

---

**From:** Michael O'Grady <[Michael.OGrady@vtleg.gov](mailto:Michael.OGrady@vtleg.gov)>

**Sent:** Friday, October 3, 2025 3:02 PM

**To:** Jim Masland <[JMASLAND@leg.state.vt.us](mailto:JMASLAND@leg.state.vt.us)>; Rebecca White <[RWhite@leg.state.vt.us](mailto:RWhite@leg.state.vt.us)>

**Cc:** Rebecca Holcombe <[RHolcombe@leg.state.vt.us](mailto:RHolcombe@leg.state.vt.us)>; Alison Clarkson <[aclarkson@leg.state.vt.us](mailto:aclarkson@leg.state.vt.us)>; Joe Major <[jmajor@leg.state.vt.us](mailto:jmajor@leg.state.vt.us)>

**Subject:** RE: Post Mills Landfill

I am writing to provide an update on the drafting request to address the Upper Valley Regional Landfill (Post Mills Landfill).

Earlier this week Erika Hoffman-Kiess from the Green Mountain Economic Development Corporation organized a zoom call of most of the major interests in the issue. Present were: Erika; myself; Shawn Donovan from ANR Brownfields; Dennis Fekert from ANR Solid Waste; Jim Merriam and Martha Staskus from Norwich Technologies; and Brian Story, the town Manager of Thetford.

The conversation highlighted two major issues 1) Brownfields development of the property for purposes of installing a solar array by Norwich Technologies; and 2) addressing the anxiety and concern of the Thetford citizens who live in proximity to the landfill regarding the safety of their drinking water and the water and land around the landfill.

### **1. Development of the Property**

With regard to the development of the property, I think there is a path forward, but it may be difficult, and I don't think it can be legislatively mandated.

In 2022, the General Assembly amended the liability exception for municipal ownership of a hazardous materials release site. Prior to 2022, the exception to liability was only provided if the municipality assumed ownership of the property involuntarily through abandonment, tax sale, etc. In 2022, the General Assembly removed the involuntary requirement, and now municipalities that own brownfields or hazardous materials release sites are exempt from liability if they were not a cause of the contamination at the property and the municipality enters into an agreement with ANR regarding implementation of corrective action at the site.

Previously Green Mountain Economic Development Corporation (GMEDC) had acquired ownership of the site through probate court in order to enter a BRELLA agreement with ANR and lease the site to Norwich Technologies for the solar array. In addition, GMEDC had done the environmental assessment and contracted for a draft corrective action plan as part of the criteria for the BRELLA agreement. However, when PFAS was identified at the property, the GMEDC board determined that there was too much uncertainty about liability to go forward. As a result, GMEDC returned ownership of the landfill property to the original owners through the probate court. This means none of the current parties interested in developing the site have ownership of the site. BRELLA agreements require the owner of the site to be involved in the agreement.

If GMEDC were to reacquire ownership and sign the BRELLA agreement, it could subsequently transfer the property and the BRELLA agreement to the town to own and manage the site for development. The Town would be exempt from future, unknown liability under the 2022 exception change. However, the town would need to assume responsibility for the management of the site and implementation of the correction action plan. This is a significant proposal. Erika stated that GMEDC's board would need to have certainty about the path forward and their potential liability. The town would need to approve such a transfer, and implementation of the corrective action plan will require funding. In addition, the certificate of public good for the solar array planned for the site is set to expire approximately in the end of February. Jim and Martha from Norwich Technologies were reasonably certain that they could get an extension of the CPG.

As you likely have already noted, there are multiple moving parts here, and many things must happen before it could be implemented, including: GMEDC Board approval; GMEDC reacquisition of the property; ANR approval of BRELLA agreement with GMEDC (because GMEDC already contracted for the corrective action plan); town approval of transfer of property from GMEDC and town approval of future site management; transfer of the property and the BRELLA agreement; CPG extension; and agreement to a lease for solar array, including lease payments. This will all take time, and I don't see a role for the legislature, except for provision of funding to the town for site management. But it is possible.

## 2. Addressing Concerns of the Thetford Citizens

As you likely know or have heard directly, the citizens of Thetford are concerned the newly discovered PFAS contamination could adversely affect their drinking water and the water and soil in proximity to the landfill. Since entry of a 2002 settlement agreement, ANR has been testing wells on or in proximity to the landfill property. The Agency's requirement to test under the settlement agreement expired in 2022, but the Agency has continued to test and has approximately \$100,000 to continue testing.

If the property were to be conveyed to an owner who entered a BRELLA agreement, the responsibility for testing and monitoring contamination at the site would transfer to the entity with the BRELLA agreement with ANR. If the property is not conveyed, there is opportunity for the Agency of Natural Resources to continue to do the monitoring. ANR proposed that this could be done under a post closure agreement with the town. ANR has post closure agreements with several towns where landfills were once located.

A post closure agreement is not the only option. The General Assembly could mandate that ANR continue to monitor the site under the terms of the 2002 settlement until a date certain. The issue with both the post closure agreement and the mandate to ANR would be funding, who would pay. As the fund created by the 2002 settlement agreement still exists at ANR, I think it would be possible for the State to appropriate money to it. I told the interested parties that if they wanted to pursue this option, they should contact legislators, and I specifically referenced Rep. Holcombe, due to her experience on the Appropriations Committee.

### Summary

I think there are alternatives to address both of the major issues with the landfill. However, any solution will take time, and I am not sure how much can be done through legislation. Funding of management or monitoring seems the most viable role for the legislature, but that is more easily said than done.

Please let me know if you need more information or have questions. Please also let me know how you would like me to go forward with the drafting request.

Michael O'Grady  
Office of Legislative Counsel

---