



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Robert R. Scott, Commissioner

Brady Sullivan Millworks, LLC
670 North Commercial Street, Suite 303
Manchester, NH 03101

Brady Sullivan Corporation
670 North Commercial Street, Suite 303
Manchester, NH 03101

Re: Mill West/Former Elbes Associates
195 McGregor Street, Manchester
Londonderry Gravel Pit
6 Roundstone Drive, Londonderry
DES Permit #GWP-198912008-M-001-4
DES Site Nos. 198912008/201512048

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 19-016

I. INTRODUCTION

This Administrative Fine by Consent ("Agreement") is entered into by and between the New Hampshire Department of Environmental Services, Brady Sullivan Millworks, LLC, and Brady Sullivan Corporation (collectively referred to as the "Parties"), under the authority of RSA 149-M:16, and RSA 147-A:17-a. This Agreement is effective upon signature by the Parties (the "Effective Date").

The Parties have entered into this Agreement to avoid the time and cost of litigation. This Agreement shall not constitute, be construed as, or operate as: (i) an admission or evidence of liability by Brady Sullivan Millworks, LLC or Brady Sullivan Corporation (hereinafter sometimes referred to collectively as the "Responsible Parties"); (ii) an admission by either Responsible Party, or evidence that either Responsible Party violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense either Responsible Party might raise in any third party proceeding.

II. PARTIES

1. The New Hampshire Department of Environmental Services ("DES") is a duly-constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive in Concord, New Hampshire.
2. Brady Sullivan Millworks, LLC ("Brady Sullivan Millworks") is a New Hampshire limited liability company having a mailing address of 670 North Commercial Street, Suite #303, Manchester, NH 03101.
3. Brady Sullivan Corporation ("Brady Sullivan Corp.") is a New Hampshire corporation having a mailing address of 670 North Commercial Street, Suite #303, Manchester, NH 03101.

III. BACKGROUND

1. RSA 149-M authorizes DES to regulate the management of solid wastes in the state under a permit system. Per RSA 149-M:7, the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Sw 100 *et seq.* (the “Solid Waste Rules”) to implement this program.
2. RSA 149-M:16 authorizes the Commissioner of DES to impose an administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision of RSA 149-M, or the Solid Waste Rules.
3. RSA 147-A authorizes DES to regulate the management and disposal of hazardous waste. Per RSA 147-A:3, the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Hw 100-1200 (the “Hazardous Waste Rules”) to implement this program.
4. RSA 147-A:17-a authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 147-A, or the Hazardous Waste Rules.
5. RSA 485-C authorizes DES to regulate the protection and management of the state’s groundwater, including the investigation, management and remediation of contaminated groundwater. In accordance with RSA 485-C:4, the Commissioner of DES has adopted administrative rules to establish standards, criteria, and procedures for groundwater discharge permits and discharge registrations to prevent pollution and protect groundwater.
6. The Responsible Parties own real property located at 195 McGregor Street in Manchester, New Hampshire (the “Mill West Site”). The Mill West Site, formerly the Elbes Associates site, is a known hazardous waste contaminated site due to the discharge of tetrachloroethylene (“PCE”) sometime before 1990.
7. On December 22, 2000, DES issued groundwater discharge permit #GWP-198912008-M-001 to Elbes Associates, Inc. for the management and remediation of contaminated groundwater at the Mill West Site. On April 3, 2007, DES issued groundwater discharge permit #GWP-198912008-M-002 (the “Permit”) to the Responsible Parties for the management and remediation of contaminated groundwater at the Mill West Site. DES reissued the Permit as #GWP-198912008-M-003, and #GWP-198912008-M-004, on December 21, 2012; and January 1, 2018; respectively.
8. RSA 485-C:2, XIII, defines “Regulated contaminant” to mean any physical, chemical, biological, radiological substance or other matter, other than naturally occurring substances at naturally occurring levels, in water which adversely affects human health or the environment.
9. The Commissioner of DES adopted NH CODE ADMIN. RULES Env-Or 600 (the “Contaminated Site Management Rules”) to establish procedures and requirements for the investigation, management, and remediation of contamination from the discharge of regulated contaminants that adversely affect human health or the environment resulting from human operations or activities.
10. Per Env-Or 602.07, “Contamination” means the presence of any regulated contaminant other than naturally occurring substances at naturally occurring or background levels, in soil, groundwater, soil gas, air, sediment, surface water, construction/excavation debris, or any other material at a concentration that has the potential to adversely affect human health or the environment.

11. PCE is a regulated contaminant. Exposure to PCE in humans can occur through ingestion, respiratory, or dermal exposure.
12. Per Env-Sw 903.01, soils with contamination, as defined in Env-Or 602.07, that are not regulated as a hazardous waste, and are not managed on-site in accordance with the Contaminated Site Management Rules, are managed as a specifically identified type of solid waste under Env-Sw 903.
13. The Responsible Parties own real property at 6 Roundstone Drive in Londonderry, New Hampshire (the "Londonderry Site"). The Londonderry Site is a sand and gravel pit located in a developed residential area without restricted access.
14. Prior to November 2013, the Responsible Parties transported over 200 loads of contaminated soils from the Mill West Site, and disposed of the contaminated soils at the Londonderry Site.
15. RSA 149-M:9, I, provides that no person shall operate a solid waste facility without first obtaining a permit from DES.
16. DES has no record of issuing a permit to the Responsible Parties to operate a solid waste facility at the Londonderry Site.
17. Per RSA 149-M:9, II, it shall be unlawful to transport solid waste to, or dispose of solid waste at, any facility other than an approved facility.
18. Env-Hw 502.01 requires all generators of waste to determine if that waste is a hazardous waste as set forth in the Hazardous Waste Rules. Contaminated soil cannot be transported from a site of generation prior to completing a hazardous waste determination in accordance with Env-Hw 502.
19. DES has no record that adequate hazardous waste determinations were made on any of the loads of contaminated soils generated at the Mill West Site, and disposed of at the Londonderry Site.
20. Upon discovery of the unauthorized disposal of contaminated soils at the Londonderry Site, DES requested that the Responsible Parties complete a site investigation that fully complied with DES regulations and provide information identifying the sources of the contaminated soil at the Londonderry Site. DES also advised the Responsible Parties that the contaminated soils had to be properly removed from the Londonderry Site, and disposed of at an authorized facility. In September 2016, subsequent to receiving a determination from DES that the soils could be managed as solid waste, the Responsible Parties completed removal of the contaminated soils from the Londonderry Site, for proper disposal at a permitted solid waste facility, at significant cost to the Responsible Parties.
21. Env-Sw 903.02 sets out the collection, storage and transfer requirements for contaminated soils. Per Env-Sw 903.02(b), contaminated soils shall be collected and stored in leak tight containers or be underlain by impermeable surfaces or by other means to prevent the discharge of contaminants to groundwater and surrounding soils. Per Env-Sw 903.02(c), contaminated soils shall be stored under cover in a manner that protects the waste from exposure to precipitation or by a method that collects and manages all leachate generated. Per Env-Sw 903.02(d),

contaminated soils shall be stored in accordance with applicable air and water quality rules and regulations.

22. The Responsible Parties did not manage the contaminated soils at the Londonderry Site in accordance with Env-Sw 903.02.

23. Per Env-Sw 903.02(e), prior to transfer, the generator shall comply with the testing requirements in Env-Sw 903.07 to assure proper management of the contaminated soils as follows: (1) if the contaminated soil is determined to be a hazardous waste, it shall be managed as a hazardous waste in accordance with all state rules and federal regulations for managing hazardous waste; and (2) if the contaminated soil is determined to be non-hazardous, it shall be managed in accordance with the solid waste rules. Per Env-Sw 903.02(f), prior to receiving contaminated soils from off-site locations, a facility shall obtain documentation from the generator demonstrating compliance with Env-Sw 903.02(e). Per Env-Sw 903.02(g), a facility that collects contaminated soils from off-site locations shall inspect the waste upon receipt and verify that the waste is the same waste as characterized by the generator in conformance with Env-Sw 903.07.

24. Per Env-Sw 903.07(a), the generator of contaminated soil shall comply with the hazardous waste determination requirements in Env-Hw 502 and other testing requirements, as applicable, prior to transferring the waste off-site if generated in New Hampshire.

25. The Responsible Parties did not comply with the hazardous waste determination requirements in Env-Hw 502 prior to transferring the contaminated soils from the Mill West Site.

IV. ALLEGATIONS

1. The Responsible Parties violated RSA 149-M:9, II, by engaging in the unauthorized transport of solid waste from the Mill West Site to a non-approved solid waste facility. RSA 149-M:16 authorizes a fine of up to \$2,000 for each offense which violates RSA 149-M or the Solid Waste Rules. The Responsible Parties transported over 200 loads of contaminated soils from the Mill West Site to the Londonderry Site. For settlement purposes only, for each of the first 112 loads, DES proposes a fine of \$2,000, for a total fine of \$224,000 for these violations.

2. The Responsible Parties violated RSA 149-M:9, II, by disposing of solid waste at a non-approved solid waste facility. RSA 149-M:16 authorizes a fine of up to \$2,000 for each offense which violates RSA 149-M or the Solid Waste Rules. The Responsible Parties disposed of over 200 loads of contaminated soils at the Londonderry Site. For settlement purposes only, for each of the first 112 loads, DES proposes a fine of \$2,000, for a total fine of \$224,000 for these violations.

3. The Responsible Parties violated Env-Sw 903.07, and Env-Hw 502.01, by failing to conduct adequate hazardous waste determinations on each load of contaminated soils prior to transfer from the Mill West Site, and disposal at the Londonderry Site. RSA 147-A:17-a authorizes a fine of up to \$2,000 for each offense which violates RSA 147-A or the Hazardous Waste Rules. The Responsible Parties transferred over 200 loads of contaminated soils from the Mill West Site to the Londonderry Site without first conducting the hazardous waste determination required under Env-Hw 502. For settlement purposes only, for each of the first 25 loads, DES proposes a fine of \$2,000, for a total fine of \$50,000 for the violations of RSA 147-A and the Hazardous Waste Rules.

4. The Responsible Parties violated RSA 149-M:9, I, by operating a solid waste facility at the Londonderry Site without a permit from DES. RSA 149-M:16 authorizes a fine of up to \$2,000 for each offense which violates RSA 149-M or the Solid Waste Rules. For settlement purposes only, DES proposes a fine of \$1,000 for this violation.
5. The Responsible Parties violated Env-Sw 903.02, by failing to store non-hazardous contaminated soils at the Londonderry Site in such a manner as to prevent the contaminated soils from coming into contact with the ground, precipitation, and storm water run-off. RSA 149-M:16 authorizes a fine of up to \$2,000 for each offense which violates RSA 149-M or the Solid Waste Rules. For settlement purposes only, DES proposes a fine of \$1,000 for this violation.

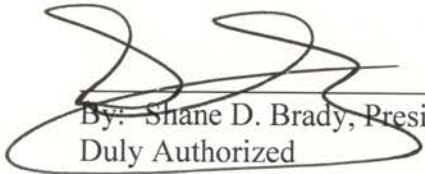
V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. In order to settle this matter, DES and the Responsible Parties have agreed to the terms of this Agreement, as set forth herein.
2. The Responsible Parties agree to pay the proposed administrative fines in the amount of \$500,000, subject to the following terms:
 - a. The Responsible Parties shall receive credit of up to \$200,000 of the proposed fines, by funding the Supplemental Environmental Project ("SEP") described in Appendix A to this Agreement. A detailed description of the SEP is attached hereto as Appendix A, and is incorporated herein and made a part hereof;
 - b. The Responsible Parties shall receive credit of up to \$125,000 of the remainder of the proposed fine, by funding the SEP described in Appendix B to this Agreement. A detailed description of the SEP is attached hereto as Appendix B, and is incorporated herein and made a part hereof;
 - c. The Responsible Parties shall receive credit of up to \$125,000 of the remainder of the proposed fine, by funding the SEP described in Appendix C to this Agreement. A detailed description of the SEP is attached hereto as Appendix C, and is incorporated herein and made a part hereof;
 - d. A SEP is not otherwise required by any local, state, or federal statute, regulation, order, consent decree, permit, or other agreement. The SEPs shall be credited at a 1:1 ratio (*i.e.*, for every one dollar spent on funding any SEP up to \$450,000, one dollar is credited towards payment of the proposed fine amount up to \$450,000);
 - e. The Responsible Parties shall fund each SEP, as follows:
 - i. Within 10 days from the date the Responsible Parties are provided with a copy of a signed statement of intent from the Town of Bartlett asserting that the funds shall be used for the SEP described in Appendix A, the Responsible Parties shall issue a certified check or money order made payable to the Town of Bartlett in the amount of \$200,000, and a copy to DES;
 - ii. Within 10 days from the date the Responsible Parties are provided with a copy of a signed statement of intent from the City of Manchester asserting that the funds shall be used for the SEP described in Appendix B, the Responsible Parties shall issue a certified check or money order made payable to the City of Manchester in the amount of \$125,000, and a copy to DES;

- iii. Within 10 days from the date the Responsible Parties are provided with a copy of a signed statement of intent from the Town of Londonderry asserting that the funds shall be used for the SEP described in Appendix C, the Responsible Parties shall issue a certified check or money order made payable to the Town of Londonderry in the amount of \$125,000, and a copy to DES; and
 - f. The Responsible Parties agree to pay the remaining \$50,000 proposed administrative fine amount for violations of RSA 147-A and the Hazardous Waste Rules, to DES within 10 days of the Effective Date of this Agreement, to be deposited in the Hazardous Waste Cleanup Fund authorized by RSA 147-B.
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3. Any payment to DES made under this Agreement shall be paid by certified check or money order made payable to *Treasurer, State of New Hampshire*, and mailed to: NH DES, Legal Unit, Attn: Compliance Attorney, P.O. Box 95, Concord, NH 03302-0095.
 4. If any payment is made by check or money order that is returned due to insufficient funds, per NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.
 5. Subject to Paragraph V.4. above, the Responsible Parties' obligations under this Agreement shall be satisfied with the payment of the sums specified in Section V of this Agreement.
 6. By executing this Agreement, the Responsible Parties waive their rights to a hearing on or any appeal of the administrative fines identified in this Agreement, and agree that this Agreement may be enforced by a court of competent jurisdiction. Other than any action that may be necessary to enforce this Agreement, DES shall pursue no further action against the Responsible Parties relative to the allegations asserted in this Agreement. In any proceeding to enforce this Agreement, the Responsible Parties agree not to challenge the validity of any provision of this Agreement, its appendices, access agreement, or any related statement of intent.
 7. In any future proceeding by DES seeking administrative fines based on alleged violations of RSA 149-M and/or the Solid Waste Rules, and/or RSA 147-A and/or the Hazardous Waste Rules; the Responsible Parties agree that they will not seek a reduction of any future proposed administrative fine based on Env-C 605.04(c).
 8. After the Effective Date, this Agreement may be amended only by written agreement signed by the Responsible Parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner of DES.
 9. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

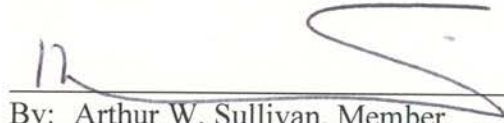
WHEREFORE, the Parties voluntarily accept the terms of this Agreement.

Brady Sullivan Corporation


By: Shane D. Brady, President
Duly Authorized

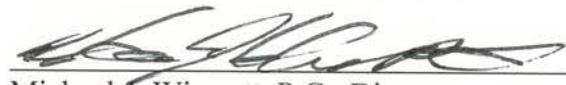
3/27/19
Date

Brady Sullivan Millworks, LLC


By: Arthur W. Sullivan, Member
Duly Authorized

3/27/19
Date

Department of Environmental Services


Michael J. Wimsatt, P.G., Director
Waste Management Division

4/4/19
Date


Robert R. Scott, Commissioner

4/11/19
Date

cc: DES Legal Unit

ec: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Bartlett Select Board
Manchester Board of Mayor and Aldermen
Londonderry Town Council

APPENDIX A

Outline of Bartlett Landfill Supplemental Environmental Project

1. The property that is the subject of this Supplemental Environmental Project ("SEP") is the site known as the former Bartlett Landfill, located at 1300 US Route 302 in the Town of Bartlett, New Hampshire, adjacent to the Saco River (the "Site"). The Site is owned by James and Donna Iovino.
2. The purpose of the SEP is to fund the design by a qualified consulting engineer of an approvable final closure plan for the landfill at the Site, including riverbank stabilization necessary to arrest the ongoing erosion of the face of the landfill at the Site that fronts on the Saco River.
3. The first action under the SEP is to complete the necessary investigations to facilitate the design work for the Site. These site investigations include the following requirements:
 - a. A complete site investigation of the landfill proper, including, but not limited to areal extent and depth of fill, waste characterization, an assessment of the existing soil cap, and potential impacts to groundwater at the Site;
 - b. A comprehensive evaluation of geotechnical conditions along the eroding landfill face, including, but not limited to, height, length, fill quality, and slope stability, to facilitate detailed design for riverbank stabilization at the Site;
 - c. Completion and submittal to DES of a comprehensive site investigation report, including a description of various alternatives for final closure of the landfill and stabilization of the riverbank; estimated costs of each; and identification of, and support for, the recommended alternative.
4. The second action under the SEP, following DES review and approval of the site investigation report and selection of the remedial alternative, is to complete a detailed design of the selected alternative and development of a more precise cost estimate for its implementation.
5. Completion of the first and second actions under the SEP is expected to position the Town of Bartlett (the "Town") to pursue a variety of additional funding sources for implementation. Accordingly, the third action under the SEP is to hire a consultant specializing in identifying and pursuing funding sources to assist financing the remedial course chosen, including riverbank stabilization work.
6. The total value of this SEP is \$200,000. When the Town and the Site owners complete the three actions contemplated under this SEP, and are prepared to implement the remedial alternative, any remaining funds may be expended for preparation of bid specifications, permitting costs, or actual construction.

APPENDIX B

Outline of Manchester/Bedford Lot Supplemental Environmental Project

1. The property that is the subject of this Supplemental Environmental Project ("SEP") is the site known as the "Bedford Lot," located at 307 Kidder Street in Manchester, New Hampshire (the "Site"). The Site is owned by the City of Manchester (the "City").
2. The purpose of the SEP is to contribute to the funding for the clean-up of the Site, which will require significant excavation and off-site disposal of soil impacted by polycyclic aromatic hydrocarbons (PAHs), arsenic, and lead contamination.
3. In coordination with an approved development plan for a hotel, located on an adjacent and privately owned site, the City is planning to clean up the Site. The City has prepared a remedial action plan and a soil and groundwater management plan, and is prepared to begin the cleanup of the Site in conjunction with the hotel development.
4. The City has dedicated \$3 million toward development of the Site, including costs for soil cleanup. The SEP funds will be used to offset the soil cleanup costs. Successful completion of the soil cleanup at the Site will facilitate the overall development project, which includes a hotel and parking garage.
5. The total value of this SEP is \$125,000, all of which is to be used for implementation of the soil cleanup at the Site.
6. If, for reasons beyond the control of the City, this SEP cannot be implemented, the City may propose an alternate SEP of similar nature and nexus with issues surrounding soil cleanup. Implementation of such an alternate SEP is subject to prior approval by the commissioner of DES.

APPENDIX C

Outline of Londonderry/Gilcreast Road Supplemental Environmental Project

1. The property that is the subject of this Supplemental Environmental Project ("SEP") is the site located at 35 Gilcreast Road in Londonderry, New Hampshire (the "Site"). The Site is owned by Gilcreast Realty Holdings, LLC, and is subject to a conservation easement held by the Town of Londonderry (the "Town").
2. The Site is comprised of a 23-acre, former apple orchard, the operation of which dates back to the 1940s. The orchard was abandoned when it and the adjoining property were sold to develop the adjacent Nevins elderly housing development. The Town purchased a conservation easement on the Site in 2003, which restricts development, but allows for outdoor recreation and pedestrian access for the public. Limited soil sampling performed at the Site in the early 2000s identified concentrations of pesticides (i.e., DDE, DDT and Dieldrin) in shallow soils in excess of DES' risk-based soil standards. The Site is now largely overgrown with Japanese bittersweet and represents an eyesore when viewed from Gilcreast Road.
3. The purpose of the SEP is to fund site assessment and cleanup planning to facilitate any needed remedial actions that would position the Site for more productive use, possibly including use as open space for outdoor recreation, and enhancement of community connectivity of nearby elderly housing with the retail district along NH Route 102.
4. The first action under the SEP is to conduct a Phase I site assessment of the Site. Following completion, a report with recommendations for any additional investigations shall be submitted to DES for review.
5. The second action under the SEP, is to complete an investigation of the Site that includes the necessary site investigations to facilitate development of a cleanup and reuse plan for the Site, including the following requirements:
 - a. A complete site investigation to characterize the nature and extent of any soil and groundwater contamination at the Site; and
 - b. Completion and submittal to DES of a comprehensive site investigation report. Based upon contemplated site reuse plans, the report shall include a preliminary screening of possible alternatives for site cleanup and stabilization.
6. The third action under the SEP, if needed, is to complete and submit to DES for review a Remedial Action Plan, prepared in accordance with Env-Or 606.
7. The fourth action under the SEP is to complete a design and bid specifications for the selected remedial alternative.
8. The total value of this SEP is \$125,000. When the Town and the Site owner(s) complete the four actions contemplated under this SEP, and are prepared to implement the remedial alternative, any remaining funds may be expended for its implementation.

APPENDIX C

9. If, for reasons beyond the control of the Town, this SEP cannot be implemented, the Town may propose an alternate SEP of similar nature and nexus with issues surrounding soil investigation and cleanup. Implementation of such an alternate SEP is subject to prior approval by the Commissioner of DES.