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February 27, 2024

Via e-mail submission (jaime.colby@des.nh.gov)

Jaime Colby, P.E.
New Hampshire Department of Environmental Services
Engineering and Permitting Section
29 Hazen Drive
Concord, NH 03302-0095

Re: Proposed Granite State Landfill, Douglas Drive, Dalton, NH
Public Benefit Demonstration
Standard Permit Application No. 2023-66600

Dear Ms. Colby:

As you know, our office represents Granite State Landfill, LLC (“GSL”) in connection with its efforts to permit and construct a new landfill in Dalton, New Hampshire. GSL submitted its solid waste permit application on October 17, 2023, which included a public benefit demonstration as required by RSA 149-M:11.

Soon after GSL submitted its application, the New Hampshire Supreme Court issued its order in *Appeal of N.H. Dep’t of Environmental Services*, Case No. 2022-0690, reversing the waste management council’s hearing officer’s decision that NHDES acted unlawfully in approving a permit for North Country Environmental Services, Inc. (“NCES”). In that order, the court interpreted – for the first time – the meaning of the capacity need criterion set forth in the public benefit statute. On behalf of GSL, we are writing to provide our comments regarding the effect of this order on GSL’s pending public benefit demonstration.

In recent years, NHDES has construed the public benefit statute as requiring applicants to identify the point in time a projected shortfall in disposal capacity will occur during the twenty-year planning period and to establish that the proposed facility will operate during that period of shortfall. Analyzing this statute, the court clarified that the terms “capacity need” and “shortfall” are not synonymous in RSA 149-M:11, V(d) and that the statute requires a separate inquiry into each of them: first, whether there is a shortfall in the capacity of existing facilities to accommodate waste projected during the twenty-year planning period in accordance with RSA 149-M:11, V; and second, if there is a shortfall, whether a capacity need exists. The first inquiry is a quantitative analysis prescribed by RSA 149-M:11, V.

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The court specifically rejected the notion that the statute imparts a “temporal relationship between the proposed facility’s operation and the period of capacity need.” *Appeal of N.H. Dep’t of Environmental Services*, 176 N.H. ____ (Dec. 28, 2023), slip op. at 12. Accordingly, the department’s recent focus on *when* a shortfall would occur in relation to the proposed facility’s operating period is not relevant to the question of whether a shortfall exists. Second, the court also rejected NCES’s position that there is capacity need for a facility if a shortfall in disposal capacity will happen at any point in the twenty-year planning period. Underscoring the distinction between “shortfall” and “capacity need,” the court repeatedly emphasized that these terms are not synonymous and require two separate analyses.

In light of this order, some portions of GSL’s capacity need analysis in the public benefit demonstration are no longer relevant. In particular, the discussion of when a shortfall will occur and the “function of time” crossover chart contained on page 9 of the public benefit submittal are no longer considerations in determining whether a shortfall exists. GSL’s application establishes the range of the capacity shortfall, depending on whether NHDES utilizes operating or design capacity, as described in the application, and this satisfies the court’s construction of the shortfall analysis.

Under the supreme court’s construction of the statute, whether there is a capacity need for a facility is a question “squarely within the Department’s discretion” after determining that a shortfall exists. *Appeal of N.H. Dep’t of Environmental Services*, 176 N.H. ____ (Dec. 28, 2023), slip op. at 11. GSL’s application includes several arguments articulating how the new facility will provide a benefit to the state and satisfy its capacity needs, particularly where GSL is intended to be a successor facility for customers in the North Country when NCES completes its operations. In addition to the arguments set forth in that section of the public benefit demonstration, the “function of time” analysis currently set forth in Section 3.3 of the public benefit demonstration further demonstrates the capacity need for this facility. While that analysis and the “crossover chart” are no longer essential to the shortfall determination, they do underscore the capacity need for the GSL facility, as GSL forecasts a drop-off in capacity in 2034 with the anticipated conclusion of TLR-III’s operations. As a new facility in the North Country, GSL is well-positioned to provide additional needed capacity to address that shortfall following TLR-III’s closure.

Please let us know if you have any questions regarding this letter as you continue your review of GSL’s public benefit demonstration.

Very truly yours,

/s/ Cooley A. Arroyo

Cooley A. Arroyo

CAA

cc: Mr. John Gay, Casella Waste Systems, Inc. (via email)
Samuel Nicolai, P.E., Casella Waste Systems, Inc. (via email)
Josh Harrison, Esq. (via email)

Colby, Jaime

From: Cooley Arroyo <arroyoc@cwbp.com>
Sent: Tuesday, February 27, 2024 11:38 AM
To: Colby, Jaime
Cc: Harrison, Joshua; Bryan Gould
Subject: GSL Application - Standard Permit Application No. 2023-66600
Attachments: 2024-02-27 CAA ltr to DES re public benefit.pdf

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Good morning, Ms. Colby:

Please see the attached correspondence regarding the GSL public benefit demonstration in connection with the above-referenced application. Please let me know if you have any questions regarding this message and its attachment.

Best,
Cooley

Cooley A. Arroyo, Esq.

Attorney

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