before the ANR Certification OL510  
12 expires.

13 DUMP also specifically contends that ANR has failed to comply with the requirements of  
14 10V.S.A.6620(a) insofar as there is no affirmative proof in either the Certification or its  
15 accompanying Responsiveness Summary that coordination among the divisions within the ANR  
16 took place during the review of this extremely large and complex industrial land use.  
17

18 This statutory provision requires more than simply ensuring that each ANR division issues its  
19 requisite approvals in isolation. The District Commissions are responsible for a supervisory  
20 oversight role of environmental protection as was articulated by the Vermont Supreme Court in  
21 its Hawk Mountain [149 VT 179 (1988) ] decision. This oversight role is in effect a critical  
22 “fail/safe” function on behalf of the public interest.  
23

24 In providing this testimony, DUMP makes known that numerous arguments made herein are  
25 identical to those made by the ANR in its complaint filed against the Moretown landfill in  
26 Superior Court in November 2014. We would hope that both the Commission and the ANR have  
27 an appreciation for precedent and consistency.

28 “*Exhibits*” and “*Documents*” noted in this testimony can be accessed according to number in the  
29 corresponding folder at:  
30 <https://drive.google.com/drive/folders/1VoU1n1BEMRunBB2-Ebrc-c3d0sVyn6fg> .  
31 If the link fails to work, copy and paste it into your browser.  
32

### 33 Facts to Keep in Mind

34 As you read our testimony, we ask the Commission to consider the following facts:

- 35 • Casella has a history of fines and violations at its New England facilities dating back to  
36 the early 1990s and continuing to the present. The company has been cited for  
37 everything from allowing leachate to contaminate ground water and ignoring state  
38 mandates, to failing to comply with emissions limitations, and creating waste slopes that  
39 exceed the allowable grade limit. (*Exhibit 1*) We will show how Casella’s performance  
40 pattern is no different in our state and how it endangers those of us who live in Vermont.  
41
- 42 • There are more modern technologies than those employed at landfills, which provide not  
43 only a cleaner approach to waste, but produce exponentially more energy. The  
44 NEWSVT gas to energy plant makes use of only the byproduct of methane. Newer

1 technology takes the entire waste stream and converts it to energy. The cost-benefit  
2 comparison of these technologies with landfills is like sweet oranges to rotten apples. An  
3 accurate cost of landfills has never been calculated taking into account the never-ending  
4 environmental impact and inevitable cleanup required.

5  
6 Casella acknowledges the development of and value placed on these technologies in its  
7 2017 Annual Report published, and at the same time recognizes that such development  
8 can have a significant adverse effect on its company's revenue streams:

9  
10 *"As we continue to develop our landfill capacity, the waste management industry is*  
11 *recognizing the value of the waste stream as a renewable resource, and accordingly,*  
12 *alternatives to landfilling are being developed that seek to maximize the renewable*  
13 *energy and other resource benefits of solid waste. ... As a result, our revenues and*  
14 *operating margins could be materially adversely affected due to these disposal*  
15 *alternatives."*  
16 (<https://ir.casella.com/static-files/4616233c-eb60-4650-ae5d-b4b3a02af980> p.21)

17  
18 Nonetheless, Casella's updated strategic plan through its fiscal year ending Dec. 31,  
19 2021, does not include green waste technologies in its five strategies:

- 20 ○ Increasing landfill returns;
- 21 ○ Improving collection profitability;
- 22 ○ Creating incremental value through resource solutions (*mostly dealing with*  
23 *recycling*);
- 24 ○ Reducing general and administration costs and improving efficiencies;
- 25 ○ Allocating capital to balance debt delevering with smart growth.

## 26 27 **PART 1: AIR POLLUTION**

### 28 Rebuttal of Solid Waste Management Facility Certification OL510, FINDINGS (2): Air Pollution

29  
30 DUMP rebuts the claim that NEWSVT has not committed more than one violation as stated in the  
31 FINDINGS (2) of the ANR Solid Waste Management Facility Certification OL510:

32  
33 *2. NEWSVT, Inc. and any person required to be listed on the disclosure statement*  
34 *pursuant to 10 VSA 6605f(b)(1) have not committed more than one (1) violation*  
35 *of environmental statutes, rules, orders, certifications or permits issued by any*  
36 *jurisdiction, which have the potential to significantly harm the public health,*  
37 *public safety or the environment, giving due consideration to the size and scope*  
38 *of the applicant's business operation.*

39 According to the scope of the ANR FINDING above, DUMP made a request to the Agency of  
40 Natural Resources for all documents concerning violations for which the Coventry landfill had  
41 been cited between 2009 and 2018. Marcella Dent, ANR Legal and Planning Program  
42 Coordinator, replied:

43  
44 *"There has been no formal enforcement action taken against the Coventry*  
45 *landfill between 2009 and 2018. While not a formal enforcement action, the*  
46 *Waste Management and Prevention Division did issue a Notice of Alleged*  
47 *Violation to the landfill on 12/10/2012..."*  
48

1 Dent's response is indicative of two behavioral patterns – patterns that do not serve the public's  
2 best interest – exhibited by the Agency of Natural Resources' staff:

- 3
- 4 1. The truth is distorted, misrepresented or half-told in order to mislead; and,
- 5 2. Oversight is lacking.
- 6

7 Therefore ANR's representation of the Coventry landfill's violations and impact on air quality is  
8 not accurate.

9

10 The ANR Complaint Report Forms concerning odors reveal a number of violations, situations  
11 that warrant violations, and a serious lack of oversight. Additionally, there are e-mails and  
12 meetings notes that detail numerous circumstances in which the landfill is not in compliance and,  
13 therefore, qualify as violations.

14

15 Dent provides a clear example in support of our findings that there have been a multitude of  
16 violations warranting action. Note that this example occurs eight years after the issuance of the  
17 2004 permit. In the **Notice of Alleged Violations, dated Dec. 10, 2012** (*Document OL510*  
18 *2012.12.10.NOAV*), **noted by Dent, onsite inspections provided the evidence** needed to cite  
19 several violations against the landfill:

- 20
- 21 • **Daily Cover:** "During the inspection on 11/16/12, Solid Waste Program staff  
22 observed that adequate daily cover had not been applied on the previous day.  
23 Raw garbage was exposed on the surface of the cell. The amount of exposed  
24 trash over a wide area also indicated insufficient daily cover on previous days,  
25 and/or failure to minimize the size of the working face and ensure that cover  
26 material remains functional and stable."
- 27
- 28 • **Fluff Cover:** "During the inspection on 11/16/12, Solid Waste Program staff  
29 observed that the initial (or "fluff") lift in Phase IV cell 3C contained  
30 unacceptable items that could pose a threat to the underlying liner. This waste  
31 had been placed on a previous day, and the unacceptable items had not been  
32 removed by a spotter. Failure to follow the filling procedures in the approved  
33 FMP violates conditions 1 and 2 of the certification, which require operation in  
34 accordance with the terms of the certification and prohibit unauthorized  
35 alterations to the approved Facility Management Plan.
- 36
- 37 • **Mercury-Containing Bulbs:** "Mercury-containing bulbs are accepted at the  
38 drop-off area adjacent to the landfill. When lamp boxes are full, they are moved  
39 to a storage shed for temporary storage. During the inspection on 11/16/12, Solid  
40 Waste Program staff observed a full box of mercury containing lamps in the shed  
41 that was not taped shut, and was not adequate to prevent breakage. Some of the  
42 bulbs were broken and had released components of the universal waste to the  
43 environment. The residue from broken lamps had not been containerized,  
44 characterized, or managed."
- 45

46 Rebuttal Continued: Violations Cited By The Agency

47

48 In addition to the observed violations in the *Alleged Violation* presented by Dent, there are a  
49 dozen Agency (odor) *Complaint Report Forms* that note violations were "found." Circumstances  
50 leading to odorous conditions include system failure, deliveries of "smelly" sludge, landfill  
51 project work, and inadequate cover.

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As you review the details of these violations, keep in mind Marcella Dent’s assertion that there has been “no formal enforcement action taken.” This begs the question of why rules, regulations and permits exist if there is no enforcement of them.

Certainly the Commission understands that the environment and citizens of Vermont are put at risk when an Agency that claims to “promote the sustainable use of Vermont’s natural resources, protects and improves the health of Vermont’s peoples and ecosystems, and promotes sustainable outdoor recreation,” turns a blind eye to environmental violations and takes no formal actions.

Nor are the citizens served by an Agency that makes use of technicalities – formal vs. informal, and “alleged” as opposed to confirmed – in communications as a means to safeguard an operation that is in clear violation. While we have an appreciation for the legal implications of language, alternative phrases referring to “actions taken,” “confirmed violations,” and/or “violations found” is appropriate and accurate terminology.

For a “violation” is a “noncompliance with one or more of the statutes specified in 10 V.S.A. 8003 or any related rules permits, assurances, or orders.”

And as such, each violation is subject to civil penalties of up \$85,000 for each initial violation and up to \$42,500 for each day a violation continues, 10 V.S.A. 8221(b)(6).

Below are a few examples of the “violations” noted in ANR documents pursuant SWMR 6-701(6), all of which resulted in emissions and/or discharges that threatened public health and the environment. Additional violations can be found in Exhibit 2: Violations Cited with the corresponding documents as noted.

- *2- Violation(s) Found – Voluntary Correction after contact* | 12/16/2011 | Flare and gas energy plant shut down. Tests show 9 locations where methane concentrations are higher than 500 ppm. (Note this is 10 times higher than the standard of 50 ppm.) Phase IV Cell 2A methane levels measure at 63,000 ppm. LPG bubbling out of landfill surface. Side slope riser pipe not connected to gas collection system. Casella admits odor problem due to plant shut downs and increased acceptance of sludge. Shut downs occurred on June 9, Dec. 1, and Dec. 11. (Document #25715)
- *3-c Violation(s) Found – No Action Taken (lack of evidence)* | 5/3/2013 | NOTE: Odor was confirmed by landfill staff: “Wing... was able to smell a gas odor at her residence.” They were digging in the landfill to fix a leachate breakout. Wing: the previous gas issues have been resolved. ( Document #13EC00290)
- *2 Violation(s) Found – Voluntary Correction after contact* | 6/10/2013 | Landfill staff pose probable causes for odor: Lenny almost sure odor is due to sludge as Trish reports following a truck that was reeking. John Gay says it could also be gas. Gas Pipe Issue: “Our operators accidentally nicked a 6” gas pipe on top of the landfill where we are excavating for soil covers.” Plant was shut down for a short time afterward. Flare could not be lit. (Document #13EC00449)
- *2 Violation(s) Found – Voluntary Correction after contact* | 12/31/2017 | Failure of gas management systems due to cold weather. Flare and vacuum on system restored on 1/2/2018 after failing on 12/31/2017. Gas to energy plant expected to be back online

1 1/3/2018. SWMR 606 (b)(2)(j) Facilities shall assure the control and treatment, if  
2 determined necessary by the Secretary, of gasses resulting from the decomposition of  
3 wastes to prevent hazards to public health and safety, the environment, or the creation of  
4 a nuisance. (Document #18EC00005)

5  
6 Failure to Operate and Maintain a Landfill Gas Collection  
7 and Control System that Effectively Captures Landfill Gas  
8

9 Occurring between 2011 and 2018, all of the above listed violations involved air pollution, either  
10 due to failures of the gas management system and/or the exposure of leachate to the environment.  
11 Through the years, NEWSVT's efforts have been insufficient to ensure that the landfill gas  
12 collection system operates properly and effectively. In fact, there have been six occasions, *of*  
13 *which we know*, when the systems completely failed in as many years, including the inability to  
14 light the flares.

15  
16 While surface emissions most likely varied, there is evidence that methane levels were beyond  
17 the compliance point of 50 ppt in 2011, and most likely reached above compliance levels on  
18 several of the other occasions when the gas management system shut down and the flares were  
19 not lit.

20  
21 There are numerous other occasions when gas emissions were caused by the landfill. In addition  
22 to the ones we outline here, we ask the Commission to take note of other system failures noted  
23 throughout this testimony.

24  
25 John Gay of NEWSVT writes in an e-mail dated April 13, 2012 (*Exhibit 28*):

26  
27 *"Over the last week we have attempted to clear a main gas header... what we*  
28 *thought was debris turned out to be a crushed pipe... This header is the primary*  
29 *extraction point for Phase IV which is the area of the landfill we have identified*  
30 *as the likely source for offsite emission.*

31  
32 *"During the day on the dates (4/4-6, 4/11-12) we had to reduce the gas flows by*  
33 *an average of about 1,100 scfm to perform the cleaning/camera work which*  
34 *could have caused off site emission (odor)."*

35  
36 On Sept. 5, 2014, John Gay writes to Mayor Paul Monette after the Mayor had made odor  
37 complaints (*Exhibit 29*):

38  
39 *"... gas pressure built up over the preceding hours and because the valve was*  
40 *closed did not get collected into the collection system; the result was a release of*  
41 *gas."*

42  
43 In hand written notes from a meeting (*Exhibit 30*) that occurred on Sept. 8, 2014, in which Barb  
44 Schwendtner and Jeff Bourdeau were in attendance, it states:

45  
46 *"1 year ago, had huge odor problem. One major trunk line collapse.*

47  
48 Not only do these system failures and gas exceedances create a pattern of unreliability going  
49 forward, but they violate the Vermont Solid Waste Management Rules:

1 *SWMR 606(b)(2)(j) Facilities shall assure the control and treatment, if*  
2 *determined necessary by the Secretary, of gases resulting from the decomposition*  
3 *of wastes to prevent hazards to public health and safety, the environment, or the*  
4 *creation of a nuisance.*

5  
6 *SWMR 606(b)(2)(H)(vi) Demonstrate that the facility landfill gas collection*  
7 *system is adequate to collect and destroy additional landfill gas generated as a*  
8 *result of additional liquids. The applicant shall include estimates of gas*  
9 *production resulting from changes in operations*

10  
11 In support of DUMP's assertions, here are the particulars of landfill gas and its impact, according  
12 to the ANR:

- 13  
14 • Landfill gas is created as solid waste decomposed in a landfill. Landfill gas  
15 consists of nearly 50 percent methane and 50 percent carbon dioxide and water  
16 vapor, as well as less than 1% non-methane organic compounds (NMOCs), small  
17 amounts of nitrogen, oxygen and hydrogen, and trace amounts of inorganic  
18 compounds.
- 19  
20 • NMOCs in landfill gas include compounds recognized by the federal  
21 Environmental Protection Agency (EPA) and ANR as hazardous air pollutants,  
22 exposure to which may result in adverse health effects.
- 23  
24 • NMOCs in landfill gas include volatile organic compounds which can react with  
25 sunlight to form ground level ozone (smog).
- 26  
27 • The release of methane and carbon dioxide in landfill contributes to global  
28 warning.
- 29  
30 • Some of the compounds in landfill gas have strong odors even at very low  
31 concentrations. The odorous compounds include sulfide (hydrogen sulfide,  
32 dimethyl sulfide, and mercaptans) and ammonia.
- 33  
34 • Methane released to the atmosphere has the potential to trap 86 times more heat  
35 than carbon dioxide over a 20 year period and 34 times more heat than carbon  
36 dioxide over a 100 year period making it a much more potent greenhouse gas.

37  
38 Rebuttal Continued: Violations Merited

39  
40 When considering complaints that should have garnered violations, we ask that the Commission  
41 take into account the fact that oversight is lacking. By its own admission, the Agency cannot  
42 make timely investigations due to distance and hours of operation.

43  
44 Barb Schwendtner, as documented in complaint forms, explains these facts to complainants  
45 repeatedly in her role of providing compliance oversight. In one case she states she is not on call  
46 24/7. Unfortunately, the residents do not get to choose the time they are impacted by odors.

47  
48 And while it is understandable that one person is not able to perform the necessary investigations  
49 (*necessary by virtue that the ANR requires a violation be confirmed through an investigation*), it

1 is not acceptable that the State does not provide adequate resources to follow through on its own  
2 stipulations.

3  
4 In essence, citizens are encouraged to inform the landfill and Agency of odors to no avail. This is  
5 an unfair and unacceptable situation for residents who have been forced to endure objectionable  
6 nuisance odors for more than a decade.

7  
8 The Agency's lack of ability to provide adequate investigations and oversight contribute to an  
9 inaccurate assessment of the seriousness of the odor problem and resulting undue air pollution.

10  
11 A variety of circumstances were acknowledged in connection with odor complaints that merit a  
12 violation due to attributable evidence in lieu of an onsite investigation. Circumstances include  
13 odors were actually confirmed (5 instances), and weather patterns consistent with impact (6), as  
14 well as project work (5), and sludge deliveries (3) that coincided with complaints.

15  
16 Note that in some of these situations, multiple elements are acknowledged and serve to confirm a  
17 complaint as valid and meriting a violation. There was also one situation in which three people  
18 complained in less than an hour.

19  
20 We list here just a few examples, with the remainder listed in *Exhibit 7: Violations Merited* with  
21 coinciding the noted documents.

22  
23 a) May 1, 2014 | *Had to close windows on Main and School in Newport because it's*  
24 *pretty nauseating.* Email from Kirsten Sultan explains: "There were some specific  
25 mechanical issues that led to specific odor emissions. The bottom line is that the  
26 systems at the landfill and methane recovery plant are very complicated and  
27 sensitive, occasionally the system malfunctions. They have isolated one problem (a  
28 particular valve or sensor ?) within the complex system and are in the process of  
29 completed replacement/repair of the component." (Document # 14EC00309)

30  
31 b) Sept. 2, 2014 | *Newport mayor reports 3 residents on West Side complain of foul*  
32 *odors.* Landfill staff hypothesize two plausible causes: 1) A gas wellhead was closed  
33 too much during Sanborn Head's balancing on Friday, causing odors to sneak out  
34 around the cap. 2) More cover is needed since waste is sitting there for a longer  
35 period. On Saturday, they only took two loads of C&D from Austin's. Will use an  
36 extra 10 inches of cover on Friday at the close of business.  
37 (Document #14EC00759)

38  
39 c) March 20, 2018 | *Complainant believes it is gas odor, smells toxic. He noticed a*  
40 *large white plume near the plant. Wondered if it was related. It was totally vertical.*  
41 *Also mentions odors woke him up at 1 or 2 a.m. two weeks ago on a Monday.*  
42 (Document #18EC00173)

43  
44 Schwendtner informs Wakefield & Shepard of air complaint. "Just FYI: Air needs at  
45 least 2 complaints to have authority as public nuisance." *NOTE: On several*  
46 *occasions there are two or more complainants, but Wakefield & Shepard, nor anyone*  
47 *else, is informed.*

48  
49 There was no wind. Schwendtner explains to Sam Wiggert that the weather  
50 conditions are allowing odors to travel as a block without getting broken up by wind,  
51 so it may not take much to cause impacts. Wiggert reports they have been installing 3



1 new horizontals in the last few weeks and installed a new vacuum line that was  
2 hooked up Friday.

3  
4 *(We note a pattern of complaints attributed by landfill staff to project work or*  
5 *construction at the landfill.)* Schwendtner suggests: Since more gas construction is  
6 planned in upcoming days, that they inform the complainant.

7  
8 Schwendtner also reminds Wiggett of previous construction when a valve got left in  
9 the wrong position, and suggests he inspect to make sure something has not been  
10 missed.

- 11  
12 d) April 25, 2018 | *Awfullest air on the planet... why do we have to live this way*” Text  
13 missed and not relayed until April 27. Schwendtner notes wind speed and direction  
14 were consistent with possible impacts on Maple Ridge. (*Document # 18EC00457*)

15  
16 Schwendtner states they have never confirmed odors at this site: Maple Ridge. It’s  
17 pertinent to note that there have been several confirmations on Lawson Ridge,  
18 beyond Maple Ridge:

- 19 • Complaint Forms: 13EC00290, 13EC00449, 13EC00574, 14EC00382.

20  
21 In addition, in the weeks following the April 25 complaint, there are multiple  
22 confirmations of odor on the ridges:

- 23 • 18EC00808.
- 24 • Landfill complaints dated 5/17/2018 (*Document L-18EC07*), 5/30/2018  
25 (*Document L-18EC08*), and 6/11/2018 (*Document L-18EC014*).
- 26 • Emails between Barb Schwendtner and Jeremy Labbe between June 7 and  
27 June 15, 2018. (*Exhibit 28*)

- 28  
29 (e) July 31, 2018 | *Complaints from three different people on ridges between 8:45*  
30 *and 9:21 a.m.*

31 Despite three complaints, landfill staff did not detect odors. How many people  
32 have to complain before Agency recognizes there is a problem? (*Documents:*  
33 *#18EC00917, # L-EC017, # L-EC018, # L-EC019*)

#### 34 Failure to Prevent Nuisance Odors

35  
36 All complaints detailed in sections titled Violations Cited and Violations Merited, including those  
37 listed in the accompanying documents, collectively serve to show that NEWSVT *has failed to*  
38 *take all the necessary steps to prevent or control nuisance odors*, which is a violation of  
39 SWMR 701(6).

40  
41 The potential for odors becoming a nuisance at a landfill is generally present unless active steps  
42 are taken to prevent, minimize and control odors to the maximum extent possible.

43  
44 Section 552, 10V.S.A., and the VAPCR define “air contaminant” as “dust, fumes, mist, smoke,  
45 other particulate matter, vapor, gas, odorous substances or any combination thereof.”

46  
47 Section 5-241(1) of the VAPCR provides:

48  
49 *“A person shall not discharge, cause, suffer, allow, or permit from any source*  
50 *whatsoever such quantities of ‘air contaminants’ or other material which will*

1 *cause injury, detriment, nuisance or annoyance to any considerable number of*  
2 *people or to the public or which endangers the comfort, repose, health or safety*  
3 *of any such persons or the public or which causes or has a natural tendency to*  
4 *cause injury or damage to business or property.”*  
5

6 Almost daily, NEWSVT has emitted air contaminants from the Coventry Landfill in the form of  
7 gas and/or odorous substances, including odors from gas generated by the decomposition of waste  
8 and odors from biosolids and leachate loads.  
9

10 Biosolids, also known as sludge, are nutrient rich organic matter produced at waste water  
11 treatment facilities, and then shipped to the Coventry landfill.  
12

13 According to ANR, biosolids can exacerbate the odors generated by a landfill in a number of  
14 ways, including directly, by being particularly odiferous, and, indirectly, by accelerating the  
15 creation of landfill gas and by increasing leachate generation due to their relatively high water  
16 content, which can lead to problems with collection and control of landfill gas.  
17

18 Sludge is connected to the cause of odors in the details of at least 16 situations, between 2010 and  
19 2018. In particular, sludge from Manchester, N.H., Haverhill, MA, Shelburne, VT, Springfield,  
20 MA, Essex, VT, and Rutland, VT, are noted.  
21

22 In relation to an odor complaint on July 31, 2014, the landfill reported that a “stinky load” had  
23 arrived from Shelburne, and that it was odorous for about 20 minutes until it was covered.  
24 Schwendtner felt compelled to speak with the landfill manager about the “landfill’s responsibility  
25 to reject overly smelly loads or not accept contracts for overly smelly sludge.”  
26 (*Document # 14EC00662*)  
27

28 Four years later, sludge becomes such a prominent cause of odor that in the summer of 2018 it is  
29 a topic of a meeting at the landfill. (*Document # 18EC00769*) After discussion about what  
30 constitutes an odor violation, the meeting focus turned to “sludge odors and efforts Casella  
31 Organics is making with the WWTP generators of the sludge to control odors at the treatment  
32 plants.”  
33

34 Residents living in proximity, sometimes not so close, have reported to ANR and NEWSVT staff  
35 that landfill odors have disrupted their quality of life and caused concern for their health.  
36 Complaints sometimes mention odors over the past three and four years, and conditions that are  
37 “eye-watering.” Therefore, as previously stated, NEWSVT is in violation of SWMR 701(6) and  
38 VAPCR 5-21(1).  
39

#### 40 Oversight and Enforcement Lacking

41

42 In talking with residents, we learned that many of them have called continually through the years,  
43 even though their calls have not produced any results.  
44

45 In several Complaint Report Forms, starting in 2010, additional and separate complaints are  
46 mentioned within detail of the complaint of record. However, there is no separate form  
47 documenting the details of these additional complaints and related details. The lack of  
48 documentation prevents an accurate and complete assessment of the odor issue and undue air  
49 pollution caused by the Coventry landfill.  
50

1     Supposedly there were no complaints in all of 2016. We know this to be untrue. In talking with  
2     residents and business owners, we were told of their calls through the years.

3  
4     At Blodgett’s Supply in Newport, two employees – Robert Fortunati and Dave Elko – confirm  
5     that a former employee named Steve Farrar, now retired, used to keep a log of calls because he  
6     called almost daily on behalf of the firm. They told us about summer days when they had to keep  
7     overhead doors closed because of strong odors.

8  
9     Farrar provided a notarized statement talking about his experience and confirming his calls.  
10    (*Exhibit 29*) There is no evidence of any of his calls among the ANR Complaint Report Forms or  
11    confirmation of the “sludge” odors offsite that would have been violations.

12  
13    We suspect that the lack of record keeping could be intentional, as is the misleading of the public.  
14    Jeff Bourdeau of the Agency told attendees of the public hearing held on June 21, 2018, that only  
15    two complaints had been received. Jeremy Labbe, landfill general manager, confirms that he  
16    heard Bourdeau say this with the stipulation that Bourdeau was referring to only those complaints  
17    received by ANR. His confirmation is documented along with those of two residents – Eve  
18    Mishou Fournier and Bob Fortunati, who take issue with Bourdeau’s statement – in records  
19    attached to a Complaint Form. (*Document # L-18EC015*) (*Exhibit 30*)

20  
21    Bourdeau’s statement came on the heels of 18 complaints being recorded in May through mid-  
22    June. Four of those complaints were confirmed, three of which were directly related to deliveries  
23    of sludge. And while most of those complaints were called into the landfill, Schwendtner  
24    acknowledges 12 complaints received by the landfill between May 2 and June 14 in an email  
25    dated June 14, one week before Bourdeau conducted the public hearing. (*Exhibit 6*)

26  
27    If Bourdeau was truly that much out of the loop, either he should not have been the one to  
28    conduct the public hearing, or he should have made an effort to be informed about such matters as  
29    odor complaints. We tend to doubt he was that much out of the loop, and that the ANR  
30    communication could be that poor among its staff members.

31  
32    We also believe the ANR records are incomplete because NEWSVT was not required to provide  
33    documentation of complaints until recently according to a November, 2018, email written by  
34    Barb Schwendtner:

35  
36            *“The landfill has only been required to report odor complaints to DEC within 24*  
37            *hours/next business day since the recent issuance of the expansion certification*  
38            *(see condition #42) issued on 10/12/18. Prior to that they only had to retain*  
39            *records for DEC inspection, so the Agency does not have their records going*  
40            *back 10 years.”*

41  
42    This is significant because most people have only known to call the landfill. And often to this  
43    day, they are directed to do so even by the Agency because the Agency staff is two hours away  
44    and cannot do timely investigations.

45  
46    The Agency repeatedly tells complainants that they must call in at the exact moment that they  
47    detect an odor with an explicit description, otherwise their complaint cannot be investigated.  
48    However, more often than not, timely complaints are not investigated. (*We count 24 complaints*  
49    *not investigated in the records released to us, but believe this represents only a fraction of*  
50    *complaints where there were no efforts made to verify them.*)

51

1 Other times complaints are investigated too late, after weather conditions have shifted.  
2  
3 If complaints are investigated, the Agency most often relies on landfill staff to “sniff” out  
4 evidence to confirm a complaint. In the majority of cases, landfill staff cannot detect odors. This  
5 begs the question, Can a staff person who has been immersed in landfill odors accurately detect  
6 an “objectionable odor” offsite the same as a resident?  
7  
8 With the odor detecting abilities aside, it appears that the Agency has the fox guarding the hen  
9 house. In fact, we find 26 complaints that were left to landfill staff to investigate.  
10  
11 Random odor patrols are conducted with very little odor detected. With the agency “two hours”  
12 away, patrols might seem like a good idea, but they have been infrequent and proven to be an  
13 insufficient substitute for complaint investigation and verification.  
14  
15 An e-mail exchange between Act 250 staff members on Sept. 3, 2014, demonstrates that odors  
16 were of great concern to residents. A complaint about ongoing odors from Newport businessman  
17 Richard Isabelle, and observing that a “Casella Smells” Facebook page has more than 100  
18 members, is shared with ANR staff and discussed among Act 250 staff. (*Exhibits 8, 9, 31*)  
19  
20 As is evident with the ongoing complaints provided herein, the complaint issue is one that has  
21 been ongoing for years and impacting “*a number of people*” without penalty to the NEWSVT  
22 landfill. It is history that confirms oversight has been lacking and ineffective.  
23  
24 When reviewing Paragraph 21 of Land Use Permit #7R0841-8,  
25  
26 *Permittee shall, prior to the disposal of waste into Phase IV of the landfill,*  
27 *provide a plan, developed cooperatively with the Agency of Natural Resources,*  
28 *for increased on-site presence of ANR Solid Waste Program staff for the purpose*  
29 *of enhanced state oversight of the facility.*  
30  
31 one can only conclude that either NEWSVT and the Agency did not take this mandate seriously,  
32 or the plan is so inadequate as to not meet the letter of intent of the permit mandate. Barb  
33 Schwendtner’s repeated assertions that staff is two hours away and cannot investigate all odor  
34 complaints confirms that this condition went unmet.  
35  
36 Introductory Findings II (i) of Land Use Permit #7R0841-8 required an “*aggressive 24-hour per*  
37 *day, motion sensitive video monitoring of the landfill facility.*” The Commission believed this  
38 would “*contribute to the long-term safety of the watershed.*” Monitoring data was to be made  
39 available to “*all state and federal monitoring agencies, the District Commission, and the newly*  
40 *formed Canadian-US representative oversight committee...*”  
41  
42 While a system was installed, it became inaccessible at some point. In an e-mail (*Exhibit 10*)  
43 written by David DiDomenico to Donald Hendrich on Oct. 27, 2009, DiDomenico states:  
44  
45 *“Below is some of what I heard back from our internal enforcement person. It is*  
46 *difficult to investigate these types of claims without staging a person at the site*  
47 *24 hours a day.*  
48  
49 *... I remembered as I was driving in this morning, there is a video camera that*  
50 *overlooks the landfill. It was an ACT 250 requirement and we had access to it for*  
51 *a while. For some reason we are not able to access it now, but we are going to*

1                    *add a condition to their upcoming recertification to maintain the camera and*  
 2                    *give us access.”*

3  
 4                    When taking a big picture view of the evidence presented here, it is easy to conclude that while  
 5                    odor control is a condition of the permit, it is not taken seriously by the Agency. And NEWSVT  
 6                    seems to believe that because they are “doing everything possible,” residents should be  
 7                    understanding and tolerate odors.

8  
 9                    This is an unacceptable way for a government agency and a multi-million dollar corporation to  
 10                    operate. And given that both have had 14 years since the last Land Use Permit was granted, there  
 11                    has been more than enough time to organize their operations and deal with shortcomings.

12  
 13                    We can only conclude they are unable to do so, and therefore the Commission should not grant a  
 14                    Land Use Permit that includes a 51-acre expansion. The expansion is 6 acres larger than the  
 15                    previous one, and if approved, as the evidence here indicates, would guarantee greater problems  
 16                    and more pollution to come.

17  
 18                    **PART 2: WATER POLLUTION**

19  
 20                    Failure to Protect Groundwater: 10 V.S.A.6086.(a)(1) an (a)(1)(b)

21                    “Groundwater is of critical importance to the State of Vermont and must be actively protected  
 22                    and managed in order to protect public health and welfare,” pursuant to 12-302(1)(a) of the  
 23                    Environmental Protection Rules (GWPRS) as adopted under 10V.S.A. 1390-1394.

24                    We will show ANR, as an agent of the state and the certifying agency, has been inactive in  
 25                    preventing “substantial harm” and “unacceptable risk” through the act of certifying continued  
 26                    operations of the NEWSVT landfill and its expansion.

27                    “Substantial harm” means a deterioration of groundwater quality to a level that requires treatment  
 28                    to restore or maintain groundwater quality enforcement standards.” GWPRS 12-302(28)

29                    “Unacceptable risk” means an activity which is likely to cause or causes a ground water quality  
 30                    condition that reaches or exceeds one or more of the groundwater quality enforcement. GWPRS.  
 31                    12-302(30)

32                    Therefore, the ANR recertification of the NEWSVT operations, including the 51-acre expansion,  
 33                    serves as an example of the Agency’s level of inactivity concerning protection of groundwater.  
 34                    Further support of this premise is forthcoming in the review of water quality reports.

35                    The Commission, in its review of fact provided within, will see that NEWSVT does not qualify  
 36                    for a Land Use Permit under Act 250, pursuant to 10 V.S.A.6086.(a)(1) an (a)(1)(b):

37                    *“Before granting a permit, the District Commission shall find that the*  
 38                    *development:*

39  
 40                    *(a)(1) Will not result in undue Water or Air Pollution. In making this*  
 41                    *determination it shall “at least” consider: ...soils.... slopes...ability to*  
 42                    *adequately support waste disposal: availability of streams for disposal of*  
 43                    *effluents: etc.....*

1                 (a)(1)(b) Waste Disposal. A permit will be granted whenever it is demonstrated  
2                 by the applicant that, in addition to all other applicable criteria, the development  
3                 will meet any applicable Health and Environmental Conservation Department  
4                 regulations regarding disposal of wastes, and will not involve the injection of  
5                 waste material or any toxic substances into the ground water or wells.”  
6

7                 This testimony will provide evidence to the fact that “*the development*,” known as the NEWSVT  
8                 Coventry landfill and its 51-acre expansion:  
9

- 10                • Has in the past, is today, and will continue into the future to allow toxic substances to  
11                enter into the groundwater or wells.
- 12                • Is knowingly a party to inorganic toxins being poured into Vermont’s rivers and lakes.
- 13                • Is based on questionable assumptions as to the flow of groundwater.
- 14                • Offers false assurances that its double-liner design does not leak or fail in any way.

15  
16                         Rebuttal of Solid Waste Management Facility Certification OL510,  
17                         FINDINGS (o): Water Pollution  
18

19                 DUMP rebuts the foundation upon which the ANR based this certification as it relates to  
20                 FINDING (o):  
21

22                         *“A detailed summary of the re-certification application’s compliance with the*  
23                         *requirements of applicable Rules and Procedures is in the Fact Sheet issued with*  
24                         *the draft certification.”*  
25

26                 In referencing the NEWSVT, Inc., Phase VI Application – Fact Sheet, the ANR is in essence  
27                 accepting the assertions found within. For the ANR makes no qualifying statements otherwise in  
28                 reference to FINDING (o).  
29

30                 DUMP specifically rebuts the following paragraph found on Page 4 of the NEWSVT Fact Sheet:  
31

32                         *“As documented by the application, the hydrogeologic characteristics, landfill*  
33                         *design and anticipated volume, physical and chemical characteristics of landfills*  
34                         *leachate, coupled with the detection monitoring of groundwater at and prior to*  
35                         *the compliance point provides sufficient support for making the determination*  
36                         *that an exceedance at the point of compliance is not probable. Should the*  
37                         *component of the landfill design fail, the monitoring systems in the place will*  
38                         *detect any discharge occurrence and will allow repairs or remediation to occur*  
39                         *prior to an exceedance at the point of compliance.”*  
40

41                 Our rebuttal includes ANR’s assertion as stated in its permit certification on FINDINGS (q)(2):  
42

43                         *“Based on the application for certification, the proposed design of the Facility,*  
44                         *the nature of the waste disposed of and the comprehensive water quality testing*  
45                         *which occurs at the site, the Secretary has determined the activities proposed by*

1 *this application will not contribute to exceedances of the Vermont Groundwater*  
2 *Enforcement Standards at a point of compliance.”*  
3

4 Prior to making these statements within the certification document, the ANR received water  
5 quality reports in 2017 and 2018 that clearly showed exceedances of groundwater enforcement  
6 standards (GES). These exceedances are an indication that contaminants are increasing and  
7 migrating to a degree that should cause alarm about the implications for water quality into the  
8 future at compliance points.  
9

10 In addition, throughout this testimony, the Commission will come to realize that the water quality  
11 testing is not “comprehensive” and the design of the facility does not preclude failure as it  
12 pertains to human error. Nor does the facility design eliminate naturally occurring issues; such  
13 naturally occurring issues therefore would be representative of an “ineffective design” or  
14 construction not representative of the design.  
15

16 We contend that the best predictor of future compliance is actual performance as it relates to the  
17 past and present. We will show that exceedances of the groundwater enforcement standards have  
18 been commonplace for the Coventry landfill operation, so much so that regulators have been  
19 lulled into routinely accepting such results to the degree of not giving proper thought to the  
20 implications for future impacts to public health and the environment.  
21

#### 22 Tests Confirm Landfill is Polluting Groundwater 23

24 Groundwater testing of the Coventry landfill monitoring wells is done on a semi-annual basis by  
25 Waite-Heindel, an environmental consulting firm hired by NEWSVT. Consecutive tests in the  
26 past five years have shown exceedances of the ground water enforcement standards for some, if  
27 not many of the substances tested. And in some of the wells, these exceedances are increasing  
28 significantly.  
29

30 According to the Certification FINDINGS (g) the ANR stated it did not have adequate  
31 information about the quality ground water and surface water:  
32

33 *“On April 13,2017 the Agency (ANR) determined the application for the landfill*  
34 *expansion to be technically incomplete. The application did not contain sufficient*  
35 *information pertaining to groundwater quality and surface water quality at the*  
36 *site.” (Exhibit 16)*  
37

38 While we contend that the ANR had more than sufficient information pertaining to groundwater  
39 quality in terms of Groundwater Enforcement Standards and exceedances of these standards as  
40 documented in the Waite-Heindel reports, we concur the ANR was lacking information  
41 pertaining to PFAS compounds, as these compounds have not been included in the semi-annual  
42 testing.  
43

44 In support of our statements, we quote an ANR letter written by Kasey Kathan. She is writing to  
45 Joe Gay about ground water exceedances cited in the Fall 2015 Semi-Annual Water Quality  
46 Monitoring Report by Waite-Heindel (*Exhibit 34*):  
47

1 *“As is typical, this recent monitoring report is consistent with previous*  
2 *observations at this site. Evidence of groundwater impact is principally*  
3 *concentrated to the monitoring wells that are located down-gradient of the*  
4 *unlined portions of the facility. Groundwater impact is indicated by the presence*  
5 *of both inorganic and organic components mixed trends and some exceedances*  
6 *of Vermont Groundwater Enforcement Standards (VGES) and there are also*  
7 *exceedances of the Vermont Water Quality Standards (VWQS) in surface water*  
8 *samples.*

9  
10 *Down-gradient of the unlined landfill (Areas A and B) the groundwater impact is*  
11 *apparent in exceedances of both inorganic and organic contaminants at multiple*  
12 *groundwater monitoring wells.”*

13  
14 Likewise, the May 2017 Semi Annual Water Quality Report is typical of the results seen in the  
15 semi-annual reports in recent years, including GES exceedances listed below (*Exhibit 17*):

- 16  
17
  - *“Arsenic, iron, lead and manganese levels statistically exceed groundwater*  
18 *standards in many of the up-gradient and down-gradient wells at NEWSVT.”*
  
19  
20   - *“... a few of the wells tested in exceedance for two other metals, chloride and*  
21 *cadmium this round.”*

22  
23 In addition to GES exceedances, during sampling of Surface Water Station SW-3, Waite-Heindel  
24 samplers noted an odor from the stream (not wafting from another location), and noted this  
25 location also had higher flow in comparison to previous sampling events. (*Exhibit 35*)

26  
27 Waite-Heindel samplers also noted *“what appeared to be Didymo at this location, a native*  
28 *species of freshwater diatom with the nickname “rock snot” due to the dense slimy mats it can*  
29 *form.”*

30  
31 Beyond increases in the exceedances of a variety of regulated contaminants, there have been  
32 other indicators of water pollution. For example, in terms of the “Didymo” observed, as  
33 mentioned above, the 2017 Waite-Heindel report went on to state:

34  
35 *“We have not seen it to this degree before, although small amounts have been observed in the*  
36 *past at this location. The lab results of stream water sampled at this location indicated the*  
37 *presence of BOD, COD, several metals, and two VOCs (some were highest to date).”*

38  
39 In the 2018 report, it is noted that COD exceeded the maximum allowable concentration (MAC),  
40 which is the highest concentration of a pollutant to which aquatic life can be exposed for a short  
41 period of time (1 hour average) once every three years without deleterious effects.

#### 42 43 Projections Show Compliance Wells Exceeding GESs

44  
45 Dump’s contention that evidence of the current exceedances of GESs is an indication of future  
46 water contamination is supported by Waite-Heindel. In 2016, Waite-Heindel made 10-year  
47 projections for GES of 22 monitoring wells located in both the lined and unlined portions of the  
48 landfill.



1 The details were contained in “Memo A” dated March 28, 2016, and sent to Kasey Kathan of  
2 ANR and Joe Gay of NEWSVT. These projections estimate that up to 9 compliance wells will  
3 exceed GESs within 10 years, two years prior to the end of the recertification period for  
4 NEWSVT’s permit. (Exhibit 35)

5  
6 Of the five wells down-gradient of the lined portion, half are expected to exceed GESs by 2026.

7  
8 In addition, one well up-gradient of the landfill’s lined portion and, up to 6 or 7 wells up-gradient  
9 in the unlined portion are expected to exceed GESs within the permitted timeframe.

10  
11 The evidence herein sufficiently proves that the recertification of the current operations alone will  
12 lead to undue water contamination. Expansion of the landfill will only exacerbate the level and  
13 breadth of water contamination caused by the Coventry landfill.

14  
15 Direction of Groundwater Flow in Question

16  
17 We draw attention to these puzzling test results as stated in the May 2018 Semi-Annual Water  
18 Quality Report authored by Waite-Heindel:

19 *“Arsenic within MW-D2 has increased significantly within the last several*  
20 *sampling rounds and has been steadily increasing in MW-BRW-3D since it’s*  
21 *installation in 2013. Given the rising arsenic concentrations in these wells, this*  
22 *northeast wetland region requires further consideration to determine definitive*  
23 *groundwater flow directions, for property boundary compliance point issues.”*

24 In response to this discovery of a different flow pattern, in March 2018 Waite-Heindel hand  
25 installed 9 monitoring wells in the northeast wetland in an effort to better understand the  
26 representative groundwater conditions of the NEW area.

27 FYI, MW-D2 has shown generally upward trends in the concentrations of several metals over the  
28 past years (As, Mn, Fe), as well as for several indicator parameters (COD, Na, Cl, Spec. Cond.).

29  
30 MW-BRW-3D is downgradient from unlined Areas A and B in the wetlands and is very close to  
31 the property line. The significance of its location is that it lies outside what was believed to be the  
32 direction of groundwater flow as mapped by Waite-Heindel.

33 With high concentrations of Arsenic in both wells, it appears that groundwater could be flowing  
34 in the general direction from MW-D2 northeast to MW-BRW-3D, counter to what Waite-Heindel  
35 groundwater flow maps show. This brings into question the accuracy of the previously assumed  
36 flow directions of the groundwater. (Exhibits 14 and 15-map)

37 *“The well in the wetlands MW-BRW-3D is testing very high in arsenic and has*  
38 *increased significantly within the last several sampling rounds and has been*  
39 *steadily increasing since its installation in 2013.”*

40  
41 Due to these increased levels of arsenic, the report goes on to state, “*the*  
42 *northeast wetlands region requires further consideration to determine definitive*  
43 *groundwater flow direction for property boundary compliance point issues. ...*  
44 *first, determining the groundwater flow directions in the NEW region relative to*  
45 *the unlined landfills, Black River and property boundaries.*

1  
2 Evident here is that the mapping of the groundwater flow direction, which has been used for  
3 years, is now questionable. Phase V, in particular would be based on these expected flows.  
4

5 There are two possible explanations for this discrepancy. Either the map detailing groundwater  
6 flow has been inaccurate for many years, or the groundwater flow has changed. Either  
7 explanation is disturbing as it puts the Black River, South Bay Wetlands, Lake Memphremagog  
8 and Newport City's municipal drinking water supply at greater risk.  
9

10 The fact that NEWSVT was not knowledgeable about the direction of groundwater flow as it  
11 pertains to the unlined portion of the landfill is a serious matter. What they presumed to be true  
12 for a long time has now been called into question. And therefore, assumptions about the  
13 possibility of contaminants migrating through the wetlands and impacting the South Bay of Lake  
14 Memphremagog are no longer credible.  
15

#### 16 Migration of Leachate

17  
18 Waite-Heindel suggest leachate migration is the "likely cause" of exceedances of GESs in three  
19 wells, as stated in the May 2017 semi-annual report:

20 *"The statistical exceedances of groundwater standards for organic compounds in*  
21 *MW-A1, MW-D2 and MW-F1 are likely the result of migration of leachate*  
22 *from the Unlined Landfill Areas A & B." (Exhibit 17)*

23 Keeping in mind the lack of groundwater flow accuracy shown in this area as described above,  
24 this migration of leachate is noteworthy as it pertains to the risk of undue water pollution that  
25 could extend to the Black River, which creates the compliance boundary. The threat grows in  
26 magnitude at this point due to the Black River flowing into Lake Memphremagog.

27 In addition, according to the problematic examples of Casella's landfill failures (*Exhibit 1*), we  
28 count 10 individual reports involving leachate contamination of water due to a variety of  
29 operational issues. One example involved leachate being dumped intentionally through the years.  
30

#### 31 Leachate Cannot be Treated

32  
33 The applicant does not meet the criteria pursuant to 10 V.S.A.6086 (1) (b) as it pertains to  
34 leachate:  
35

36 *"Waste disposal. A permit will be granted whenever it is demonstrated by the*  
37 *applicant that, in addition to all other applicable criteria, the development or*  
38 *subdivision will meet any applicable Health and Environmental Conservation*  
39 *Department regulations regarding the disposal of wastes, and will not involve the*  
40 *injection of waste materials or any harmful or toxic substances into ground water*  
41 *or wells."*  
42

43 NEWSVT is the producer of and a party to the disposal of leachate. And in that capacity,  
44 NEWSVT has not taken responsibility to contribute to the safe disposal of leachate. NEWSVT  
45 trucks leachate to Newport and Montpelier wastewater treatment facilities with full knowledge  
46 that these facilities cannot filter out the PFAS compounds.

1  
2 It is accepted by the Vermont Agency of Natural Resources and the Department of Environmental  
3 Conservation that Waste Water Treatment Facilities cannot effectively treat inorganic material or  
4 PFAS.  
5  
6 Attachment A of the Responsiveness Document compiled by the ANR in connection with the  
7 permit certification states as much:  
8  
9 *“Conventional WWTF treatment processes do not efficiently remove PFAS;  
10 WWTF treatment processes can lead to physical or chemical partitioning of the  
11 various PFAS compounds into either the treated liquid (effluent) or into the  
12 solids (sludges) which then may serve as sources of PFAS to the environment.”*  
13 *(Exhibit 21)*  
14  
15 In addition, Sen. Christopher Bray, chair of the Senate Natural Resources and Energy Committee,  
16 sought some answers from Tom, DiPietro, Deputy Director of Department of Public Works in  
17 South Burlington. *(Exhibit 33)*  
18  
19 Bray asked, *“Are waste water treatment plants designed to handle PFAS and to detoxify it before  
20 discharging?”*  
21  
22 To which DiPietro replied, *“No. Typical processes used to treat wastewater are not effective in  
23 removing PFAS.”*  
24  
25 In support of DiPietro’s answer, Chief Operator Christopher Cox agreed that the Montpelier  
26 Water Resource Recovery Facility he operates passes the PFAS compounds through to the  
27 Winooski River in its effluent.  
28  
29 The inability of the wastewater treatment facilities to filter out PFAS compounds results in these  
30 toxic substances being dumped directly into the Clyde and Winooski rivers, which then feed into  
31 Lake Memphremagog and Lake Champlain.  
32  
33 While the ANR and NEWSVT will argue that the effluent meets standards, what they are not  
34 stating is that dilution is used to meet standards. This is problematic because of the nature of  
35 PFAS compounds, which are inorganic. Simply said, they don’t break down. And due to their  
36 soluble nature, they become invisible to the human eye, and allow for the deception of dilution  
37 being effective.  
38  
39 Because PFAS compounds don’t break down, they remain in the environment for years and  
40 accumulate over time, according to the EPA among other sources.  
41  
42 To illustrate this point, consider salt, which is also soluble. If you put a tablespoon of salt into a  
43 glass, and then drink it, you are consuming a tablespoon of salt though the amount is not visible.  
44 If you add another tablespoon of salt to the glass of water, the accumulation will equal two  
45 tablespoons no matter how large your glass of water and the level of dilution.  
46  
47 If the Commission grants NEWSVT a land use permit, they are sanctioning the production of an  
48 additional 264 million gallons of toxic leachate on top of the millions already produced annually.  
49 The accumulation of PFAS compounds over time will contribute “undue water pollution” not just  
50 in the North East Kingdom, but throughout Vermont. As the producer of this toxic liquid and the

1 benefactor of profits from the landfill, NEWSVT should bear the responsibility for the treatment  
2 and safe disposal of leachate for years to come.

3  
4 Danger of PFAS Compounds Ignored

5  
6 In recent years, according to Battelle, the world’s largest nonprofit research and development  
7 organization with major technology centers and national laboratories around the world, there has  
8 been increased interest in per- and polyfluoroalkyl substances (PFASs) from regulators, industry  
9 and the public. And for good reason: many of these chemicals have been shown to be highly  
10 persistent in the environment and in biological tissue, and have been correlated with negative  
11 health impacts.

12  
13 Perfluorinated alkylacids are the highly persistent PFAS chemicals that are further classified  
14 according to the functional groups attached to the perfluorinated carbon chain. Commonly  
15 detected perfluorinated alkylacids include Perfluorooctanoic acid (PFOA), the most commonly  
16 detected of the compounds.

17  
18 The debate concerning PFAS compounds is framed as to how much is safe. The more accurate  
19 and honest portrayal of the current debate by regulators is how much can a human body withstand  
20 before people become critically or deathly sick; anything less is therefore being interpreted as  
21 “safe.”

22  
23 Let’s not kid ourselves, toxic is toxic, there is no level that is safe. We should not employ the  
24 same lengthy and unhealthy learning curve that we did with nuclear waste, DDT, lead paint and  
25 various other contaminants. It is not responsible to “*wait and see*” when the circumstances,  
26 including lack of knowledge, put at risk the public’s health.

27 There have been attempts to get the public to think that the clear waste water, containing PFAS  
28 compounds from leachate, which emerges as effluent at wastewater treatment facilities is safe.  
29 One person actually drank some to make the point. However, as previously stated, PFAS is  
30 inorganic, which means it doesn’t break down. Second, PFAS is soluble, it dissolves and becomes  
31 invisible just as salt does when put in water. We all know that while the water may appear clear,  
32 the salt is still there. The same is true of PFAS, it remains though it is invisible. And over time it  
33 accumulates.

34 ANR admits that more evaluation of PFAS compounds is needed and a safe method for treating  
35 them has yet to be determined. This admission is found in the Responsiveness Summary,  
36 Attachment A, on the last page of a Memo titled: Next Steps to Address Concerns Regarding  
37 Poly- and Perfluoroalkyl Substances (PFAS) in Landfill Leachate (*Exhibit 25*):

38 *“Utilizing PFAS concentrations measured at the Newport WWTF, the DEC has*  
39 *calculated likely receiving water concentrations of PFAS downstream of the*  
40 *Newport WWTF within the Clyde River. These calculations show that the PFAS*  
41 *concentration within the Clyde River would be lower than Health Advisory for*  
42 *drinking water (20 ppt) as established by the Vermont Department of Health.*  
43 *Notwithstanding these initial findings, the DEC has concluded additional*  
44 *evaluation of landfill operations and leachate management is appropriate to*  
45 *minimize potential impacts on local receiving waters.”*

1 Standards for PFAS compounds are limited and not based on adequate research. Therefore these  
2 standards cannot guarantee safety at any level. Furthermore, health standards, which vary from  
3 state to state, cannot be relied on to protect the public’s health.

4 The EPA concurs that further study of PFAS compounds is needed, and is taking a serious  
5 attitude toward such research. In an unprecedented national summit hosted by the EPA in May,  
6 2018, the EPA announced it is beginning the necessary steps to propose designating PFOA and  
7 PFOS as hazardous substances through one of the available statutory mechanisms through the  
8 Super Fund Law. [https://www.epa.gov/newsreleases/historic-epa-summit-provides-active-](https://www.epa.gov/newsreleases/historic-epa-summit-provides-active-engagement-and-actions-address-pfas)  
9 [engagement-and-actions-address-pfas](https://www.epa.gov/newsreleases/historic-epa-summit-provides-active-engagement-and-actions-address-pfas) )

10  
11 Rebuttal of Responsiveness Summary As it Relates to PFAS Analysis  
12

13 In Amendment A of the Responsiveness Summary (*Exhibit 22*), the ANR makes a misleading  
14 statements, claiming that the results of PFAS analysis of the NEWSVT landfill and the Newport  
15 waste water treatment facility are similar to other like facilities tested around Vermont. This  
16 statement is misleading because it omits an important distinction made by the Weston & Sampson  
17 report.

18  
19 *“In January 2018 DEC obtained samples for PFAS analysis of landfill leachate*  
20 *and wastewater treatment facility (WWTF) influent, effluent and biosolids from*  
21 *all (five total: NEWSVT, Moretown, Randolph, Chittenden Solid Waste District*  
22 *and Burlington City) of the lined landfills in Vermont, and the Vermont WWTFs*  
23 *(six total: Montpelier, Newport, Burlington Main, South Burlington Airport,*  
24 *Barre and Randolph) that manage leachate from those facilities. This sampling*  
25 *included leachate from the New England Waste Services of Vermont landfill*  
26 *(NEWSVT) and the Newport WWTF.” (Exhibit 22)*

27  
28 *“The concentrations detected within the NEWSVT landfill leachate and at the*  
29 *Newport WWTF are similar to the detections and concentrations at the other*  
30 *lined landfill facilities and WWTFs tested within Vermont and other published*  
31 *concentrations. The mean concentration of PFOA within Vermont leachate was*  
32 *1,295 ppt (maximum: 2,110 ppt) and the mean concentration of PFOS within*  
33 *Vermont leachate was 183 ppt (maximum: 278 ppt)”.* (Exhibit 21)

34  
35 In rebutting this statement, we reference the conclusions from the actual report as submitted by  
36 Weston & Sampson on May 3, 2018. More complete than the ANR statement, Weston &  
37 Sampson conclude the concentrations detected at NEWSVT top the levels detected at the  
38 landfills. *“PFAS concentrations in landfill leachate are elevated with the highest concentrations*  
39 *at the NEWSVT landfill”.* (Exhibit 23)

40  
41 In terms of the waste water treatment facilities, Weston & Sampson conclusions are considerably  
42 different than what those of the ANR.

43  
44 *“Overall, PFAS concentrations in influent and effluent samples were generally*  
45 *less than 10ng/L. At Montpelier and Newport, PFAS concentrations were higher,*  
46 *but still less than 100 ng/L.”*

1 *“The difference between influent and effluent concentrations are generally small*  
2 *(<5 ng/L) except for at the Newport WWTF, where detected effluent*  
3 *concentrations are 18 to 75 ng/L higher than influent concentrations...”*  
4

5 Additionally, the ANR Responsiveness Summary uses a Canadian study to report on how the  
6 mean value concentrations and highest concentrations of PFAS compounds from 28 landfills  
7 vary. In doing so, they misrepresent how the study results relate to Vermont findings.

8  
9 *“A Canadian study reported mean concentration value of a number PFAS*  
10 *compounds from 28 landfills to be 2,950 ppt, with the highest concentration*  
11 *report at 21,300 ppt (Li et al., 2012). Work by Busch et al. (2010) evaluated the*  
12 *concentration of individual PFAS compounds within landfill leachate and*  
13 *observed a mean PFOA concentration of 197 ppt (maximum: 1,000 ppt) and a*  
14 *mean PFOS concentration of 97 ppt (maximum: 1,500 ppt).” (Exhibit 22)*  
15

16 The ANR goes on to state that *“the mean concentration of PFOA, which is just*  
17 *one PFAS compound, within Vermont leachate was 1,295 ppt (maximum 2,110*  
18 *ppt) and the mean concentration of PFOS (just one of PFAS compounds) within*  
19 *Vermont leachate was 183 ppt (maximum: 278 ppt).*  
20

21 To be clear about this spurious statement, the ANR is talking about two different and individual  
22 contaminants as opposed to a collection of contaminants making up the concentration of PFAS  
23 compounds referred to in the Canadian study. The accumulative level of several contaminants  
24 would likely be greater than any individual contaminant.

25  
26 What the ANR fails to say is that PFAS detected at NEWSVT was higher than all 28 landfills  
27 included in the Canadian study. On page 9 of the Weston & Sampson Report (Exhibit 24), the  
28 table of results shows the total PFAS at NEWSVT is actually 24,660 ng/L or ppt., 3,360 ppt  
29 higher than the highest concentration detected at the Canadian landfills.  
30

31 As shown throughout this testimony, ANR habitually distorts the facts by leaving out conclusive  
32 information or summarizing by using general terms that are not true to the word of the actual  
33 reports.  
34

35 We urge the Commission to recognize the difference between the facts and ANR’s  
36 misrepresentation of them. The PFAS detected at the NEWSVT landfill is clearly significantly  
37 higher than what is detected at other landfills.  
38

### 39 PFAS Testing Incomplete and Inconclusive

40 PFAS has already been detected in groundwater monitoring wells at the Coventry landfill,  
41 according to the ANR Report on PFAS Sampling at NEWSVT Landfill, dated Sept. 4, 2018.  
42 (Exhibit 13) ANR requested this testing in August 2018 following a review of submitted public  
43 comments. Of the six wells tested around the unlined and lined portions, PFAS was detected in  
44 two, or one-third, of the wells.  
45

46 The additional testing for PFAS compounds provided valuable information pertaining to  
47 contaminant mobility, or the migration of pollutants. However, we do not believe that the  
48 additional testing of wells was comprehensive enough to show the dangers and degree of  
49 pollutant migration of both the unlined and lined portions of the landfill.

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Alarming Level of PFAS Warrants Additional Testing in Unlined Area

Sampling of MW-P2RR, located in the wetlands adjacent to the northern end of the unlined landfill, revealed dangerously high levels of two PFAS compounds: PFOA (57 ppt) and PFHpA (41 ppt). Additionally, PFHxS was measured at 18 ppt. Collectively these PFAS compounds totaled 116 ppt, exceeding Vermont’s safety standard of 20ppt by almost six times. (*Exhibit 13*)

The ANR diminishes the implications of this test result by noting that MW-P2RR is located on the landfill property, which serves as a compliance point for the unlined landfill. We take issue with this premise for several reasons:

- The direction of the groundwater flow in this region is under question, as was established previously.
- There is an information gap because no down-gradient wells were tested, including those down-gradient and closest to MW-P2RR, despite detection the highest concentration of PFAS compounds. The wells that we believe should be tested include: MW-B1, MW-A1, BR-W1, and BRW-2R.
- Using the property line, which abuts the Black River, as the compliance point is irresponsible and contrary to global knowledge about unlined landfills. All agree that unlined landfills are significantly less safe than lined landfills, and yet the ANR has allowed the Coventry landfill to be in compliance without a buffer to protect the Black River.

Despite historic practices, the Commission needs to give serious consideration as to why no buffer is required of an unlined landfill when one is required for the “state of the art” lined landfills?

We remind the Commission that Vermont’s Act 78 called for the closure of 58 unlined landfills across the state of Vermont due to the environmental hazards they posed. And although these landfills all had caps installed after their closures, most are unlined underneath. This means that once water infiltrates the caps of these landfills, leachate can readily pollute the area’s groundwater, according to a 2014 University of Vermont (UVM) study of the closed landfills. (*Document 1 UVM*)

In the 2014 UVM study, a calculator was developed to assess the risk to the environment posed by each of these landfills. The Coventry Landfill score was rated “High Risk” with a “High Reliability” score.

There is already evidence of leachate migration from the unlined portion. And while to some degree this is expected, we cannot let that skew the assessment of how dangerous this is to the waters of this region. Once leachate, containing PFAS compounds, comes in contact with the

1 Black River, the domino effect will take over and consequences will be costly, both to the public  
2 health and the environment. Leachate migration must be a top concern.

3  
4 NEWSVT has not thoroughly evaluated the potential impact of perfluoroalkyl and  
5 polyfluoroalkyl substances (PFAS) on groundwater or the public's health. Although the permit  
6 certification requires testing going forward, a permit should not have been issued. For a long line  
7 of Act 250 precedents prohibit "conditions subsequent," or impermissible substitutes for  
8 affirmative evidentiary proof that the standards of Act 250 criteria are satisfied prior to the  
9 approval of a project.

10  
11 PFAS Detected in Well on Compliance Boundary of Lined Landfill

12  
13 The second groundwater monitoring well that showed levels of PFAS was MW-E1, which is  
14 down-gradient and right on the compliance boundary of the lined disposal cells. PFAS was  
15 measured at 6.7 ppt. And while that is below the Vermont safety standard, it is an indicator of  
16 ground water quality issues to come. (*Exhibit 13*)

17  
18 Considering buffer zones are only required to be 300 feet, it is significant to note that MW-E1 is  
19 400 feet downhill from Phase IV. The fact that it is located in a wetland discharge zone provides  
20 additional concern.

21  
22 The location of MW-E1 in relationship to Phase IV is evidence of contaminants migrating a  
23 significant distance from the lined landfill. The close proximity to the compliance boundary,  
24 combined with the distance the contaminants have already migrated, indicate that groundwater  
25 quality beyond the compliance points will be impacted at some time in the future, probably the  
26 relatively near future.

27  
28 It is alarming that none of the wells located down-gradient of MW-E1 was tested in order to  
29 determine that no wells beyond the compliance point have been contaminated. In particular, the  
30 two wells that should be tested are BRW-8S and BRW-9S. They are located in the buffer zone  
31 next to the property line, which is the Black River.

32  
33 MW-E1 is directly downgradient of the 45-acre Phase IV portion of the lined landfill, which is  
34 the newest phase permitted in 2004. So in the span of the less than 14 years, a significant level of  
35 PFAS contaminants is being detected 400 feet from the lined portion of the landfill.

36  
37 Additionally, when considering the migration distance of these PFAS compounds, it can be  
38 concluded that NEWSVT cannot prove that the groundwater enforcement standards will not be  
39 exceeded at compliance points related to both the lined and unlined portions of the landfill.

40 For this reason, it is not prudent or precautionary for Commission to issue a land use permit for  
41 the continued operation of the Coventry landfill, much less a 51-acre expansion.

42  
43  
44  
45



1 EPA States Landfill Liners Leak

2  
3 All landfill liners will eventually leak due to deterioration, however, leaks are also possible prior  
4 to deterioration.

5  
6 According to the EPA as reported in the Rachel’s Hazardous Waste News, The Environmental  
7 Research Foundation research cited these quotes from the EPA Federal Register: (*Exhibit 20*)

8  
9 *“There is good theoretical and empirical evidence that the hazardous*  
10 *constituents that are placed in land disposal facilities very likely will migrate*  
11 *from the facility into the broader environment. This may occur several years,*  
12 *even many decades, after placement of the waste in the facility, but data and*  
13 *scientific prediction indicate that, in most cases, even with the application of best*  
14 *available land disposal technology, it will occur eventually.”*

15  
16 More immediate threats to the integrity of landfill liners are human errors in the form of mistakes  
17 made during installation in the welding of membrane sections, or the dumping of wastes that  
18 could puncture the membrane, causing leakage.

19  
20 As shown previously, human error is known to cause problematic conditions at the Coventry  
21 Landfill. We remind the Commission of one in particular that is of the type that could puncture  
22 the liner.

23  
24 During an inspection of the landfill on Nov. 16, 2012, solid waste program staff observed  
25 *“unacceptable items that could pose a threat to the underlying liner”* in Cell 3C of Phase IV.  
26 (*Document OL510 2012,12.10 NOAV*)

27  
28 This particular waste had been placed in the cell on the previous day, and either went unnoticed  
29 or, was noticed and ignored. This amplifies the risk, for most likely this waste that posed a threat  
30 to the liner would have remained if it had not been for an inspection. And because inspections  
31 don’t happen daily or even frequently, it remains unknown how often this is happening.

32  
33 Other factors contributing to leaks can be the accumulation of waste and the pressure it creates, as  
34 well as the uneven settling common to certain types of waste, such as asbestos.

35  
36 Taking into account all the potential ways a landfill liner can leak, we submit that it is beyond  
37 reasonable risk to allow the Coventry landfill to continue to operate or expand.

38  
39 Membrane Liners Are Only As Good As Landfill Operation Allows

40  
41 The Coventry landfill design involves a double liner system: one is a membrane and the other is  
42 the natural clay soils of the area. Both, in connection with the underground drainage system, are  
43 intended to keep leachate from entering the groundwater.

44  
45 However, the success of such a system does not guarantee the containment of leachate. For the  
46 liners are meant to act much like bowls, holding the liquid leachate until it can be removed and

1 hauled away. In the case that the liner and system become full, the leachate would overflow, or  
2 breakout.

3  
4 We know of one such breakout at the Coventry landfill as it was mentioned “in passing” during  
5 the discussion about an odor complaint. (*Document 13EC00290*) As you consider this incident,  
6 we emphasize that our records are not complete and all inclusive, and none relate to the  
7 intentional documentation of such events.

8  
9 Unlined Landfill Needs to be Remediated Sooner Rather Than Later

10  
11 In the 2014 UVM study cited earlier (*Document UVM 1*), made “recommendations showing  
12 estimations of likelihood that certain actions are needed,” according to the unlined landfill’s  
13 priority classification. For landfills with a High Reliability score and a High Risk score, as is the  
14 case with the Coventry Landfill, the UVM study states restoration is likely needed.

15  
16 In addition to the exceedingly high 116 ppt of PFAS compounds found in MW-P2RR, the ANR  
17 notes concern for additional contaminants in a letter addressed to John Gay of NEWSVT on Feb.  
18 26, 2016. Kasey Kathan outlines the following issues concerning GESs exceedances  
19 (*Exhibit 36*):

20  
21 *“As is typical, this recent monitoring report is consistent with previous*  
22 *observations at this site. Evidence of groundwater impact is principally*  
23 *concentrated to the monitoring wells that are located down-gradient of the*  
24 *unlined portions of the facility. Groundwater impact is indicated by the presence*  
25 *of both inorganic and organic components mixed trends and some exceedances*  
26 *of Vermont Groundwater Enforcement Standards (VGES) and there are also*  
27 *exceedances of the Vermont Water Quality Standards (VWQS) in surface water*  
28 *samples.*

29  
30 *“Down-gradient of the unlined landfill (Areas A and B) the groundwater impact*  
31 *is apparent in exceedances of both inorganic and organic contaminants at*  
32 *multiple groundwater monitoring wells. ... Similarly, MW-P2R has seen a*  
33 *significant increase in the concentrations of arsenic, iron and manganese during*  
34 *the 2015 sampling events...*

35  
36 *“Of some concern are the continued inorganic contaminant exceedances down-*  
37 *gradient of the lined portion of the facility and without direct influence by the*  
38 *unlined portion of the landfill. While these exceedances are limited to*  
39 *contaminants that may be attributable to naturally occurring constituents,*  
40 *preliminary evaluation does indicate that they are above the concentrations in*  
41 *the up-gradient monitoring wells that are available.”*

42  
43 Despite ANR’s concerns and the Coventry landfill being scored as a “High Risk,” regulators are  
44 not mandating the transfer of waste contained in the unlined landfill to cells that are lined. And  
45 NEWSVT has not put forth its Phase V plan for implementation, stating the firm will not deal  
46 with the unlined landfill for another 18 to 20 years at a City Council meeting in Newport in  
47 October, 2018.

1 The Phase V plan includes a Class II Wetlands variance. The plan is to construct Phase V  
2 immediately adjacent to the Black River wetland, including where the unlined landfill Cells A  
3 and B are now located.

4  
5 The waste containment boundary of Phase V will be closer than the minimum isolation distance  
6 to waters of 300 feet pursuant SWMR. Wetlands are considered to be “waters” in this isolation  
7 distance requirement. The soil berm along the northern side of Phase V on the Black River  
8 wetland will extend into this wetland.

9  
10 Phase V cells will be constructed in the same area as BRW-3D in the wetlands. This well has  
11 tested significantly higher every year for several contaminants, attracting the concern of ANR.

12  
13 Permitting of such a plan is another example of a total disregard for established regulations as  
14 they pertain to Class II Wetlands and regulators’ responsibility to provide protection from  
15 pollution.

16  
17 The main reason for the wetlands variance is that NEWSVT has stated that an alternative plan to  
18 locate Phase V to another area would not be cost effective. Considering they may not be able to  
19 afford such a project in the future, NEWSVT’s financial considerations should not be the  
20 Commission’s main concern.

21  
22 We ask that Commission address this gross misstep. For we would hope that the public’s health  
23 and environmental protection are not foregone in the interest of a private corporation’s profit  
24 margins.

#### 25 26 No Insurance for the Future

27  
28 Most of us have values that incorporate our responsibility to future generations. We do not  
29 believe in creating disastrous conditions and leaving them for our grandchildren to clean up. The  
30 Coventry landfill falls within the realm of disastrous conditions.

31  
32 Creating trash mountains that rival the size of some of the worlds treasures, such as the Eiffel  
33 Tower and the Pyramid of Giza, will not leave the kind of legacy any of us would so choose. For  
34 it is, and will continue to be, harmful to the environment, and therefore negatively impact all  
35 future life.

36  
37 There is no guarantee it will not. In fact, Casella openly admits it may not be able to insure  
38 against environmental impacts. As much is stated in its 2017 Annual Report  
39 (<https://ir.casella.com/static-files/4616233c-eb60-4650-ae5d-b4b3a02af980> (page 23):

40  
41 *“We may not have sufficient insurance coverage for our environmental*  
42 *liabilities, such coverage may not cover all of the potential liabilities we*  
43 *may be subject to and/or we may not be able to obtain insurance*  
44 *coverage in the future at reasonable expense, or at all.”*

45  
46 Considering the evidence presented within this testimony of Casella’s inability to manage the  
47 landfill without ongoing issues that threaten the public’s health and the environment, this is a  
48 fact, that in and of itself, should warrant the Commission to cut Vermont’s losses and call for a  
49 closure plan of the entire landfill, lined and unlined. To do otherwise, is subjecting the citizens  
50 of Vermont to risks that are beyond reason.

51

1 And though, as stated, Casella’s admissions concerning insurance are enough justification to  
2 stop the landfill expansion, we must inform the Commission that there is more to take into  
3 account when considering the risks of allowing Casella to continue to operate in Vermont.  
4

5 In the Land Use Permit #7R0841-8, Condition #26, the Commission required a plan to recap  
6 the unlined portion of the Coventry Landfill:  
7

8 *“Permittee shall, within six (6) months of the issuance of this permit,*  
9 *submit all necessary permit applications and support documents*  
10 *necessary to gain ANR and Act 250 approval for the transfer of waste*  
11 *contained in the unlined landfill cells (known as the Nadeau unlined cells*  
12 *“A & B”) to cells that are lined.”*  
13

14 A Hydrogeological Site Characterization was done by Heindel and Noyes, Inc., dated May 11,  
15 2005, as part of the proposed Phase V application process. We ask the Commission to note the  
16 following statements, as they will have bearing on conclusive statements about risk.  
17

18 *“The waste containment boundary of Phase V is proposed to be located*  
19 *at distances ranging from 125 feet to 220 feet from this northeast*  
20 *wetland.”*  
21

22 *“Wetlands are considered by the SWMP to be “waters” in this isolation*  
23 *distance requirement”.*  
24

25 *“We have not conducted a detailed numerical modeling of potential*  
26 *groundwater impacts from a theoretical leak from the liner system if an*  
27 *alternative Phase V were constructed with more than 300 feet of*  
28 *isolation distance to the wetlands. NEWSVT has indicated it cannot cost-*  
29 *effectively construct such a small lined cell.”*  
30

31 Casella clearly states it cannot meet Condition #26 if it is held to the State’s environmental  
32 standards because it is not cost effective. We believe any concern for cost effectiveness should  
33 not be remiss in weighing those concerns against the costs of having to clean up land and water if  
34 polluted, along with the health care costs of citizens who could become ill as a result of pollution.  
35

36 The Commission may feel it is doing due diligence by requiring closure and post-closure funds.  
37 We provide evidence that such funds are not a guarantee.  
38

39 For Casella cannot guarantee it can meet Condition #15 of Land Use Permit #7R0841-8, nor any  
40 future statement as would be required of permitting of the Coventry landfill 51-acre expansion:  
41

42 *Permittee shall, as per the outline provided in the Findings of Fact and*  
43 *Conclusions of Law, create and contribute to a Post-Post-Closure Fund*  
44 *(Fund) the purpose of which is to insure that adequate funds will be*  
45 *available for necessary maintenance, repair and mitigation more than 30*  
46 *years beyond the closure of the Coventry landfill facility and operation.*  
47

48 Casella, again by its own admission, may be unable to cap the Coventry landfill, unlined and  
49 lined, due to lack of funds. It is factually stated in the Casella 2017 Annual Report  
50 <https://ir.casella.com/static-files/4616233c-eb60-4650-ae5d-b4b3a02af980> (page 25) :  
51

1               *“Our financial obligations for final capping, closure or post-closure*  
2               *costs could exceed the amounts accrued or amounts otherwise receivable*  
3               *pursuant to trust funds established for this purpose.”*  
4

5 We urge the Commission to have a good understanding of Casella’s financial circumstances,  
6 taking in the level of debt when considering revenues and all of the company’s obligations. We  
7 believe Casella’s own statements are reason to take the precautionary path, and not approve the  
8 expansion of an already problematic and harmful development.  
9

10 The citizens of Vermont do not deserve to have their lives and environment be so diminished in  
11 value as to have decision-makers gamble them away.  
12

13                               In Conclusion

14 For more than a decade, Coventry landfill owner, the very profitable Casella, has had the  
15 opportunity to cure the issues of its “state of the art” facility. The company has 40 years of  
16 experience in the waste management industry and owns/operates 111 waste management  
17 facilities. And yet, with all of its experience and resources, Casella has failed solve its problems  
18 here in Vermont, just as it has in many of its other operations.

19 This is not to say that the landfill staff and management have not tried. Rather their efforts have  
20 made way to landfill issues that have run the gamut of systems failure and human error, to the  
21 inability to control the stench of sludge and migration of contaminants into the groundwater.

22 And we don’t kid ourselves, and hope the Commission will follow suit, when it comes to  
23 acknowledging the fact that just a fraction of the issues that are a routine part of the operations at  
24 the Coventry Landfill have been exposed. Along with the demonstration that oversight and  
25 documentation are lacking, this assertion is supported by recognizing the number of documents  
26 concerning the landfill operations are many compared to what we have included in this testimony.

27 It must be acknowledged that these issues are not isolated incidents, but ongoing evidence of  
28 systemic failure. And with this acknowledgement, we ask that the Commission be clear about the  
29 level of risk the Coventry landfill poses to the citizens of Vermont. It is not, as stated in the Land  
30 Use Permit #7R0841-8, a low risk facility that will cause undue air and water pollution.

31 Act 250 precedents have evaluated the term “undue” with respect to air and water pollution. In  
32 Upper Valley Regional Landfill 3R0609-EB (1991) the Board held that:  
33

34 The word “undue” is not defined in Act 250. Webster’s New Collegiate Dictionary defines  
35 “undue” in pertinent part, as:  
36

- 37       • *"Inappropriate; unsuitable.*
- 38       • *Not right; not lawful or legal.*
- 39       • *Not agreeable to a standard; excessive; immoderate; inordinate."*  
40

41 A review of decisions addressing the term “undue” in the context of Act 250 indicates that it has  
42 been interpreted in the context of the specific facts of each case under consideration; the decisions  
43 are more instructive about what is not undue rather than what is.  
44

45 In Pike Industries, Inc 5R1415-EB (2005), the Board concluded that:  
46

1           *“Whether a pollutant is undue can depend on a series of factors, which may*  
2           *include an analysis of the nature and amount of the pollution, a proposed*  
3           *project’s location and topography, prevailing winds, whether the pollutant*  
4           *complies with certain standards or recommended levels, and whether effective*  
5           *measures will be taken to mitigate the pollution.”*  
6

7       And in In re: Rivers Development [68-3-07 Vtec ( 2010 ) ] the Environmental Court instructed  
8       that the historical interpretations of Criterion 1 regarding air pollution do not establish a sole  
9       reliance on governmental air quality standards, but vest the adjudicating tribunal with the  
10      responsibility of determining whether all applicable factors support a finding of undue air  
11      pollution.

12  
13      Other precedents require that the District Commissions not worsen an existing undue or  
14      unreasonable impact on the jurisdictional tract and its surroundings by permitting additional or  
15      increased impacts.

16  
17      DUMP understands clearly that it is not the role of a District Commission to pursue violations of  
18      environmental laws or to enforce those provisions. Having said that, DUMP provides extensive  
19      evidence in its written testimony of substantive noncompliance at the landfill and proffers this as  
20      probative evidence in support of the above referenced standard set out in Act 250 Rule 19 (F)(2)

21  
22      In other words, a reasonable person will conclude that undue air and water pollution is already  
23      resulting on the NEWSVT jurisdictional tract and in the surrounding environs, and that it will  
24      continue to do so with the expansion operation notwithstanding the ANR technical approvals of  
25      the landfill expansion.

26  
27      District Commissions are charged with evaluating the credibility of an applicant and its ability to  
28      operate a project as materially represented. Here, there is no credible proof that the facility can be  
29      properly operated.

30  
31      We restate for the purpose of emphasis that there is long line of Act 250 precedents that prohibit  
32      “conditions subsequent” as impermissible substitutes for affirmative evidentiary proof that the  
33      standards of the Act 250 criteria are satisfied prior to approval of a project. [See eg Blair Family  
34      4C0388-EB (1988); Smith and Killington, Ltd 1R0593-EB ( 1990) and Town of Stowe 100035-  
35      9-EB (1998) ]

36  
37      The terms and findings – let alone the actual conditions – in the ANR Air Permit and  
38      Certification are largely “conditions subsequent.” The Commission is being asked to accept those  
39      ANR approvals as presumptive proof under criteria 1(Air) and 1(B). The evidence presented by  
40      DUMP demonstrates that the ANR approvals are, in effect, “conditions subsequent” in their  
41      entirety, issued by an agency that is incapable of ensuring substantive compliance with the  
42      content of its approvals due to a mix of inadequate staffing, an inability to ensure timely  
43      verification of landfill operations given the distance from ANR offices to the project site, and  
44      frankly, conditions which are impossible to implement in a consistent and effective manner.

45  
46      Based upon the testimony herein, DUMP requests that the Commission conclude that the  
47      applicant has failed to meet its evidentiary burdens of production and proof under criteria 1(Air)  
48      and 1(B) and thus the application for a land use permit must be denied.

49  
50      We also urge the Commission to force the elephant in the room be acknowledged by all, but  
51      especially those who hold the responsibility to do so: the State of Vermont and its leaders, elected

1 and appointed. That elephant, which leaders are so conveniently hiding behind, is the false  
2 assertion that the Coventry landfill is Vermont's only option for managing waste. There truly are  
3 more modern and greener options to dumping the state's waste into one monstrous landfill, and  
4 the time is now to pursue those options.

5 As previously stated, this fact cannot be denied when Casella supports it in its 2017 Annual  
6 Report by stating the waste management industry is switching directions and pursuing waste to  
7 energy technologies.

8 By denying a land use permit for Application 7R0841-13, based on and according to the findings  
9 presented by DUMP pursuant Act 250 Criteria 1 and 1(B), the Commission would cause the State  
10 and its agencies to create a comprehensive waste management plan that meets current statues and  
11 regulations.

12 We, the members of DUMP, believe when taking into account the entire contents of this  
13 testimony, that the Commission cannot in good conscience approve a land use permit that  
14 includes Phase VI for the Coventry Landfill. There is enough proof that NEWSVT operations,  
15 with or without the expansion, will not maintain compliance, and will cause undue air and water  
16 pollution.

17 And therefore, issuance of a land use permit by virtue of Act 250 Criteria 1 and 1(B) would not  
18 be in the best interest of the state, its environment, and its citizen, present and future. We believe  
19 it is not the Commission's role to protect problematic development when the costs far exceed the  
20 benefits.

21 Furthermore, the evidence presented herein, justifies the Commission to call for a plan to close  
22 the entire operation of the Coventry Landfill without additional study or review.

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24

25 Respectfully submitted by,

26

27 Charlie Pronto

28 Anita Ancel

29 DUMP, LLC

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