

STATE OF NEW HAMPSHIRE
WASTE MANAGEMENT COUNCIL

DOCKET NO. 23-05 WMC

IN RE: CONSERVATION LAW FOUNDATION APPEAL

ORDER ON APPELLANT’S REQUEST FOR EXPEDITED REVIEW

ORDER: MOTION DENIED

BACKGROUND

On May 11, 2023 the Conservation Law Foundation (the “Appellant”) filed a Notice of Appeal with the Waste Management Council (the “Council”) seeking review of the New Hampshire Department of Environmental Services’ (“NHDES”) issuance of Type II Permit Modification – Final Construction Plans (Stage VI Phase II), Application #2022-61805 (the “Permit Modification”) to North Country Environmental Services, Inc. (“NCES”) on April 12, 2023. In its Notice of Appeal, the Appellant requested the Council provide an expedited review of this appeal pursuant to Env-WMC 204.14. See Notice of Appeal, p. 5.

DISCUSSION

The Appellant has not sufficiently argued that there is an imminent and substantial threat to public health or the environment due to NHDES’s issuance of the Permit Modification, or that the Appellant will suffer an economic hardship if the appeal is not promptly resolved. The Appellant asserts:

“Expedited review is necessary to prevent NCES’s expansion of Stage VI under an unlawful permit, prevent additional harm to CLF members as a result of an expanded landfill, and prevent additional harm to the environment. There is an imminent and substantial threat to public health and the environment that will remain unaddressed until this appeal is resolved. Env-WMC 203.14(f)(1). An expedited review will not unduly burden NCES or any party to this appeal.”

Notice of Appeal, p. 5.

This appeal is very focused in its scope: the Appellant argues that NHDES unlawfully issued the Permit Modification because a) its issuance is a violation of RSA 149-M:11; and b) the Permit Modification conflicts with the Council’s determination that the underlying permit was unlawful in Appeal of Conservation Law Foundation, Docket No. 20-14. See Notice of Appeal, p. 2. Based on the available information, it appears the Permit Modification authorizes NCES to construct “Stage VI, Phase II” of its facility- if, as it appears, the Permit Modification merely allows for the construction of a further part of the NCES facility (in NCES’s anticipation that the underlying permit will be authorized upon the resolution of Appeal of New Hampshire Department of Environmental Services, No. 2022-0690), then the Appellant must evidence how the construction activity authorized by the Permit Modification will result in an imminent and substantial threat to public health or the environment thereby justifying an expedited review of this appeal.

It is unspecified and unclear how NHDES’s issuance of the Permit Modification—and NCES’s subsequently authorized construction activities—result in an imminent and substantial threat to public health or the environment. There is no evidence or argument provided by the Appellant that NCES’s authorized construction activities will result in an imminent and substantial threat to public health or the environment. The present appeal pertains to the Permit Modification, not to the underlying permit which was previously reviewed by the Council: the Appellant bears the burden of showing that the Permit Modification will result in an imminent and substantial threat to public health or the environment, and the Appellant has failed to meet this burden.

Whether the construction activity authorized by the Permit Modification will be warranted upon the resolution of Appeal of New Hampshire Department of Environmental Services, No. 2022-0690, or if NCES’s construction activity may result in NHDES taking enforcement action at a later date, is outside the scope of the present appeal.

CONCLUSION

Pursuant to Env-WMC 204.14(e) and the above analysis, the Appellant's request for expedited review is **DENIED**.

/s/ Zachary Towle Date: 6/2/2023
Zachary N. Towle, Esq., NH Bar 270211
Hearings Officer, Waste Management Council