THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS. SUPERIOR COURT

Brent Tweed, et al

v.

The Town of Nottingham, et al.

Docket No. 218-2019-CV-398

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

This matter involves the Town of Nottingham's "Freedom From Chemical Trespass" ordinance adopted by the Town at its March, 2019 town meeting. Unlawfulness pervades virtually every provision of the ordinance, with the exception of Section 3. That section calls for, "amendment of the New Hampshire Constitution and federal Constitution to recognize expressly a right of local self-government free from governmental restriction, ceiling preemption, or nullification by corporate 'rights.'" Exhibit #1, Section 3. Residents of the Town of Nottingham are free to pass resolutions in town meeting calling on their elected representatives to do whatever they want. The fact that the ordinance does contain such a plea reflects the fact that the advocates of this measure were fully aware of the illegality of the ordinance. What Nottingham may not do, however, is to adopt ordinances that trample the rights of others, which is precisely what the ordinance does.

II. STATEMENT OF UNDISPUTED FACTS

The sole question before the Court is whether the ordinance is within the authority of the Town of Nottingham to enact and/or whether various provisions in the ordinance violate the

United States and New Hampshire Constitutions. A copy of the ordinance is attached hereto as Exhibit #1.

The plaintiff Brent Tweed is an individual with a residence located in the Town of Nottingham. See Affidavit of Brent Tweed, Exhibit #4. Mr. Tweed is also a taxpayer in the Town of Nottingham with an equitable right and interest in the preservation of an orderly and lawful government within the taxing district. See Affidavit of Brent Tweed, Exhibit #4.

Mr. Tweed is also the sole shareholder and director of co-plaintiff G&F Goods, LLC, a Delaware limited liability company registered to do business in New Hampshire. See Affidavit of Brent Tweed, Exhibit #4. G&F Goods, LLC, is a company in the business of making mail order purchases and sales. As such, G&F Goods has occasion to burn fossil fuels for transportation for business purposes and for heat at his place of business within the Town and to dispose of packaging and other waste material that may contain toxic substances is landfill or other disposal sites within the Town of Nottingham. See Affidavit of Brent Tweed, Exhibit #4. G&F Goods, LLC further has occasion to use paint and cleaning supplies at its place of business, which it disposes of properly within the Town of Nottingham.

Based on the breadth of the statute, Mr. Tweed is concerned that any resident of the Town of Nottingham may seek to enforce the provisions of ordinance against him and seek to have a fine of up to $1000 imposed upon him.

He seeks a declaration from this Court that the ordinance is unconstitutional and unenforceable.

III. LEGAL STANDARD APPLICABLE FOR DECLARATORY JUDGMENT

Pursuant to RSA 491:22:

> Any person claiming a present legal or equitable right or title may maintain a petition against any person claiming adversely to such right or title to determine

> the question as between the parties, and the court's judgment or decree thereon shall be conclusive. The taxpayers of a taxing district in this state shall be deemed to have an equitable right and interest in the preservation of an orderly and lawful government within such district; therefore any taxpayer in the jurisdiction of the taxing district shall have standing to petition for relief under this section when it is alleged that the taxing district or any agency or authority thereof has engaged, or proposes to engage, in conduct that is unlawful or unauthorized, and in such a case the taxpayer shall not have to demonstrate that his or her personal rights were impaired or prejudiced.

N.H. Rev. Stat. Ann. § 491:22. A petition for declaratory judgment is peculiarly appropriate to determine the constitutionality of a statute, when parties desire, and public needs require the speedy determination of important public interest involved therein. *Chronicle & Gazette Publishing Co. v. Attorney General* 94 U.S. 148, 150 (1946).

The existence of the vague ordinance that by its plain language purports to give any resident of the Town of Nottingham the right to enforce the ordinance against fellow residents is a matter that that is "peculiarly appropriate" for a judicial declaration concerning constitutionality and enforceability. Like private criminal prosecutions, private enforcement of vague environmental ordinances that purport to subject persons to fines create a significant risk that such actions may originate from private quarrels, may be intended to vex and harass an opponent, and often to not result in public benefit. See generally, *State v. Martineau,* 148 N.H. 259, 262-263 (2002)(citing *Waldron v. Tuttle,* 4 N.H. 149, 151 (1827)).

IV. ARGUMENT

A. The Ordinance Is Ultra Vires

In enacting our state constitution, the people of New Hampshire agreed "to form themselves into a free, sovereign and independent Body Politic, or State, by the name of THE STATE OF NEW HAMPSHIRE." N.H. Const. Part 2, Art. 1. They further agreed that "[t]he Supreme Legislative Power, within this State, shall be vested in the Senate and House of

Representatives, each of which shall have a negative on the other." N.H. Const. Part 2, Art. 2. These provisions have long been construed to grant the General Court the entirety of the legislative authority, leaving none for municipalities, except that which the General Court itself delegates to them. Nottingham's assertion of municipal rights that are "natural, fundamental, and unalienable," which can also be fairly characterized as an assertion of "inherent rights," has been rejected repeatedly by the New Hampshire Supreme Court.

> An "inherence" of the right is advocated on the ground that such government was established and in force when the Constitution was ordained. But the Constitution did not preserve existing institutions because of the fact of their existence. Unless its provisions demanded their preservation, they had no more than a common–law support for their continuance, which the Legislature might terminate or extend in an altered or modified form. The power of the Legislature is supreme outside the limitations the Constitution states. The theory of a restriction on its power by an "inherence" of right thereto is not in this state a judicial implement of constitutional construction. The sovereignty of the people of the state is represented by their government in completeness of power and authority except only as the Constitution places restraints upon it. The state is not a union of locally organized communities or units, but was formed by "the people inhabiting the territory formerly called the province of New Hampshire." Const. pt. 2, art. 1. The community entities were in existence when the Constitution was adopted. It recognized their existence and did not destroy them. But they were not parties to, and were not made a part of, the organization of the state government except to the extent the Constitution provided.

Amyot v. Caron, 88 N.H. 394, 190 A. 134, 138 (1937).

"There has been a consistent and unvarying support of the principle of complete legislative control of local government." *Opinion of the Justices*, 99 N.H. 540, 541 (1955)(citing *Amyot*). New Hampshire cities and towns are creations of the state and have only those powers that the New Hampshire General Court has delegated to them. "Towns are merely subdivisions of the State and have only such powers as are expressly or impliedly granted to them by the legislature." *Public Serv. Co. v. Town of Hampton*, 120 N.H. 68, 71 (1980). The legislature has:

> plenary power over municipalities [that is] limited only by provisions of our State Constitution which grants municipalities only the right to control the form of their

> local government as enacted in their charters. N.H. Const. pt.1, art. 39…. Otherwise the legislature may grant, withhold, or withdraw local control as it sees fit.

Seabrook Citizens for Defense of Home Rule v. Yankee Greyhound Racing, Inc., 123 N.H. 103, 108 (1983)(quoting *Region 10 Client Mgt., Inc. v. Town of Hampstead*, 120 N.H. 885, 888 (1980)).

"When a municipality enacts an ordinance pursuant to a grant of authority by the legislature, "the municipality must exercise [its] power in conformance with the enabling legislation." *K.L.N. Construction v. Town of Pelham*, 167 N.H. 180, 184 (2014)(quoting *Cmty. Res for Justice v. City of Manchester*, 154 N.H. 748, 754 (2007)). "If a town enacts an ordinance "for considerations or purposes not embodied in an enabling act, it will be held invalid ... as an ultra vires enactment beyond the scope of the delegated authority." *Id*. (internal quotation omitted).

In the exercise of its "supreme legislative power," the General Court has delegated limited authority to municipalities to choose their form of government and to legislate on a narrow range of local interests. These choices are relatively narrowly drawn by the legislature and do not authorize a town to simply change its form of government on a whim by enacting whatever ordinance it may see fit. The permissible forms of local government, and the method for enacting those changes to the form of government, are prescribed in statue. To the extent that the operative language of the ordinance constitutes or relies on an change in the form of government of the town, any such change that would support the broad assertions of power contained in the ordinance are not authorized by any enactment of the General Court and therefore should be declared invalid.

The ordinance asserts a right of local self-government that completely ignores the constitutional structure. In 1966, the people amended our state constitution to give towns an extremely limited home rule option. Part I, Art. 39 reads as follows:

> [Art.] 39. [Changes in Town and City Charters, Referendum Required.] No law changing the charter or form of government of a particular city or town shall be enacted by the legislature except to become effective upon the approval of the voters of such city or town upon a referendum to be provided for in said law. The legislature may by general law authorize cities and towns to adopt or amend their charters or forms of government in any way which is not in conflict with general law, provided that such charters or amendments shall become effective only upon the approval of the voters of each such city or town on a referendum.

New Hampshire law gives towns a small number of forms of government from which they can choose. The principle forms are either the traditional open town meeting/board of selectmen form of government and the town council/town manager form of government. This allows for towns to choose between the traditional board of selectmen/town meeting form of government and the town council/town manager for described in RSA 49-D-2. See generally, *Appeal of Barry*, 143 N.H. 161, 164 (1998). Further, a town may choose to adopt the official ballot/SB2 form of government, RSA 40:12-16, and may also choose among forms of budget committees set forth in statute. RSA 32:15-17. That is the extent of a town's power to alter its form of government.

Through its ordinance, Nottingham attempts to enact a change far outside the scope of our Constitution and the legislation implementing the extremely limited home rule. The ordinance does not hide this fact and indeed, it proclaims its revolutionary, nature by quoting from the Declaration of Independence, with minor editorial changes:

> We hold these truths to be self-evident, that all people are created equal, that they naturally are endowed with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, the people institute governments, which derive their just powers from the consent of the governed.

> Further, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

Exhibit #1, Preamble, paragraphs 1-2. The ordinance then asserts a source of its alleged right to enact the ordinance, stating, "This right of self-government, as stated in the Declaration of Independence, is natural, fundamental, and unalienable. It is also secured to us by the United States Constitution and the Constitution of the State of New Hampshire." Exhibit #1, paragraph 3. Finally, having asserted a right derived from natural law, the Declaration of Independence, and the United States and New Hampshire Constitutions, the ordinance asserts, "if our system of local government infringes our rights, we the people of Nottingham, have the right to alter or replace that system with one that secures and protects our rights…." See, Exhibit #1, Preamble, paragraph 4. The preamble to the ordinance concludes that, "we deem it necessary to alter our system of local government, and we do so by adopting this [ordinance]." Exhibit #1, Preamble.

The Town of Nottingham attempt to alter its system of local government in the manner reflected by the ordinance must fail. First, the ordinance severely misconstrues the dual constitutions and the Declaration of Independence. Both documents were drafted by representatives of the states acting on behalf of those states in a representative capacity. It is the *states* that were the building block of the federal republic and the *states* that were the body politic through which "the people" exercised their natural rights of self-government. While our founding documents create various rights to be protected from government interference, they do not create a right in any group of people other than the states themselves to form their own government. Yet this is precisely the right Nottingham asserts in the ordinance.

The United States Supreme Court described this historical reality in *Printz v. United States*, 521 U.S. 898, 918-922 (1997)(internal citations and quotations omitted for clarity):

> It is incontestible that the Constitution established a system of "dual sovereignty." Although the *States* surrendered many of their powers to the new Federal Government, they retained "a residuary and inviolable sovereignty." This is reflected throughout the Constitution's text, including (to mention only a few examples) the prohibition on any involuntary reduction or combination of a *State's territory*, Art. IV, § 3; the Judicial Power Clause, Art. III, § 2, and the Privileges and Immunities Clause, Art. IV, § 2, which speak of the *"Citizens" of the States*; the amendment provision, Article V, which requires the votes of three-fourths of the *States* to amend the Constitution; and the Guarantee Clause, Art. IV, § 4, which "presupposes the continued existence of the *states* and ... those means and instrumentalities which are the creation of their sovereign and reserved rights." Residual *state sovereignty* was also implicit, of course, in the Constitution's conferral upon Congress of not all governmental powers, but only discrete, enumerated ones, which implication was rendered express by the Tenth Amendment's assertion that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the *States*, are reserved to the *States* respectively, or to the people."

(Emphasis added).

RSA 31:39 is the grant of New Hampshire's state power to towns that authorizes them to enact ordinances. The statue reads as follows:

> 31:39 Purpose and Penalties. –
> I. Towns may make bylaws for:
> (a) The care, protection, preservation and use of the public cemeteries, parks, commons, libraries and other public institutions of the town;
> (b) The prevention of the going at large of horses and other domestic animals in any public place in the town;
> (c) The observance of Memorial Day, whereby interference with and disturbance of the exercises for such observance, by processions, sports, games or other holiday exercises, may be prohibited;
> (d) Regulation of the use of mufflers upon boats and vessels propelled by gasoline, oil or naphtha and operating upon the waters within the town limits;
> (e) The kindling, guarding and safekeeping of fires, and for removing all combustible materials from any building or place, as the safety of property in the town may require;
> (f) The collection, removal and destruction of garbage, snow and other waste materials;
> (g) Regulating the operation of vehicles, except railroads as common carriers, upon their streets;

(h) Regulating the conduct of public dances;
(i) Regulating the conduct of roller skating rinks;
(j) Regulating the sanitary conditions of restaurants within town limits in accordance with the provisions of RSA 147:1;
(k) Issuing a license for the operation of a restaurant and other food serving establishments within the town limits and charging a reasonable fee for same;
(l) Making and ordering their prudential affairs;
(m) Issuing permits for tattooing facilities and charging a fee for the permit; and
(n) Regulating noise.
(o) Requiring the reporting of contributions to, and expenditures by, any candidate or political committee made for the purpose of influencing the election of any candidate for local elective office, or any person or committee for the purpose of influencing the vote on any local ballot or referendum question.
(p) Regulating the retail display and accessibility of martial arts weapons including throwing stars, throwing darts, nunchaku, blow guns, or any other objects designed for use in the martial arts that are capable of being used as lethal or dangerous weapons.
II. Towns may appoint all such officers as may be necessary to carry the bylaws into effect.
III. Towns may enforce the observance of the bylaws by suitable penalties not exceeding $1,000 for each offense to enure to such uses as the town may direct.

Nothing in the plain language of this statute can be read to authorize the town to enact a sweeping environmental regime by municipal ordinance.[1] In effect, the ordinance seeks to act as a town-wide zoning ordinance that bans entire classes of legitimate and regulated business activities that produce by products that might be considered "toxic." By purporting to ban broad swaths of economic activity, the town in effect zoned them out of existence.

The New Hampshire Supreme Court addressed a similar circumstance in *Beck v. Town of Raymond*, 118 N.H. 793 (1978). In *Beck*, the town adopted a "slow growth" ordinance which limited the availability of residential building permits. The town defended its action by asserting that the "slow growth" ordinance was a valid exercise of its police powers under RSA 31:39. *Id*. at 795. The Supreme Court rejected this contention, stating:

[1] To the extent that the town may assert that its ordinance is within the general police power to enact regulations protecting the health, safety, and morals of its residents, any such action is preempted by state and federal law as discussed infra.

> We hold that the general police power delegated to a municipality pursuant to RSA 31:39 may not be used as a usual and expedient mechanism for effecting zoning regulations which would otherwise fall within the scope of RSA 31:60-89. When such ordinances become a substitute for a zoning plan, the purpose and effect of the zoning enabling legislation is defeated. "Such controls cannot be used in the development of a broad comprehensive plan, and they lack the broad scope of power and continuity which is essential to long-range planning." 1 N.H. Office of Comprehensive Planning, Growth Management: A Handbook on Land Use Controls for New Hampshire Municipalities, 41 (1977).

Beck, 118 N.H. at 800.

Much like the "slow growth" ordinance in *Beck*, the Nottingham ordinance is "so comprehensive as to require compliance with RSA 31:60-89," and is an invalid exercise of the police power delegated to a municipality pursuant to RSA 31:39.

It is worth noting that advocates for this kind of ordinance are well aware that towns do not have the authority to enact the desired change at present. In 2018, a Constitutional Amendment Concurrent Resolution was introduced in the New Hampshire House. See, 2018 CACR 19. The proposal required a two-thirds votes of the house to pass. It failed miserably, with an inexpedient to legislation motion being adopted by a nearly two-thirds margin, 217-112 on March 15, 2018.

The ordinance passed by the Town of Nottingham also contains an illegal enforcement mechanism that violates RSA 31:39-c(I). That statute reads in pertinent part as follows:

> Any town may establish, by ordinance adopted by the legislative body, a system for the administrative enforcement of violations of any municipal code, ordinance, bylaw, or regulation and for the collection of penalties, to be used prior to the service of a formal summons and complaint. *Such a system may be administered by a police department or other municipal agency*.

(Emphasis added). The ordinance does not limit enforcement to a police department of other municipal agency. Rather, the ordinance expressly states that, "[a]ny resident of Nottingham may enforce or defend this ordinance through an action brought in the resident's name." Exhibit #1,

Section 2(d). This mechanism exceeds the authority delegated by the legislature in RSA 31:39 and must be found to be outside the scope of the town's authority to adopt ordinances.

The ordinance also creates new jural persons, referred to as "ecosystems" and "natural communities," and purports to grant them authority to participate in judicial proceedings to "enforce or defend" the ordinance. See, Section 2(c). This is a radical and bizarre proposition that flies in the face of existing law, tramples on judicial authority, has never been authorized by the New Hampshire General Court, and should be declared invalid by this court.

B. The Ordinance is Unconstitutionally Overbroad, Void for Vagueness, and Violates the First Amendment Rights of Nottingham Residents.

Both state and federal law governing principles of overbreadth and vagueness are well established. The United States Supreme Court has held that, "[i]t is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). "Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning." *Id*. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them." *Id*. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." Finally a third, but related issues it that, "where a vague statute abut(s) upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of (those) freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone . . .

than if the boundaries of the forbidden areas were clearly marked.'" *Id*. (internal quotations omitted).

New Hampshire law is similar. A statute can be impermissibly vague for either of two independent reasons: (1) it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits; or (2) it authorizes or even encourages arbitrary and discriminatory enforcement." *State v. Gatchell*, 150 N.H. 642, 643 (2004).

The ordinance constitutes the most pernicious type of law because it fails on both counts: It is harsh in its response, yet it gives the ordinary citizen no notice whatsoever of the conduct it prohibits, and it leaves its ambiguous terms to be defined not just by law enforcement officers, but to any and all residents of the Town of Nottingham who may wish to act as special prosecutors. Worse still, it invites residents of Nottingham not only to represent their own interests, but to step forward for the purpose of advocating on behalf of a "healthy climate," "natural communities," and "ecosystems." The ordinance provides no guidance on what constitutes a "healthy climate" or the interests of "natural communities" or "ecosystems, nor does the ordinance identify how a spokesperson for these entities will be chosen. The ordinance creates the very real risk of creating a race to represent these entities because whoever is chosen to speak on their behalf will wield substantial power determining exactly what the interests of those entities are. The combination of vague definitions combined with an express statement permitting any person in the Town to seek enforcement of the vague provisions creates an environment where abusive enforcement is likely to flourish. "The requirement that government articulate its aims with a reasonable degree of clarity ensures that state power will be exercised only on behalf of policies reflecting an authoritative choice among competing social values, reduces the danger of caprice and discrimination in the administration of the laws, enables

individuals to conform their conduct to the requirements of law, and permits meaningful judicial review." *Roberts v. United States Jaycees*, 468 U.S. 609, 629 (1984). The ordinance leaves the construction of its terms to the newly empowered residents of Nottingham who may do with it practically whatever they wish.

The ordinance does not define either its goals nor its means of achieving those goals with anywhere near the level of specificity required the state and federal constitutions. For example, the ordinance asserts a right to a "climate capable of sustaining human societies," and creates a non-exhaustive laundry list of some of the acts that may violate the ordinance, including "the physical deposition or disturbance of…any other waste that poses a present or potential hazard to human health of ecosystems." It is entirely unclear what activities may produce waste that a Nottingham resident believes poses a potential hazard to human health. Does a driving a motor vehicle that is part of a corporate fleet have the potential to harm human health or release toxic contaminants into the air, soil, or water? Does a dairy farmer who operates his or her business in corporate form, and who fertilizes the soil and feeds hay to cows who then release methane through belching and flatulence run afoul of the ordinance? It appears so. Certainly nothing in the ordinance offers any protection for a person performing these two activities whatsoever.

In effect, the ordinance authorizes individual citizens to harass their neighbors for activities that are too numerous to possibly name them all here. The Court should find that the ordinance fails to describe the conduct it seeks to prohibit and as such should declare it void for vagueness.

The ordinance is overbroad as well. The purpose of the overbreadth doctrine is to protect those persons who, although their speech or conduct is constitutionally protected, "may well refrain from exercising their rights for fear of criminal sanctions by a statute susceptible of

application to protected expression." *New York v. Ferber*, 458 U.S. 747, 768 (1982)(quotation omitted); See also *State v. Briggs*, 147 N.H. 431, 435-36, 790 A.2d 792 (2002).

The ordinance expressly tramples on citizens' First Amendment rights and completely upends the constitutional structure of our government. Section 2(e)[2] of the ordinance reads as follows:

> (e) If the Town of Nottingham fails to enforce or defend this law, or a court fails to uphold this law or purports to declare it unlawful, the law shall not be affected, and any resident may then enforce the rights and prohibitions of the law through non-violent direct action. If enforcement through non-violent direct action is commenced, this law shall prohibit any private or public actor from filing a civil or criminal action against those participating in such non-violent direct action. If an action is filed in violation of this provision, the applicable court must dismiss the action promptly, without further filings being required of direct-action participants. "Direct action" as used by this provision shall mean any non-violent activities or actions carried out to directly enforce the rights and prohibitions contained within this law.

This section purports to prohibit the right of a citizen to seek the assistance of courts to enforce his or her rights. "The right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government." *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 387 (2011)(quoting *Sure-Tan, Inc. v. NLRB, 467 U.S.* 883, 896-897 (1984)). The Town of Nottingham has no authority to narrow the protections of the First Amendment and the ordinance should be declared invalid for this reason alone.

The United States District Court for the District of New Mexico considered a substantially similar provision in *Swepi, Ltd. P'ship v. Mora Cty*., 81 F. Supp. 3d 1075 (D.N.M. 2015), holding

[2] Section 2(e) of the ordinance is so exceptionally contrary to so many established legal principles that it could fairly be located in several different sections of this memorandum. The fact that is being discussed in the constitutional overbreadth section as a violation of citizens' First Amendment rights is for ease of drafting and, hopefully, of reading. However placement in this section should not be construed to mean that the plaintiffs are not also challenging the section based on the ultra vires nature of its contents nor upon the clear violation of judicial independence and separation of powers.

that the ordinance was "substantially overly broad" and that no "'conceivable governmental interest would justify such an absolute prohibition of' First Amendment Rights." *Id.* at 1188. The *Swepi* court continued: "SWEPI, LP is currently exercising its First Amendment rights by filing suit to overturn the Ordinance—i.e. seeking to violate the Ordinance. According to Section 5.5, because of SWEPI, LP's exercise of its First Amendment rights, it no longer has First Amendment rights. Such a law is illogical and cannot stand. Section 5.5 is overly broad in its restriction of First Amendment rights, and, as such, must be invalidated*." Id*. In Washington, a court affirmed a decision keeping a similar initiative off of the ballot because "municipalities cannot strip constitutional rights from entities and cannot undo decisions of the United States Supreme Court." *Spokane Entrep. Ctr. v. Spokane Moves to Amend the Const*., 369 P.3d 140, 146 (Wash. 2016). And in Pennsylvania, a court described an argument that business entities lacked the right to complain about an ordinance as "contrary to over one hundred years of Supreme Court precedent." *Pa. Gen. Energy Co., LLC v. Grant Tw*p., 139 F. Supp. 3d 706, 714 (W.D. Pa. 2015).

There are no legitimate applications of a law that eliminates the right to assert legitimate legal defenses to criminal prosecution; the law is therefore invalid on its face. See, e.g., *City of Chi. v. Morales*, 527 U.S. 41, 52 (1999)(noting that "the overbreadth doctrine permits the facial invalidation of laws that inhibit the exercise of First Amendment rights if the impermissible applications of the law are substantial when 'judged in relation to the statute's plainly legitimate sweep'" (quoting *Broadrick v. Okla*., 413 U.S. 601, 612-15 (1973)). The Nottingham ordinance has no "plainly legitimate sweep" whatsoever. Accordingly, there is no way that the restriction of the plaintiffs' First Amendment rights can fall within it.

The unique context in which the effort to squelch citizens' First Amendment rights makes the effects of the effort even worse than may be immediately apparent. Section 2(e) purports to provide special protections for Nottingham residents who engage in "direct action." The ordinance defines direct action as, "any non-violent activities or actions carried out to directly enforce the rights and prohibitions contained within this law." (Emphasis added). Notably, the ordinance refers to "non-violent" action rather than "lawful" action. The plain meaning of the ordinance invites non-violent protest that can take the form of trespass and civil disobedience against disfavored actors who earn the ire Nottingham residents.[3] The ordinance then purports to prevent the victims of this "non-violent," but potentially illegal conduct, from seeking to enforce their rights in the courts of law. An ordinance that sets up a conflict and then seeks to remove the rights of one party to seek judicial relief cannot withstand scrutiny and is fundamentally unfair under the Fifth Amendment to the United States Constitution and Part I, Article 14 of the New Hampshire Constitution, as well as a violation of the First Amendment's petition clause.

Section 2(e) also fails in that it purports to order this court, and others, to rule in favor of future unknown persons, who presumably will commit future illegal acts of an unknown nature, before they actually go out and commit those acts. The ordinance orders the court to dismiss any claims brought against persons engaged in "direct action" without any pleadings being filed. This language clearly violates the separation of powers, as set forth below, in that if allowed to stand it would impinge upon the "necessary characteristic of a judicial officer …to render judgment to

[3] This language may have been derived from an organization known as the Coalition for Direct Action at Seabrook, which proposed "direct action" in the form of massive acts of trespass and civil disobedience against the construction of the Seabrook Nuclear power plant. See Exhibit #2. It is worthy of note that civil disobedience generally is thought to mean a public, non-violent and conscientious breach of law undertaken with the aim of bringing about change in laws or government policy. When the public sees fellow citizens being punished by unjust laws, the theory goes, the public will demand change. The Town of Nottingham seems to want the benefit of being able to break the law while avoiding the adverse consequence of potentially illegal acts.

determine issues that are properly raised before the judicial branch." *Opinion of the Justices,* 128 N.H. 17, 19 (1986)(citing *Rhode Island v. The State of Massachusetts,* 37 U.S. 657, 718 (12 Pet. 657, 718) 9 L.Ed. 1233 (1838)).

C. The Ordinance is Preempted By State and Federal Regulation

Under the preemption doctrine, "[l]ocal legislation is repugnant to State law when an ordinance or bylaw either expressly contradicts a statute or else runs counter to the legislative intent underlying a statutory scheme." *Town of Salisbury v. New England Power Co*., 121 N.H. 983, 984 (1981)(quoting *State v. Driscoll*, 118 N.H. 222, 224 (1978)). "Generally, a detailed and comprehensive State statutory scheme governing a particular field demonstrates legislative intent to preempt that field by placing exclusive control in the State's hands." *JTR Colebrook, Inc. v. Town of Colebrook*, 149 N.H. 767, 770 (2003). "Such exhaustive treatment of the field ordinarily manifests legislative intent to occupy it." *North Country Environmental Services v. Town of Bethlehem*, 150 N.H. 606, 615 (2005). "It is well settled that towns cannot regulate a field that has been preempted by the state*." JTR Colebrook*, 149 N.H. at 770 (2003)(quoting *Town of Hooksett v. Baines*, 148 N.H. 625, 627 (2002)).

The ordinance asserts that, "All residents of Nottingham possess the right to clean air, water, and soil, which shall include the right to be free from all corporate activities that release toxic contaminants into the air, water, and soil…." (Emphasis added). Thus, the only fair reading of the plain words of the ordinance is that it prohibits *any* corporate actor from releasing *any* toxic substances whatsoever at *any* location in the town. It is an ordinance of astounding, and ill-considered, breadth.

The New Hampshire Supreme Court held that municipalities were preempted from making their own air emissions standards in *Bio Energy, LLC v, Town of Hopkinton*, 153 N.H.

145 (2005). That case involved an effort by the town selectmen to issue a cease and desist order against a wood co-generation facility in the Town of Hopkinton, asserting that Bio Energy's business activities were contrary to the town's zoning ordinance[4]. *Id*. at 147. The case describes in detail the town's rationale under the zoning ordinance to issue the cease and desist letter, however for the purposes of this memorandum, the case is relevant because the Supreme Court concluded that the cities and town in this State have not been given, "concurrent affirmative authority to regulate air pollution." *Id*. at 153.

The Court continued:

> We regard it as highly improbable that the legislature, after establishing detailed guidelines," intended to leave the ultimate regulation of air pollution "to the vagaries of local regulation." *JTR Colebrook*, 149 N.H. at 771. It follows that the town had no authority to issue a cease and desist order based upon emissions produced by Bio Energy's operation of its co-generation facility. "Where the state has preempted the field, local law regulating the same subject is inconsistent with the state's transcendent interest, whether or not the terms of the local law actually conflict with the statewide legislation." *Id*. at 773 (quotation omitted). Of course, "[a]ny local regulations relating to such matters as traffic and roads, landscaping and building specifications, snow, garbage, and sewage removal, signs, and other related subjects, to which any industrial facility would be subjected and which are administered in good faith and without exclusionary effect, may validly be applied to a facility approved by the State." *Stablex Corp*., 122 N.H. 1091, 1104 (2005).

Bio Energy, LLC v. Town of Hopkinton, 153 N.H. 145, 154 (2005). Thus, under the *Bio Energy* precedent, the state has preempted the field of air pollution regulation and any town ordinance that is inconsistent with state law is invalid.

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[4] There is a significant body of preemption law concerning zoning cases because municipalities seeking to extend the legitimate reach of their power have used their zoning authority, which the General Court has clearly delegated to them and authorized them to use, to the greatest extent and effect possible. Sometimes the Supreme Court has found these uses of the zoning power to be within the legislative delegation of authority and sometimes not. In addition to cases discussed in this memorandum, see generally, *Lakeside Lodge, Inc. v. Town of New London*, 158 N.H. 164 (2008); *Blagbrough Family Trust v. Town of Wilton*, 153 N.H. 234 (2006); *Town of Carroll v. Rines*, 164 N.H. 523 (2013); *Whitcomb v. Town of Carroll*, 141 N.H. 402 (1996); *Corey v. Majestic Moters, Inc*., 140 N.H. 426 (1995). This is significant because it reflects the desire of most New Hampshire municipalities to root their exercise of local control on a legitimate legal basis. Rather than follow this tactic, Nottingham has instead resorted to the language of revolution.

In *Stablex v. Town of Hooksett*, 122 N.H. 1091 (1982), the Supreme Court found that an ordinance governing solid waste disposal was preempted by state law. Hooksett adopted an ordinance purporting to ban privately owned or operated facilities for the "collecting, receiving, processing, reprocessing, treatment, recovery, storage, disposal or burying of hazardous waste" anywhere within the town, except with the approval of the voters of the town. *Id*. at 1905. The local ordinance "clearly provided that notwithstanding State approval of a proposed hazardous waste facility, local approval in the form of a popular referendum, was required in order for such a facility to be built in the town." *Id*.

Stablex argued that the town lacked authority to enact the ordinance requiring local popular approval because the state had preempted the field. The town argued that its ordinance was an exercise of its police power to enact zoning ordinances and regulations for the protection of the health, safety and welfare of its citizens. *Id*. at 1099. The town also argued that the authority to require popular approval was an exercise of its powers under RSA 31:39.

The New Hampshire Supreme Court rejected Hooksett's claims and found that state law preempted the local hazardous waste ordinance. The Court reviewed both federal and state law in the area of solid hazardous waste disposal and concluded that the legislature, "devised a comprehensive and detailed program of statewide regulation, which on its face must be viewed and preempting any local actions having the intent or effect of frustrating it." *Id*. at 1101. Thus, just as *Bio Energy* held that state laws and regulations preempted the field of air pollution regulation, *Stablex* found that state and federal laws preempted the field of solid waste disposal.

In *Town of Salisbury v. New England Power Co*., 121 N.H. 983 (1981), the Supreme Court found an ordinance banning the spraying of chemical defoliants within the town to be preempted by state law. And in *Town of Pelham v. Browning Ferris Industries of New*

Hampshire, Inc., 141 N.H. 355 (1996), the Supreme Court found that regulations relating to landfill closures were preempted by state law. *Id.* at 363. Notably, the Town of Pelham argued that towns were, "free to apply their own regulations on top of state requirements." *Id*. The Supreme Court rejected this argument as well.

Bio Energy, *Stablex, New England Power,* and *Browning Ferris* are all cases involving the rejection of local environmental regulations that were drawn far more narrowly than the Nottingham ordinance. The Nottingham ordinance would plainly ban the air emissions in *Bio Powe*r, the hazardous waste facility in *Stablex*, and the spraying of chemical defoliants in *New England Power*, all of which the Supreme Court declared could not be banned by local regulation in the face of a state statutory scheme.

Given that the Supreme Court has already ruled that three activities that the ordinance would ban are preempted by state law, this court should find that the subject matter of the ordinance is preempted and declare it unenforceable based on the Supreme Court's reported cases alone.

If the existing precedent does not convince the court that the state has preempted the field of environmental regulation, the brief review of the regulations governing environmental protection should. Even a cursory examination of the state's broad scheme of environmental regulation will overwhelmingly support a declaration that the subject matter of the ordinance is preempted.

The General Court has created the New Hampshire Department of Environmental Services ("DES") and placed within it a Division of Water, RSA 21-O:6, a Division or Waste Management, RSA 21-0:8, and a Division of Air Resources. Pursuant to their legislative authority, these subdivisions of DES have adopted extensive administrative rules governing the

permissible amount of pollutants that can be released into the environment, issuing permits for such releases, and regulating entities that participate in related activities.[5] See Exhibit #3, Table of Contents of Administrative Rules. The federal government has done even more. Despite this extensive the thorough regulation of virtually all aspects of environmental protection, the ordinance proposes to negate any state or federal program that permits a corporation to obtain a permit and engage in legal activities. This staggering overreach should be declared to be outside the scope of the town's authority, illegal, and unenforceable.

D. The Ordinance The Ordinance Violates the Separation of Powers

Part I, Article 37 of the New Hampshire Constitution reads as follows:

> Separation of Powers. In the government of this State, the three essential powers thereof, to wit, the Legislative, Executive, and Judicial, ought to be kept as separate from, and independent of, each other, as the nature of a free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the Constitution in one indissoluble bond of union and amity.

The concept of the separation of powers "contained in virtually every American constitution was designed to protect the people from the tyranny of government which could result from the accumulation of unbridled power in any one branch of the government. The Federalist No. 47 (Madison)." *Opinion of the Justices*, 121 N.H. 552, 556 (1981). The separation of powers doctrine is "violated when one branch usurps an essential power of another." *Petition of Mone*, 143 N.H. 128, 134 (1998). "A necessary characteristic of a judicial officer is the authority to render judgment to determine issues that are properly raised before the judicial branch. *Opinion of the Justices,* 128 N.H. 17, 19 (1986).

[5] The amount of environmental regulation is so vast, and the activities banned by ordinance are so broad, that it is not possible to intelligently discuss whether a particular activity that the ordinance might seek to limit is preempted until the Town asserts that some subject area is, in fact, not preempted. In the event that the Town does make an argument about a particular subject area, the plaintiffs reserve the right to address such a claim with a more specific response.

As described above, Section 2(e) seeks to deprive the judicial branch of government of its core function of determining the rights and responsibilities of parties that are properly before it be pre-judging cases that have not even arisen yet. As such, the ordinance usurps judicial authority and seeks to place that authority with the municipal legislative entity of the town meeting.

Further, the ordinance seeks effectively to modify Superior Court 15 by creating a right of intervention in superior court proceedings. Pursuant to Sup. Ct. R. 15:

> Any person shown to be interested may become a party to any civil action upon filing and service of an Appearance and pleading briefly setting forth his or her relation to the cause; or, upon motion of any party, such person may be made a party by order of court notifying him or her to appear therein. If a party, so notified, neglects to file an Answer or other responsive pleading on or before the date established by the court, that party shall be defaulted. No such default shall be set aside, except by agreement or by order of the court upon such terms as justice may require.

The ordinance would improperly supersede the superior court rule and threaten the ability of judicial branch to control the proceedings occurring in court. The court's rulemaking authority is and area in which "the Judiciary and Legislature share concurrent authority, absent constitutional considerations, such as impairment of the court's ability to function*." In re: Southern New Hampshire Medical Center*, 164 N.H. 319, 328 (2012)(quoting McNamara, The Separation of Powers Principle and the Role of Court in New Hampshire, 42 NH.B.J. 66, 82 (June 2001)). However, this shared authority exists between the General Court, which holds the supreme legislative power, and the Supreme Court, which holds the supreme judicial power. As set forth above, Nottingham has no grant of legislative authority in this area and does not stand on a co-equal basis with the judicial branch. However, even if the town had that authority, a provision granting ecosystems and natural communities the right to intervene would threaten the ability of

courts to conduct their core function of adjudicating cases while protecting the rights of all parties.

V. CONCLUSION

For the forgoing reasons, the Court should grant this motion for summary judgment and declare the ordinance invalid, unconstitutional, and unenforceable.

Respectfully Submitted,

Brent Tweed and
G&F Goods, LLC
By his attorneys,
Lehmann Law Office, PLLC

January 13, 2020

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CERTIFICATION

I hereby certify that a copy of this pleasing was this day forwarded to opposing counsel via the court's electronic service system.

/s/*Richard J. Lehmann*

Richard J. Lehmann

EXHIBIT #1

FREEDOM FROM CHEMICAL TRESPASS RIGHTS-BASED ORDINANCE

ESTABLISHING A COMMUNITY RIGHTS-BASED ORDINANCE FOR NOTTINGHAM, NH, THAT PROHIBITS ACTIVITIES AND PROJECTS THAT WOULD VIOLATE RIGHTS SECURED BY THE ORDINANCE

Preamble

We hold these truths to be self-evident, that all people are created equal, that they naturally are endowed with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, the people institute governments, which derive their just powers from the consent of the governed.

Further, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

This right of self-government, as stated in the Declaration of Independence, is natural, fundamental, and unalienable. It is also secured to us by the United States Constitution and the Constitution of the State of New Hampshire.

Pursuant to that right of self-government, if our current system of local government infringes our rights, we, the people of Nottingham, have the right to alter or replace that system with one that secures and protects our rights, as long as the new system does not infringe other rights protected for us by state or federal law.

It is our legislative determination that chemical trespass resulting from the following corporate activities, namely the physical deposition or disturbance of toxic wastes, including petroleum refining wastes, coal combustion wastes, sewage sludge, heavy metals, chemical residue from manufacturing processes, mining residuals, radioactive wastes, or any other waste that poses a present or potential hazard to human health or ecosystems, is detrimental to our rights, health, safety, and welfare.

As we are purportedly constrained by state and federal law, which courts interpret to require us to accept such harmful corporate activity, we the people of Nottingham are unable under our current system of local government to secure our rights by banning said activity.

Therefore, we deem it necessary to alter our system of local government, and we do so by adopting this Freedom from Chemical Trespass Rights-based Ordinance.

Section 1 – Statements of Law

(a) Right of Self-Government. All residents of Nottingham possess a right of self-government, which includes, but is not limited to, the following rights: first, the right to a system of local government founded on the consent of the people of the municipality; second, the right to a system of local government that secures their rights; and third, the right to alter any system of local government that lacks consent of the people or fails to secure and protect the people's rights, health, safety, and welfare.

Any action to annul, amend, alter, or overturn this Ordinance shall be prohibited unless such action is approved by a prior Town vote at which a majority of the residents of the Town voting approve such action.

(b) Right to a Healthy Climate. All residents of Nottingham possess a right to a climate system capable of sustaining human societies, which shall include the right to be free from all corporate activities that infringe that right, including chemical trespass resulting from the physical deposition or disturbance of toxic wastes, which, for purposes of this ordinance, includes petroleum refining wastes, coal combustion wastes, sewage sludge, heavy metals, chemical residue from manufacturing processes, mining residuals, radioactive wastes, or any other waste that poses a present or potential hazard to human health or ecosystems.

(c) Right to Clean Air, Water, and Soil. All residents of Nottingham possess the right to clean air, water, and soil, which shall include the right to be free from all corporate activities that release toxic contaminants into the air, water, and soil, including chemical trespass resulting from the physical deposition or disturbance of toxic wastes.

(d) Rights of Ecosystems and Natural Communities. Ecosystems and natural communities within Nottingham possess the right to naturally exist, flourish, regenerate, evolve, and be restored, which shall include the right to be free from all corporate activities that threaten these rights, including chemical trespass resulting from the physical deposition or disturbance of toxic wastes.

(e) Right to Protection from Governmental and Corporate Interference. All residents of Nottingham and the Town of Nottingham possess the right to enforce this Ordinance free of interference from corporations, other business entities, and governments. That right shall include the right of residents to be free from ceiling preemption, because this Ordinance expands rights and legal protections for people and nature above those provided by less-protective state, federal, or international law.

Section 2 – Enforcement

(a) Any business entity or government that willfully violates any provision of this Ordinance shall be subject to a civil penalty in an amount of $1,000 per day of violation.

(b) Any business entity or government that willfully violates any provision of this Ordinance also shall be liable for any injury to an ecosystem or natural community caused by the violation. Damages shall be measured by the cost of restoring the ecosystem or natural community to its state before the injury, and shall be paid to the Town of Nottingham to be used exclusively for the full and complete restoration of the ecosystem or natural community.

(c) Ecosystems and natural communities within Nottingham may enforce or defend this Ordinance through an action brought in the name of the ecosystem or natural community as the real party in interest.

(d) Any resident of Nottingham may enforce or defend this Ordinance through an action brought in the resident's name. Any resident, and any ecosystem or natural community, also shall have the right to intervene in any action concerning this Ordinance in order to enforce or defend it, and in such an

action, the Town of Nottingham shall not be deemed to adequately represent their particularized interests.

(e) If the Town of Nottingham fails to enforce or defend this law, or a court fails to uphold this law or purports to declare it unlawful, the law shall not be affected, and any resident may then enforce the rights and prohibitions of the law through non-violent direct action. If enforcement through non-violent direct action is commenced, this law shall prohibit any private or public actor from filing a civil or criminal action against those participating in such non-violent direct action. If an action is filed in violation of this provision, the applicable court must dismiss the action promptly, without further filings being required of direct-action participants. "Direct action" as used by this provision shall mean any non-violent activities or actions carried out to directly enforce the rights and prohibitions contained within this law.

Section 3 – State and Federal Constitutional Changes

Through the adoption of this Ordinance, the people of Nottingham call for amendment of the New Hampshire Constitution and the federal Constitution to recognize expressly a right of local self-government free from governmental restriction, ceiling preemption, or nullification by corporate "rights."

ENACTED AND ORDAINED this _____ day of _____, 20_____, by the Town of Nottingham, in Rockingham County, New Hampshire.

By:

Signature _____Print_____

Signature _____Print _____

Signature _____Print _____

Signature _____Print _____

Signature _____Print _____

Attest: _____

EXHIBIT #2

The Christian Science Monitor

Antinuclear coalition set for fresh assault on Seabrook

May 22, 1980

By Randy Shipp, Staff writer of The Christian Science Monitor

BOSTON

Once more -- on Saturday, May 24 -- opponents of the nuclear poweer plant being built at Seabrook, N.H., will attempt to disrupt construction. Members of 57 antinuclear groups are expected to participate in what is being billed as a "nonviolent" occupation and blockade of the plant site. This time, however, leaders of the Coalition for Direct Action at Seabrook (GDAS), an offshoot of the antinuclear Clamshell Alliance, say demonstrators will "resist" arrest, though not violently.

Gov. Hugh Gallen has declared a civil emergency in connection with the planned protest, and New Hampshire state troopers and National Guard troops will be assisted by troopers from Massachusetts, Maine, Vermont, and Rhode Island.

New Hampshire officials see the issue not as pro- or anti-nuclear power, but as the necessity to prevent destruction of private property.

CDAS members say it is imperative that demand construction at Seabrook be stopped. They say the hazards to human life and disruption of the delicate coastline far outweigh potential benefits, and that use of alternative fuels, plus increased conservation can meet New England's power needs.

They insist the nuclear plant is not needed, citing a report by the New England Power Pool (NEPOOL -- an organization of public and private electric utilities supplying more than 99 percent of the region's electric power) indicating that even without the nuclear plant New England will have a projected reserve of 44.3 percent in 1985-86, and only slightly less than 30 percent in 1991.

Spokesmen for Public Service Company of New Hampshire (PSNH), the private utility that is building the Seabrook plant, do not dispute those figures, but say they are misleading because they include projections of some plants that have since been delayed and may be indefinitely postponed.

The NEPOOL figures also assume a continued rate of conservation and use of alternative fuels that may not hold true for future years, Public Service spokesmen say.

But the big selling points, PSNH's Gordon McKenney says, is the cost factor and the lessening of dependence on foreign oil. At present about 50 percent of the power produced or purchased by PSNH comes from oil-burning plants. When the two Seabrook reactors go on line, this will be reduced to about 5 percent, he says.

"Seabrook can be justified today on oil cost savings alone," Mr. McKenney contends. "If you go through the numbers, you'll find that Seabrook will pay for itself in oil cost savings alone by the end of the 1980s, assuming it comes on line as scheduled. . . ."

CDAS member Jamie Factor is unimpressed. She talks calmly about tearing down fences, facing attack dogs, National Guard troops, and state police armed with billy clubs and chemical Mace. She says she has done it before, and if that is what it takes to halt the construction, she will do it again.

She says the "direct action" of CDAS is similar to the civil disobedience used, without success, by the Clamshell Alliance in trying to halt Seabrook construction. But there is one major difference -- those involved in the CDAS protest will resist arrest, according to Miss Factor.

"With civil disobedience people are saying they feel strongly enough about something to be willing to go to jail for it. With direct action we're saying that although we feel strongly enough that we would go to jail for it, we don't want to because that's not going to help us stop the plant from being built."

Coalition members feel the nuclear power plant poses tremendous potential danger to life, and that his justifies their action. But they insist there will be no violence directed at people, no matter what security forces do.

The destruction of private property (fences, etc.) and the potential for violence if security forces try to keep the protesters out has alienated other more moderate anti-nuclear groups.

"I think it's clear that neither the state of New Hampshire nor the Public Service Company of New Hampshire feels that the Seabrook nuclear power plant should be shut down," says Nate Thayer, explaining that decision. "They have continuously rejected the wishes of the people of Seabrook, who have voted . . . not to have the nuclear power plant in the town, and it's clear that the plant will continue to be built if we rely upon working within the electoral system."

Since March 1976, Seabrook residents have voted twice against construction of the nuclear plant; once against transporting radioactive materials through Seabrook, and once against providing the large quantities of water the plant would need. $"We're not militant terrorists," says a CDAS member. "We're just normal college students, workers, people who feel we have to change something in our lives. And we do it with just the resources we have at hand -- our minds, our abilities, and our collective understanding of what we're trying to do."

Some CDAS members also apparently see the Seabrook action as a test of a new, more militant form of direct action that might be emulated by other groups.

"It's important to realize that there are more objectives this time than just occupying and blockading the plant," says a CDAS member. The aim is "to help build a direct action movement that will empower people in all different strata of society to take direct action in their own lives wherever they feel oppressed. . . . We hope this will be an example to others in the antinuclear movement, the women's movement, and other emerging movements such as the antidraft movement."

Related stories

- Maine earthquake felt across New England
- **CONSUMER ENERGY REPORT** Why Germany is ditching nuclear power
- **FOCUS** In battle to stop sexual assault, young men emerge as allies

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EXHIBIT #3

Certified Rules

Air Program Rules (Env-A)

Env-A 100-4800 Rules Governing the Control of Air Pollution
Env-A 100: Organizational Rules
Env-A 300: Ambient Air Quality Standards
Env-A 400: Acid Deposition Control Program
Env-A 500: Standards Applicable to Certain New or Modified Facilities and Sources of Hazardous Air Pollutants; State Plans for Designated Facilities and Pollutants
Env-A 600: Statewide Permit System
Env-A 700: Permit Fee System
Env-A 800: Testing and Monitoring Procedures
Env-A 900: Owner or Operator Recordkeeping and Reporting Obligations
Env-A 1000: Prevention, Abatement and Control of Open Source Air Pollution
Env-A 1100: Prevention, Abatement, and Control of Mobil Source Air Pollution
Env-A 1200: Volatile Organic Compounds (VOCs) Reasonably Available Control Technology
Env-A 1300: Nitrogen Oxides (NOx) Reasonably Available Control Technology (RACT)
Env-A 1400: Regulated Toxic Air Pollutants
Env-A 1500: Conformity
Env-A 1600: Fuel Specifications
Env-A 1700: Permit Application
Env-A 1800: Asbestos Management and Control
Env-A 1900: Incinerators
Env-A 2000: Fuel Burning Devices
Env-A 2100: Particulate Matter and Visible Emissions Standards
Env-A 2300: Mitigation of Regional Haze
Env-A 2400: Ferrous and Non-Ferrous Foundries, Smelters and Investment Casting Industries
Env-A 2500 Reserved (previously Pulp and Paper Industry: Particulate Matter and Visible Emissions Standards; now covered by other rules)
Env-A 2600 Reserved (previously Pulp and Paper Industry: Total Reduced Sulfur Emissions from Kraft Mills; now covered by other rules)
Env-A 2700: Hot Mix Asphalt Plants
Env-A 2800: Sand & Gravel Sources; Non-Metallic Mineral Processing Plants; Cement & Concrete Sources
Env-A 2900: Sulfur Dioxide and Nitrogen Oxides Annual Budget Trading and Banking Program
Env-A 3000: Emissions Reduction Credits Trading Program
Env-A 3100: Discrete Emissions Reduction Trading Program
Env-A 3200: NOx Budget Trading Program
Env-A 3300: Municipal Waste Combustion
Env-A 3400 Reserved (previously Commercial and Industrial Solid Waste Incinerators; now covered by other rules)

Env-A 3500 Reserved (previously Hospital/Medical/Infectious Waste Incineration; now covered by other rules)
Env-A 3600 Reserved (previously National Low Emission Vehicle (National LEV) Program; expired/not readopted)
Env-A 3700 Reserved (previously NOx Emissions Reduction Fund for NOx-Emitting Generation Sources; repealed)
Env-A 3800 Reserved (previously Voluntary Greenhouse Gas Emissions Reductions Registry; statute repealed eff. 7-1-17)
Env-A 4000 Reserved (previously Portable Fuel Container Spillage Control); now covered by federal regulations
Env-A 4100 Consumer Products
Env-A 4200 Architectural and Industrial Maintenance Coatings
Env-A 4300 Other Solid Waste Incineration
Env-A 4600 Carbon Dioxide (CO2) Budget Trading Program [EFFECTIVE January 1, 2020, SEE Env-A 4600 under Recently Adopted Air Programs Rules on Rulemaking Page]
Env-A 4700 Carbon Dioxide (CO2) Offset
Env-A 4800 Carbon Dioxide (CO2) Allowance Auction Program

Hazardous Waste Rules (Env-Hw)

Env-Hw 100 Organization and Definitions
Env-Hw 200 Procedural Rules
Env-Hw 300 Permits
Env-Hw 400 Identification & Listing of Hazardous
Env-Hw 500 Requirements for Hazardous Waste
Env-Hw 600 Requirements for Hazardous Waste Transporters
Env-Hw 700 Requirements for Owners & Operators of Hazardous Waste Facilities/ Hazardous Waste Transfer Facilities
Env-Hw 800 Requirements for Recycling of Hazardous Wastes
Env-Hw 900 Inspection & Enforcement
Env-Hw 1000 Hazardous Waste Cleanup Fund
Env-Hw 1100 Requirements for Universal Waste Management
Env-Hw 1200 Land Disposal Restrictions

Oil & Remediation Program Rules (Env-Or)

Env-Or 300 Aboveground Petroleum Storage Facilities
Env-Or 400 Underground Storage Tank Program
Env-Or 500 Recovery of Gasoline Vapors
Env-Or 600 Contaminated Site Management
Env-Or 700 Groundwater Release Detection Permits
Env-Or 800 Brownfields Program Under RSA 147-F

Solid Waste Rules (Env-Sw)

Env-Sw 100-2100 Solid Waste Rules Table of Contents
Env-Sw 100 Purpose, Applicability, and Definitions
Env-Sw 200 Procedures
Env-Sw 300 Permits
Env-Sw 400 Collection, Storage, and Transfer Facility Requirements
Env-Sw 500 Processing or Treatment Facility Requirements
Env-Sw 600 Composting Facility Requirements
Env-Sw 700 Incineration Facility Requirements
Env-Sw 800 Landfill Requirements
Env-Sw 900 Management of Certain Wastes
Env-Sw 1000 Universal Facility Requirements
Env-Sw 1100 Additional Facility Requirements
Env-Sw 1200 Permit-by-Notification Facility Requirements
Env-Sw 1300 Public Grants for Landfill and Incinerator Closure
Env-Sw 1400 Financial Assurance
Env-Sw 1500 Certification of Waste-Derived Products
Env-Sw 1600 Solid Waste Facility Operator Training and Certification
Env-Sw 1700 Requirements for Land Application of Wood Ash
Env-Sw 1800 Reduction of Toxics in Packaging
Env-Sw 2000 Inspections
Env-Sw 2100 Management and Control of Asbestos Disposal Sites Not Operated After July 10, 1981

Dam Program & Related Rules (Env-Wr)

Env-Wr 100-700 Dam Rules (See individual listings below)
Env-Wr 100 Organizational Rules [includes Definitions]
Env-Wr 200 Procedures
Env-Wr 300 Existing Dams
Env-Wr 400 Constructing or Reconstructing a Dam
Env-Wr 500 Emergency Action Plans
Env-Wr 600 Removal of Dams
Env-Wr 700 Lake Level Determinations
Env-Wr 900 Official List of Public Waters

Drinking Water & Related Rules (Env-Dw)

Env-Dw 100 Purpose and Applicability; Use of Federal Terms; Special Provisions For Political Subdivisions; Definitions
Env-Dw 200 Rule Waivers; Confidential Business Information; Hearing Procedures
Env-Dw 300 Sources of Water (see individual Parts below)
Env-Dw 301 Definitions
Env-Dw 302 Large Production Wells and Wells for Large Community Water Systems

Env-Dw 303 Groundwater Sources of Bottled Water
Env-Dw 304 Emergency Bulk Water for Public Water Supplies
Env-Dw 305 Small Production Wells for Small Community Water Systems
Env-Dw 400 Public Water System Classification and Design (see individual Parts below)
Env-Dw 401 PWS Classification; Well Siting; Hydro/Engineering Studies
Env-Dw 402 General Design Standards for Public Water Systems
Env-Dw 403 Coatings, Additives, and Lead Prohibition
Env-Dw 404 Design Standards for Large PWS
Env-Dw 405 Design Standards for Small Community PWS
Env-Dw 406 Design Standards for Non-Community PWS
Env-Dw 407 Standards Adopted by Reference
Env-Dw 500 Operation & Maintenance (see individual Parts below)
Env-Dw 501 Permit to Operate
Env-Dw 502 Certification of Water Works Operators
Env-Dw 503 Public Water Systems Operational Requirements
Env-Dw 504 Public Water Systems Maintenance Requirements

Env-Dw 505 Backflow Prevention
Env-Dw 506 Seasonal Public Water Systems
Env-Dw 600 Capacity Assurance
Env-Dw 700 Water Quality: Standards, Monitoring, Treatment, Compliance, and Reporting
Complete Table of Contents, OLS Revision Notes
Env-Dw 701 Purpose and Applicability; Units Of Measure
Env-Dw 702 - Env-Dw 706 MCLs and MCLGs
Env-Dw 707 General Monitoring Requirements; Laboratory Analytical Methods
Env-Dw 708 Sampling Schedules
Env-Dw 709 - Env-Dw 713 Monitoring For Specific Contaminants
Env-Dw 714 Control of Lead and Copper
Env-Dw 715 Disinfection Residuals, Byproducts, and Byproduct Precursors
Env-Dw 716 Filtration, Disinfection, and Waste Recycling
Env-Dw 717 Groundwater Monitoring and Treatment (Federal Ground Water Rule)
Env-Dw 718 Recordkeeping Requirements & Env-Dw 719 Reporting
Env-Dw 719 Reporting - SEE Env-Dw 718 & Env-719, above
Env-Dw 720 Inspections; Significant Deficiencies
Env-Dw 721 Exemptions
Env-Dw 722 Best Available Technology and Treatment Techniques
Env-Dw 723 Non-Central Treatment
Env-Dw 800 Public Notification by Public Water Systems
Env-Dw 900 Protection of Water Sources (see individual Parts below)
Env-Dw 901 Groundwater Reclassification Rules
Env-Dw 902 Protecting the Purity of Surface Water Sources of Drinking Water
Env-Dw 1000 Grants for Public Water Systems (see individual Parts below)

Env-Dw 1001 Grants for Surface Water Treatment, Regional Water Systems, and Groundwater Investigations
Env-Dw 1002 Water Supply Land Protection Grants
Env-Dw 1100 Drinking Water State Revolving Loan Fund
Env-Dw 1200 Privately Owned Redistribution Systems
Env-Dw 1300 Administrative Procedures for Grants and Loans from the Drinking Water and Groundwater Trust Fund [Effective October 23, 2019, see Env-Dw 1300 under Recently Adopted Drinking Water & Related Rules on Rulemaking Page]

Water Quality/Quantity Rules (Env-Wq)

Env-Wq 300 Surface Water Protection (see individual Parts below)
Env-Wq 301 State Surface Water Discharge Permits [formerly Env-Ws 401]
Env-Wq 304 Certifcation of Wastewater Treatment Plant Operators [formerly Env-Ws 901]
Env-Wq 305 Pretreatment of Industrial Wastewater [formerly Env-Ws 904]
Env-Wq 306 Management of Mercury Amalgam [formerly Env-Ws 905]
Env-Wq 400 Groundwater Protection (see individual Parts below)
Env-Wq 401 Best Management Practices for Groundwater Protection
Env-Wq 402 Groundwater Discharge Permits and Registrations
Env-Wq 402 Cross-Reference Table (prior rules to 2016 rules)
Env-Wq 403 Large Groundwater Withdrawals
Env-Wq 404 Underground Injection Control
Env-Wq 500 Clean Water State Revolving Loan Fund
Env-Wq 600 Selection of Consulting Engineers [SEE Env-C 500]
Env-Wq 700 Standards of Design and Construction for Sewerage and Wastewater Treatment Facilities
Env-Wq 800 Sludge Management
Env-Wq 1000 Subdivisions; Individual Sewage Disposal Systems
Env-Wq 1100 Public Bathing Places
Env-Wq 1200 Winnipesaukee River Basin Program
Env-Wq 1300 NH Clean Lakes Program
Env-Wq 1400 Shoreland Protection
Env-Wq 1500 Alteration of Terrain
Env-Wq 1600 Septage Management Rules
Env-Wq 1700 Surface Water Quality Standards
Env-Wq 1700 Cross-Reference Table - Prior Rules to Rules eff. 12-01-2016
Env-Wq 1800 Rivers Management and Protection Program
Env-Wq 1900 Protection of Instream Flow on Designated Rivers
Env-Wq 2000 Coastal Program Grant Rules
Env-Wq 2100 Water Conservation, Use, Registration, & Reporting (see individual Parts below)
Env-Wq 2101 Water Conservation
Env-Wq 2102 Water Use Registration and Reporting
Env-Wq 2102 Cross-Reference Table - 2008 rules to 2017 rules
Env-Wq 2200 Voluntary Certified Salt Applicator Program

Wetlands Rules (Env-Wt)

Env-Wt 100 Wetlands Organizational Rules
Env-Wt 200 Wetlands Procedural Rules
Env-Wt 300 - 700 Wetlands Program
Env-Wt 800 Compensatory Mitigation
Env-Wt 900 Stream Crossings

EXHIBIT #4

AFFIDAVIT OF BRENT TWEED

State of New Hampshire
County of Hillsborough

Before me, _____ the undersigned Notary, on this 14th day of January, 2020, personally appeared Brent Tweed, who being first duly sworn on this 14th day of January on his oath states as follows:

1. I am an individual with a residence located at 23 Fort Hill Road in the Town of Nottingham, New Hampshire.
2. I am also a taxpayer in the Town of Nottingham with an equitable right and interest in the preservation of an orderly and lawful government within the taxing district.
3. I am also the sole shareholder and director of G&F Goods, LLC, a Delaware limited liability company registered to do business in New Hampshire.
4. G&F Goods, LLC, is a company in the business of making mail order purchases and sales located at 23 Fort Hill Road in the Town of Nottingham, New Hampshire. As such, G&F Goods, LLC, has occasion to burn fossil fuels for transportation for business purposes and for heat at G&F's place of business within the Town and to dispose of packaging and other waste material that may contain toxic substances is landfill or other disposal sites within the Town of Nottingham. G&F Goods, LLC further has occasion to use paint and cleaning supplies at its place of business, which it disposes of properly within the Town of Nottingham.
5. Based on the breadth of the statute, I am is concerned that any resident of the Town of Nottingham may seek to enforce the provisions of ordinance against me and against G&F Goods, LLC, and seek to have a fine of up to $1000 imposed upon either me or G&F Goods, LLC.

Further the affiant sayeth not.

_____
Signature of Brent Tweed

Brent Tweed
23 Fort Hill Road
Nottingham, New Hampshire 03290

Subscribed and sworn to before me this 14th day of January, 2020

_____
Signature of Notary

_____
Printed Name of Notary

Notary Public

My commission expires _____, 20____