

# STATE OF NEW HAMPSHIRE SITE EVALUATION COMMITTEE

Docket No. 2011-03

**Petition of Gorham Paper and Tissue, LLC for an Exemption from the Application  
and Certificate Requirements of R.S.A. 162-H**

**August 5, 2011**

## **DECISION AND ORDER GRANTING EXEMPTION WITH CONDITIONS**

### **I. Introduction**

On December 29, 2010, in Docket No. 2010-02, Application of Androscoggin Valley Regional Refuse Disposal District, the Site Evaluation Committee (Committee) granted an exemption from the application and certificate requirements of RSA 162-H to Androscoggin Valley Regional Refuse Disposal District (District) for the siting, construction, and operation of a blended landfill gas (LFG) and natural gas energy project which included (1) a landfill gas processing facility and associated compressor, dehydration unit, flares, and LFG meter at the eastern end of the Mt. Carberry Landfill located in Success, Coos County; (2) a natural gas metering and pressure regulation station (M&R Station) on District property located in Berlin, Coos County, and near the existing Portland Natural Gas Transmission System (PNGTS) pipeline; (3) an approximate 11,300-foot-long, buried 8-inch-diameter High Density Poly Ethylene (HDPE) LFG pipeline from the Landfill to the M&R Station in Berlin; (4) an approximate 350 to 675 foot-long, 2-inch diameter lateral pipeline from the existing PNGTS mainline pipeline to the M&R Station; (5) an approximate 470 to 850 foot-long, 8-inch-diameter

HDPE mixed LFG and natural gas pipeline from the M&R Station to the Androscoggin River; (6) an approximate 300-foot-long, 8-inch-diameter segment of coated steel pipeline crossing the abandoned railroad bridge over the Androscoggin River; and, (7) an approximate 2,500-foot-long, 8-inch-diameter HDPE mixed LFG and natural gas pipeline from the west end of the Androscoggin River crossing to the Gorham paper mill (Project).

On June 10, 2011, Gorham Paper and Tissue, LLC (GPT) filed a letter with the Committee updating the Committee on modifications to the Project and seeking confirmation that GPT could rely on the exemption granted to the District in Docket No. 2010-02. In its filing, GPT reported the following substantial modifications to the Project:

1. GPT has completed its purchase of the former Fraser Paper mill located in Gorham, Coos County, NH (Mill), and proposes to install and own the natural gas pipeline, the M&R Station and all parts of the pipeline transiting from the PNGTS pipeline to the Mill. Originally, the District planned to construct, install and own the entire pipeline.
2. Rather than delivering blended LFG and natural gas to the Mill through a single pipeline, GPT now proposes to construct two separate pipelines delivering natural gas and LFG separately.
3. The LFG pipeline will be owned in part by GPT and in part by the District.
4. The natural gas pipeline will connect to the outlet flange of PNGTs above ground check valve with 4 inch standard wall coated steel piping 36 inches below grade and will run for approximately 1200 and 1400 linear feet to the M&R station. This portion of the natural gas pipeline is designed to supply natural gas ranging in pressure from a minimum of 500 psig to a maximum of 1440 psig. After metering, heating and regulation in the M&R facility, the natural gas will be delivered via the pipeline to the mill at a minimum pressure of 30 psig.
5. In its supplemental submission of July 1, 2011, GPT also advises that there have been some modifications concerning the M&R Station. First, the LFG pipeline will not run through the M&R Station. Second, the location of the M&R Station

has been shifted to an area that is roughly 200 feet to the north in order to avoid certain steep slopes in the area.

The proposed modifications to the Project are substantially different than contemplated by the original exemption and require that the Committee determine whether the Project, as modified, continues to qualify for exemption from the application and certificate process of RSA 162-H. The proposed facilities will collect and transport LFG and natural gas from Success and Berlin, respectively, and deliver LFG and natural gas to the mill located in Gorham via two separate pipelines and associated facilities. All of the proposed facilities are located within Coos County, N.H.

The siting, construction and operation of such facilities are usually regulated by the Site Evaluation Committee in an integrated fashion and require a Certificate of Site and Facility. However, under certain circumstances the Committee has the authority to exempt a proposed project from its regulation. The District was originally granted an exemption in Docket No. 2010-02. When the Committee chooses to grant an exemption, the Applicant must still comply with all state and local regulations and obtain all necessary permits and licenses from the appropriate federal, state and local agencies. In this docket, we must consider the proposed modifications to the project both in design and in ownership and determine whether the project as modified should continue to be exempted from the requirements of RSA 162-H. The Committee's authority to grant an exemption from the application and certificate requirements of RSA 612-H is set forth in RSA 162-H: 4, IV.

## **II. Standard of Review**

RSA 162-H:4, IV, grants the Committee the 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 to grant an exemption is subject to the four statutory 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: 4:

- (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 by 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.

In this docket, the Committee finds that each of the statutory requirements are satisfied. Therefore, the exemption will be granted.

## **III. Consideration Of Statutory Criteria For Exemption**

The Committee has considered the original exemption, the petition filed by GPT, the supplemental submission of GPT, the presentations made at the public meeting and the response of the public to the request for exemption. The Committee determines that it is appropriate to exempt the project as modified by GPT from the application and certificate process of RSA 162-H. In making this decision, the Committee has

considered each of the statutory requirements for exemption and the representations and commitments made by GPT.

**A. Existing State Statutes, State Agency Rules or Municipal Ordinances Provide Adequate Means to Satisfy the Objectives of RSA 162-H: 1**

The pertinent objectives of RSA 162-H: 1 are summarized as follows:

- 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 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. In granting the original exemption to the District, the Committee found that existing state statutes, administrative rules and ordinances were adequate to satisfy the objectives of RSA 162-H:1. Specifically, the Committee recognized that the Department of Environmental Services would be responsible for assuring compliance with environmental laws including laws regulating the use of wetlands and the alteration of terrain and that the Public Utilities Commission, Safety Division would oversee gas pipeline safety issues. The Committee also recognized that the project, as originally exempted, would be subject to federal regulation by the Environmental Protection Agency and the Pipeline Hazardous Materials Safety Administration of the Department of Transportation, as well as PUC Administrative Rules chapter 500, Rules for Gas Service. In addition, the Committee found that the project would be subject to local land use and planning ordinances. The modifications to the project as presented by GPT do not diminish the role of the state federal and local agencies under state federal and local

statutes and regulations and ordinances. Therefore, the Committee finds that existing laws, rules, and ordinances continue to provide an adequate means of satisfying the statutory objectives of RSA 162-H:1. The laws administered by those agencies adequately protect the environment and the health, safety and welfare of the citizens of the state.

**B. A Review of the Application Reveals That Consideration of the Application by Only Selected Agencies Represented on the Committee is Required and the Objectives of RSA 162-H:1 Can be Met by Those Agencies Without Exercising the Provisions of RSA 162-H**

It is clear from the record that the Department of Environmental Services and the Public Utilities Commission administer the laws and regulations most affecting this Project. The GPT modifications do not alter this fact. The environmental, land use and safety aspects of the Project are all included within the auspices of either the Department of Environmental Services or the Public Utilities Commission. The Project is located on private property owned by the District, Great Lakes Hydro and GPT. The affected wetlands have been previously delineated by the District. The processing facility, the M&R Station, and the lateral pipeline from the existing PNGTS pipeline are all located away from abutting properties and in areas that are not generally trafficked by the public. The pipeline ends at the existing mill building, a recognized industrial structure that has existed for years.

The construction of the pipeline will involve some wetland impacts but the modifications proposed by GPT do not increase the affected area to any significant degree. However, it is clear that such impacts have been and can continue to be monitored and regulated by the Department of Environmental Services. The Project

has been exempted by the Department of Environmental Services from the requirements of the alteration of terrain program. The Public Utilities Commission has already informally advised the Applicant that the pipeline facilities will not be regulated as a public utility. Both the District and GPT have filed petitions with the Public Utilities Commission requesting permits to cross over the Androscoggin River on the abandoned railroad bridge. As noted in the original exemption docket, this process requires communication with the Safety Division of the Public Utilities Commission. GPT asserts that communication with the Safety Division will continue throughout the construction and operation of the Project. Finally, as noted in the original exemption process, to the extent that the construction of the Project might involve transportation of heavy loads for the purposes of construction, the Department of Transportation can adequately monitor and enforce state regulations with respect to the transportation of heavy loads. The project as modified by GPT does not require the Committee to exercise the complete procedural apparatus of RSA 162-H in order to protect the statute's objectives.

**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**

The Committee held a public meeting and a public hearing with regard to the original application for exemption filed by the District on November 22, 2010. There was no opposition to the project as originally announced. GPT's petition concerning the modified project was filed on June 10, 2011. An Order and Notice of Public Meeting and Informational Hearing was published in the Union Leader and the Berlin Daily Sun on June 24, 2011. The published notices included the opportunity to submit written

comments. A public meeting and informational hearing was held on July 6, 2011, in Berlin. At the public meeting and the public hearing, no opposition was raised either to the Project itself or to the exemption process. No written comments were submitted by members of the public.

The record in this docket clearly supports a finding that the public notice, public meetings and hearings as well as 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 and local boards within the communities affected.

**D. All Environmental Impacts or Effects Are Adequately Regulated by Other Federal, State or Local Statutes, Rules or Ordinances**

We have already noted that the environmental effects of this Project concerning air emissions and wetland impacts and solid waste management appear to reside squarely within the jurisdiction of the Department of Environmental Services. In addition, the Project will be subject to the jurisdiction of the Public Utilities Commission for the water crossing and with respect to pipeline safety. Finally, the record indicates that the Project is subject to local zoning, planning and building ordinances. Under these circumstances, the Committee finds that the environmental impacts and effects of the project, as modified, are adequately regulated by other federal state and local statutes rules and ordinances. However, in order to ensure compliance with such statutes, regulations and ordinances the Committee requires that the District and GPT continue to consult with the Safety Division of the Public Utilities Commission during the design and construction process for the project. Additionally, the District and GPT shall



each file "as built" plans and drawings with the Committee and with the Safety Division of the Public Utilities Commission. The "as built" plans and drawings shall demonstrate ownership and operational responsibilities for each sub segment of the facility. The District and GPT shall also file a synopsis of all contracts that create ownership and/or operational responsibility in any entity for each segment of the project. With these conditions, the Committee can be assured that the necessary information will be available to ensure that all environmental impacts and effects are adequately regulated by other federal state and local agencies through their rules, statutes and ordinances.

#### **IV. Conclusion**

GPT has presented a modified facility to the Committee. While there are some changes within the boundaries of the facility, the overall size and purpose of the facility have not materially changed. Additionally, GPT will own a significant portion of the facility while the District retains ownership over a significant portion of the facility. While the project, as a whole, will have some wetland impacts and air emissions, these matters are most properly monitored and regulated through the Department of Environmental Services. Likewise, the water crossing and pipeline safety issues will be monitored and regulated by the Public Utilities Commission. Finally, the zoning, planning and building ordinances of the local communities provide sufficient safeguard that environmental and safety impacts are adequately regulated. Under these circumstances, the Committee finds that the statutory criteria for exemption set forth at RSA 162-H: 4, IV, have been met. Therefore, the Committee will exercise its discretion and grant GPT an exemption from the statutory process of RSA 162-H for the Project as modified and described in its filing dated June 10, 2011, and supplemental submission

of July 1, 2011. Nothing in this Order shall be interpreted or construed to relieve GPT or the District from their respective obligations to comply with any and all applicable laws, statutes, ordinances, regulations, or other authority other than RSA 162-H.

### **ORDER**

WHEREAS, Gorham Paper and Tissue LLC has purchased the former Fraser Paper Mill located in Gorham and intends to operate said mill to the economic benefit of the region; and,

WHEREAS, Gorham Paper and Tissue LLC has requested that the Committee grant it an exemption from the requirements of RSA 162-H pertaining to the proposed siting, construction, installation and operation of a landfill gas and natural gas energy facility and pipeline as modified; and,

WHEREAS, the Committee has previously granted such an exemption to the Androscoggin Valley Regional Refuse Disposal District and Gorham Paper and Tissue LLC seeks to modify that exemption; and,

WHEREAS, the Site Evaluation Committee has determined that the filings in this docket contain 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 for the objectives of RSA 162-H: 1; and,

WHEREAS, the Site Evaluation Committee finds that consideration of the Application by only selected agencies represented on the Site Evaluation 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; and,


WHEREAS, a public meeting and public informational hearing was held in Berlin, New Hampshire July 6, 2011, and the information obtained at said hearing was supportive of granting an exemption and no member of the public voiced opposition to the exemption; and,

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

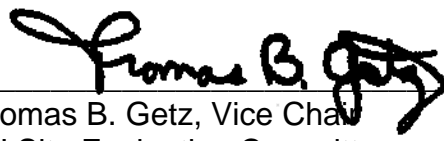
IT IS HEREBY ORDERED: that the Project, as modified and described in the filing of June 10, 2011, and the supplemental submission of July 1, 2011, filed by Gorham Paper and Tissue LLC is accepted as complete pursuant to RSA 162-H:4, IV; and,

FURTHER ORDERED, that the petition for exemption filed by Gorham Paper and Tissue LLC as contained in said filings is hereby **GRANTED** pursuant to RSA 162-H: 4, IV.

SO ORDERED this 5th day of August, 2011.



Thomas S. Burack, Chairman  
NH Site Evaluation Committee



Thomas B. Getz, Vice Chair  
NH Site Evaluation Committee

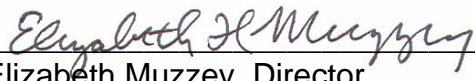


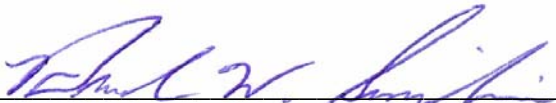
Harry Stewart, Director  
Water Division

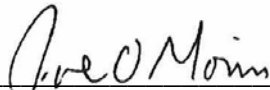


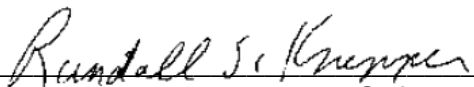
Clifton Below, Commissioner  
Public Utilities Commission

  
Amy Ignatius, Commissioner  
Public Utilities Commission


  
Elizabeth Muzzey, Director  
Division of Historical Resources

  
Brad Simpkins, Interim Director  
Division of Forests and Lands

  
Joanne Morin, Director  
Office of Energy and Planning

  
Randall Knepper, Director Safety Div.  
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Robert Scott, Director  
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Glenn Normandeau, Exec. Director  
NH Fish & Game