

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2007 - 01

**Application and Request of the University of New Hampshire
for Exemption from the Approval and Certificate Requirements of RSA 162-H.**

**DECISION AND ORDER GRANTING EXEMPTION FROM
THE APPROVAL AND CERTIFICATE REQUIREMENTS OF RSA 162-H**

I. Introduction

The University of New Hampshire (hereinafter “University”) intends to construct and operate a landfill gas energy facility. On March 27, 2007, the University filed, pursuant to RSA 162-H: 4, IV, an Application seeking exemption from the requirements of 162-H.

Waste Management of New Hampshire Inc. (hereinafter “Waste Management”), currently owns and operates the Turnkey Landfill in Rochester, New Hampshire. The Turnkey Landfill has an existing system of wells, piping and pumps that collects methane gas. The Applicant’s proposed facilities will process landfill gas from the Turnkey Landfill in Rochester, which is currently being flared, and transport it to the Durham campus where the gas will be used to generate electricity for use by the University.

The University’s proposed landfill gas energy project will include the construction of: 1) a landfill gas processing facility and associated generators, flares and other ancillary equipment at the Turnkey Landfill located in Rochester, New Hampshire, not exceeding an aggregate capacity of 7 megawatts; 2) a landfill gas pipeline approximately 12.5 miles long, which originates at the gas processing facility at the Turnkey Landfill and passes through Rochester,

Dover, Madbury and Durham, terminating in Durham; 3) new electric generating facilities at the University not exceeding 7 megawatts; and 4) modifications to the University's existing co-generation facilities which will permit the blending and metering of landfill gas with natural gas.

With the exception of the pipeline, the facilities are to be located on land owned by Waste Management and the University. Commencing at the Turnkey Landfill, the pipeline will follow private roads, town roads and private property for 1.3 miles to the Spaulding Turnpike, then follow the Spaulding Turnpike for approximately six miles, and then follow the Boston and Maine railroad for approximately three miles to its terminus on the University campus.

On June 18, 2007, the Site Evaluation Committee held a public informational hearing in Durham at the University's Elliot Alumni Center to receive the University's presentation, and to hear comments from the public and other interested persons. Following the informational hearing, the Committee held a public meeting for discussion and deliberations. Upon a motion duly made and seconded, the Committee voted, orally, to grant an exemption from the application process and to issue a written Decision and Order memorializing its action.

RSA 162-H normally requires that all aspects of an application to construct and operate an energy facility be reviewed by the Site Evaluation Committee. Site Evaluation review supplants the consideration of a project by numerous state agencies and municipalities under various state and local laws and centralizes consideration of proposed energy facilities with the Committee. It is the purpose of RSA 162-H to ensure that the siting, construction and operation of energy facilities be "treated as a significant aspect of land use planning in which all environmental, economic and technical issues are resolved in an integrated fashion." RSA 162-H:1, I. In some circumstances the Committee may exempt an application from the approval and certificate provisions of the statute. RSA 162-H: 4, IV. It should be noted that exemption from

the application and approval process before the Site Evaluation Committee does not exempt an applicant from regulation of the proposed project. An applicant who has been granted an exemption by this Committee is still subject to all federal, state and local regulations and permitting requirements.

II. Statutory Criteria for Exemption

RSA 162-H:4, IV, grants the Committee discretion to exempt an application from the statutory process if it determines that other existing statutes provide adequate protection of the objectives set forth in RSA 162-H:1. The discretion of the Committee is statutorily circumscribed by the four requirements set forth below. The Committee must find that an application satisfies all four requirements before it may grant an exemption from the statutory requirements of RSA 162-H.

- (a) Existing state statutes, state agency rules or municipal ordinances provide adequate protection of the objectives of RSA 162-H:1;
- (b) A review of the application reveals that consideration of the application by only selected agencies represented on the committee is required and that the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H;
- (c) Response to the application from the general public indicates that the objectives of RSA 162-H:1 are met through the individual review processes of the participating agencies; and
- (d) All environmental impacts or effects are adequately regulated by other federal, state or local statutes, rules or ordinances.

III. Request for Exemption

The University asserts that the project meets the statutory criteria for exemption. The University presented several reasons for the granting of an exemption:

1. The University submits that the pipeline utilizes existing highway and railroad corridors to the maximum extent, departing only to avoid existing obstacles, to avoid disturbing wetlands or to utilize property owned by the University. Also, the gas processing facility will be located within the grounds of the Turnkey Landfill, away from both abutters and the public. Finally, the generating facilities in Durham will be located within an existing plant building on the University's campus. Application, p. 3, Transcript, June 18, 2007, p. 15, 17.

2. The University avers that the requirements for exemption set forth at RSA 162-H:4, IV(b), are achieved because regulation of the facilities and pipeline is limited to certain agencies; namely, the Department of Environmental Services, the Public Utilities Commission, and the Department of Transportation. Thus, regulation by those agencies will meet the objectives of RSA 162-H:1 and, therefore, it is unnecessary to submit the proposal to the complete site evaluation process as contemplated by RSA 162-H:6. Application, p. 3.

3. The University contends that all of the environmental impacts and effects of the project are adequately regulated by the federal, state and local statutes, rules and ordinances. In its application, the University states that the primary environmental issues to be considered in connection with this project are the impact on air emissions and the impacts on wetlands, both of which are subject to comprehensive regulation by the Department of Environmental Services, and that the appropriate approval applications and permits are either already obtained or are pending. Application, p. 3.

4. Last, the University asserts that the proposed project has been considered by each of the municipalities in which elements of this project will be located. In accordance with RSA 674:54, public meetings have been held in each municipality. Application, p. 3. Abutters to the project have all been notified and the University asserts public response to the proposed project

has been favorable. Transcript, May 7, 2007, p. 21-23; 59-63.

The University, in addition to the foregoing arguments for exemption, has also made certain representations and commitments to the Committee. Specifically, the University has represented that:

A. A Wetlands and Non-Site Specific Permit was obtained from the Department of Environmental Services on March 7, 2007. Transcript, June 18, 2007, p. 22. Additionally, a draft permit from the Air Resources Division of the Department of Environmental Services and the supporting preliminary determination has been issued. The 30-day public comment period on the draft permit began on June 15, 2007, and concluded on July 18, 2007. Transcript, June 18, 2007, p. 36. The University has also secured a Use & Occupancy Permit from the Department of Transportation for the installation, operation and maintenance of the gas pipeline within existing state road right-of-ways. Transcript, June 18, 2007, p. 23.

B. Although the project may cause an increase in the University's overall air emissions of nitrous oxide, the regional emissions of sulfur will be substantially decreased. Transcript; June 18, 2007, p. 17-18, 32. Currently, gas from the landfill is being flared by Waste Management and sulfur is thereby being released into the atmosphere. The University, however, will be removing all of the sulfur from the landfill gas before putting it into the generating facility machines. The project will substantially reduce regional sulfur emissions. Transcript, June 18, 2007, p. 17. Additionally, the University projects that by using the renewable landfill gas as its primary fuel, its greenhouse gas emissions/carbon footprint will be seven percent (7%) below 1990 emissions by 2010. Transcript, June 18, 2007, p. 19.

C. The University is using directional drilling and plastic piping in the installation of the pipeline. This technique allows the pipeline to be installed under the Cocheco River and a

number of sensitive wetlands along the pipeline route so as not to disturb the land surface in the wetlands. In fact, due in part to this technique, the total wetlands surface disturbance for the entire project is less than three acres. Transcript, June 18, 2007, p. 19-20.

D. The Rochester Planning Board, after a public meeting on March 26, 2007, approved the University's application for the construction of the facility and the pipeline in a Notice of Decision dated March 29, 2007. Currently, the University is also working with the Town of Rochester with respect to a licensing agreement for the right to install, maintain or otherwise operate the gas pipeline within public highway corridors in the town of Rochester. Transcript, June 18, 2007, p. 56. Supplemental Filing Attachment 6.

E. Concerns for safety have also been addressed. The University has coordinated with the Public Utilities Commission Pipeline Safety Division which regulates this aspect of the project. The pipeline is made of a high-density polyethylene pipe that is not subject to corrosion. The gas will be odorized and the pipeline is equipped with shut-off valves and pressure sensors, allowing the University to detect any pressure excursion immediately and shut down the flow of gas in the pipeline. Transcript, June 18, 2007, p 20-21. Additionally, the wall thickness of the pipe is an inch and a half or more and is rated at a higher pressure than current regulation would allow the University to operate. Transcript, June 18, 2007, p. 44.

F. The project may need a Terrain Alteration Permit from the Department of Environmental Services, as highlighted by the Department of Environmental Services Water Division Director Harry Stewart. Such a permit has been historically obtained by pipeline projects having over 100,000 square feet of impact to a land area. Transcript, June 18, 2007, p. 38. The University averred that such a permit, if necessary, would be applied for and obtained through the Department of Environmental Services. Transcript, June 18, 2007, p. 42.

Subsequent to the public meeting, the Department of Environmental Services determined that a Terrain Alteration Permit is not required for the project.

G. The University has engaged in public education and outreach about the project. The University appeared before each planning board in the four communities affected and held public informational meetings. Transcript, June 18, 2007, p. 21. The Planning Board of Dover and interested members of the Dover public conducted a site walk along the proposed route of the pipeline in Dover. Transcript, June 18, 2007, p. 21. The University spoke to Conservation Committees in each of the four communities, and also spoke variously with town councils, town boards of selectmen, State agencies and State committees. Transcript, June 18, 2007, p. 22. The University also contacted an extensive abutter list. Transcript, June 18, 2007, p. 23; Supplemental Filing Attachment 4.

H. Overall, the public has been very supportive of the University's project. Transcript, June 18, 2007, p. 60. The pipeline will be crossing some private property in Madbury, and several of the families owning property which will be crossed are in favor of the project and have been supportive. Transcript, June 18, 2007, p. 61.

I. The University recognizes that its energy needs are seasonal and has structured its project to allow the University to provide sales to the grid in the summer season when the University's energy needs are low and community energy needs are high. Transcript, June 18, 2007, p. 24.

J. The University will be funding the project through Higher Education Facility Authority bonds, which are taxable bonds. These bonds will be the obligation of the University System, rather than the State of New Hampshire. Transcript, June 18, 2007, p. 66. Additionally, the University expects that the costs of energy for the University will go down, in the short term,

and will allow the University cost containment in the long term. Transcript, June 18, 2007, p. 67.

IV. Consideration of Statutory Criteria for Exemption Pursuant to RSA 162-H:4, IV

After comprehensive review of the University's Application, its presentation before the Committee and the response of the public to the request for an exemption, the Committee has determined to exercise its discretion to exempt this Application from the statutory site evaluation process. In making its decision, the Committee has considered each of the statutory requirements for exemption and the representations and commitments made by the University.

1. Existing state statutes, state agency rules or municipal ordinances provide adequate means to satisfy the objectives of RSA 162-H:1.

The objectives of RSA 162-H:1 are: a) to maintain a balance between the environment and the need for new energy facilities; b) to avoid undue delay in the construction of necessary facilities, and; c) to ensure that the siting, construction and operation of facilities are treated as a significant aspect of land use planning in which all environmental, technical, and economic issues are resolved in an integrated fashion so as to ensure an adequate and reliable supply of electric power in conformance with sound environmental utilization. RSA 162-H:1, I & II.

As previously noted, exemption from the statutory process of RSA 162-H does not relieve the University from the requirements of any federal, state or local statutes, regulations or ordinances. The landfill gas project will be subject to all of the federal statutes and regulations administered by United States Environmental Protection Agency. The Department of Environmental Services will administer the state environmental laws and regulations with regard to the wetland impacts, protected plant or animal species, and the air emissions produced by the University's proposal. In fact, the Department of Environmental Services already heavily regulates the gas collection and control system of the Turnkey Landfill itself, where the

processing facility will be constructed. Transcript, June 18, 2007, p. 25, 51. The Public Utilities Commission will regulate the design, construction and safety aspects of the proposed landfill gas pipeline. The University has been in regular contact with the Pipeline Safety Division of the Public Utilities Commission. Transcript, June 18, 2007, p. 20 – 21. Additionally, the project will be subject to the zoning, planning and building ordinances and regulations of the towns of Rochester, Dover, Durham and Madbury. The University will also be subject to the Department of Transportation rules and regulations with respect to its use of any state highways, roads or otherwise for the route of the proposed pipeline. Transcript, June 18, 2007, p. 26.

The Committee finds that existing federal, state and local statutes, regulations and ordinances will provide adequate means to satisfy the objectives of RSA 162-H:1. The largest impacts stemming from this project appear to be within the authority of the Department of Environmental Services, the Public Utilities Commission and the Department of Transportation. The laws administered by these agencies adequately protect the environment and the health, safety and welfare of the citizens of the State.

2. A review of the application reveals that consideration of the application by only selected agencies represented on the committee is required and that the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H.

The Department of Environmental Services, the Public Utilities Commission and the Department of Transportation administer the laws and regulations pertaining to the material environmental, land use and safety aspects of this project. The pipeline utilizes existing highway and railroad corridors to the maximum extent practicable, departing only to avoid existing obstacles, avoid having to disturb wetlands or to utilize property owned by the University. Also, the processing facility will be located within the grounds of the Turnkey Landfill away from both abutters and the public, and the generating facilities in Durham will be located within an existing

plant building on campus. Although there will be some wetland impacts, such impacts can be properly monitored and regulated through the Department of Environmental Services. The Department of Environmental Services and the Public Utilities Commission are the state agencies which appear to have the greatest regulatory interest and can adequately regulate the project in such a fashion as to protect the objectives of RSA 162-H:1. It is not necessary to exercise the complete procedural apparatus of RSA 162-H in order to protect the statute's objectives.

3. Response to the application from the general public indicates that the objectives of RSA 162-H:1 are met through the individual review processes of the participating agencies.

The Committee held a public hearing with regard to the Application in Durham on June 18, 2007. Notice of the hearing, including notice of opportunity to submit written comments, was published in the *Union Leader* on May 28, 2007. At the public meeting, no opposition was raised to either the project itself, or the exemption process. No written comments were submitted by members of the public.

The University has presented its proposal for the facility and pipeline at public meetings in the municipalities of Rochester, Dover, Durham and Madbury and received predominately favorable responses from the public attendees. The City of Dover conducted a site walk of the pipeline corridor within the City limits, and that site walk was well attended by the members of that community. Transcript, June 18, 2007, p. 21. Prior to these public meetings, the University spoke to municipal staffs, conservation commissions in each community, and boards of selectman, and sent out information letters to an extensive list of abutters. Supplemental Filing Attachment 4; Transcript, June 18, 2007, p. 22. The Department of Environmental Services held a public hearing with respect to the proposal's effect on the wetlands on November 2, 2006, with

notice to the Conservation Commissions in each of the four affected municipalities. Although the Dover Conservation Commission intervened in the wetlands application, it did not oppose the project. Transcript, June 18, 2007, p. 60-61.

The record clearly supports a finding that the response received from the general public throughout the pendency of this Application indicates that the statutory objectives of RSA 162-H: 1 can be met through the individual review processes of the relevant state agencies.

4. All environmental impacts or effects are adequately regulated by other federal, state or local statutes, rules or ordinances.

The environmental effects of this project concerning air emissions and wetland impacts appear to reside within the jurisdiction of the Department of Environmental Services. In addition, the project will be subject to local zoning, planning and building ordinances, and the Public Utilities Commission has jurisdiction with respect to pipeline safety. Under these circumstances the Committee finds that the environmental impacts and effects of the project can be adequately regulated by the aforementioned federal, state and local agencies.

V. Conclusion

The Application before the Committee presents a set of circumstances that warrant an exemption from the statutory site evaluation process set forth in RSA 162-H. The proposed project utilizes existing highway and railroad corridors to the maximum extent. The gas processing facility will be located within the grounds of the Turnkey Landfill, away from both abutters and the public. The generating facilities in Durham will be located within an existing generation plant building on campus. Although there will be some wetland impacts and air emissions, such environmental effects can be properly monitored and regulated through the Department of Environmental Services. Additionally, the Application, the evidence presented at the public hearing and the representations and commitments made by the University satisfy the

statutory criteria for exemption set forth at RSA 162-H: 4, IV. Therefore, the Committee will exercise its discretion and grant the University an exemption from the statutory process of RSA 162-H for the project contained in its Application which has been docketed as No. 07-01. Nothing in this Order shall be interpreted or construed to relieve the University from its obligation to comply with any law, statute, ordinance, regulation or other authority other than R.S.A. 162-H.

ORDER

WHEREAS, the University of New Hampshire has filed an Application for exemption from the requirements of RSA 162-H pertaining to the proposed siting, construction, installation and operation of a landfill gas energy facility and pipeline;

WHEREAS, The University's proposed facilities will process landfill gases from the Turnkey Landfill in Rochester and transport them to facilities located on the University campus where the converted gases will generate electricity for the benefit of the University; and,

WHEREAS, the Site Evaluation Committee has determined that the Application contains sufficient information to carry out the purposes of RSA 162-H; and,

WHEREAS, the Site Evaluation Committee finds that existing state statutes, state agency rules and municipal ordinances provide adequate protection of the objectives of RSA 162-H:1; and,

WHEREAS, the Committee finds that consideration of the Application by only selected agencies represented on the SEC is required and that the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H; and,

WHEREAS, a public informational hearing was held on June 18, 2007, and no member of the public voiced opposition to the Application, nor indicated that the objective of RSA 162-H:1 can not be met by state agencies without exercising the provisions of RSA 162-H; and,

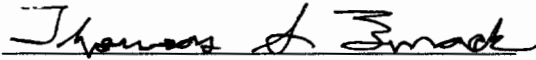
WHEREAS, all environmental impacts or effects of the proposed facility and pipeline are adequately regulated by federal, state or local statutes, rules or ordinances.

IT IS HEREBY:

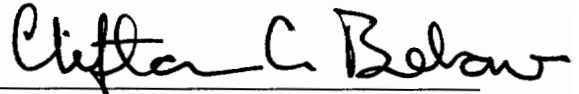
ORDERED, that the University of New Hampshire's Application for Exemption is accepted as complete pursuant to RSA 162-H:6 and RSA 162-H: 7, and;

FURTHER ORDERED, that the University's Application for Exemption is GRANTED pursuant to RSA 162-H: 4, IV.

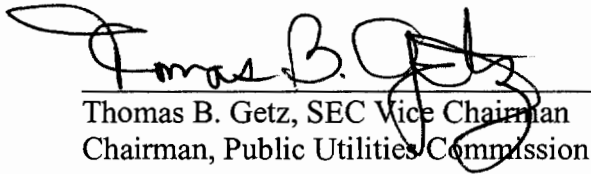
So ordered this 8th day of August, 2007.



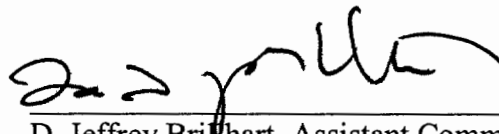
Thomas S. Burack, SEC Chairman
Commissioner, Department of
Environmental Services



Clifton C. Below, Commissioner
Public Utilities Commission



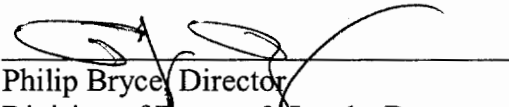
Thomas B. Getz, SEC Vice Chairman
Chairman, Public Utilities Commission



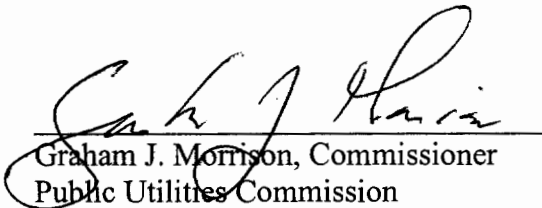
D. Jeffrey Brimhart, Assistant Commissioner
Department of Transportation



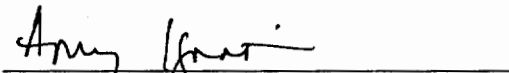
Harry T. Stewart, Director
Water Division, Department of
Environmental Services



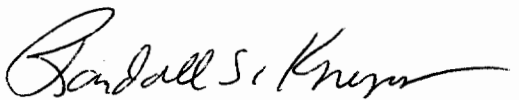
Philip Bryce, Director
Division of Forests & Lands, Department of
Resources & Economic Development



Graham J. Morrison, Commissioner
Public Utilities Commission



Amy Ignatius, Director
Office of Energy & Planning



Randall Knepper,
Director of Safety Division
Public Utilities Commission



Brook Dupee,
Division of Public Health Services,
Department of Health & Human Services