

Town of Dalton Conservation Commission
756 Dalton Road
Dalton, NH 03598

March 30, 2021

Robert R. Scott, Commissioner
Michael Wimsatt, Waste Management Director
New Hampshire Department of Environmental Services
29 Hazen Drive
Concord, NH 03302

Re: Superior Court Docket No. 217-2021-CV-00092
Conservation Law Foundation v. Robert R. Scott, Commissioner
New Hampshire Department of Environmental Services

Dear Commissioner Scott and Director Wimsatt:

The Town of Dalton Conservation Commission would like to respectfully submit this letter in support of the merits of the complaint filed against Commissioner Scott, Commissioner, seeking declaratory judgment, a writ of mandamus, and injunctive relief filed by the Conservation Law Foundation on February 11, 2021 for the following:

- The New Hampshire Department of Environmental Services (NHDES) is in violation of RSA 149-M:29, the New Hampshire statute on state solid waste planning and reporting, until it publishes an updated solid waste management plan.
- Absent an updated solid waste plan, we concur with the Conservation Law Foundation (CLF) that it is not possible for NHDES to accurately determine whether any new or expanded landfill in New Hampshire would meet the public benefit requirements because the state solid waste management plan is 18 years old.
- RSA 149-M:29 states that beginning in Oct. 1, 1998, and for every six years thereafter, NHDES shall update the state's solid waste management plan and

prepare a report on the level of achievement in reaching the 40-percent diversion goal as stated in the 2003 Solid Waste Plan.

- Absent a valid and updated state solid waste plan, NHDES cannot lawfully or reasonably render a substantial-public-benefit determination and, therefore, cannot lawfully and reasonably issue permits for new or expanded solid waste disposal facilities, particularly the proposed Granite State Landfill in Dalton, NH.
- RSA 149-M:2 states that by the year 2000, New Hampshire is to achieve a 40-percent minimum weight diversion of solid waste land-filled or incinerated on a per capita basis and is to develop strategies alternatives to land-filling, such as source reduction, recycling and reuse, and composting for reaching that goal.
- By not complying, NHDES has failed to achieve the above-stated 40-percent minimum weight diversion goal, which would have resulted in a significant shift away from waste disposal (with land-filling being the state's least preferred waste method) to the preferred methods of source reduction, recycling, reuse, and composting pursuant to the solid waste management hierarchy established more than two decades ago.
- NHDES's permitting of landfill disposal capacity has allowed for precious NH landfill capacity to be consumed at rates of nearly 50 percent by out-of-state waste since at least 2015.

We ask the court to prohibit NHDES from issuing a permit for any new or expanding landfill until NHDES has achieved compliance with the statute and its "substantial public benefit" requirement. Relative to the permitting of the Granite State Landfill in Dalton, NH, we are particularly concerned with the significant, adverse environmental impacts, as well as potential impacts to human health, groundwater and drinking water, heavy truck traffic, odors, and negative impacts to the region's quality of life, and the outdoor recreation and tourism industries.

The NHDES wetlands permit process requires that applicants, in this case the Granite State Landfill LLC (Casella Waste Systems), demonstrate that their project is the "least environmentally-damaging practicable alternative" (LEDPA). With over 17 acres of wetlands destruction being proposed, it is our concern that the absence of a current solid waste plan prohibits the applicant, GSL, from

demonstrating consistency with the state solid waste plan, thereby preventing NHDES Wetlands Bureau from making an accurate determination relative to LEDPA and wetlands impacts relative to its landfill project.

By ignoring the law and failing to produce a current solid waste management plan, NHDES is failing to commit to waste reduction and diversion efforts, thereby allowing for a dramatic and irrevocable impact on residents in the North Country and for the State of New Hampshire.

Therefore, the Dalton Conservation Commission supports the action brought forth by CLF seeking a declaratory judgment that NHDES is violating statutory solid waste planning and regulatory requirements, that a writ of mandamus ordering NHDES to achieve compliance with the statutory solid waste plan requirement, and an order enjoining NHDES from reviewing, and issuing decisions on, permit applications for new or expanded waste facilities, as well as any further review and decision-making required for permits it has already granted, until it has a legally valid state solid waste plan.

Respectfully,

A handwritten signature in black ink that reads "Nancy Comeau". The signature is written in a cursive, flowing style.

Nancy Comeau, Chair

The Town of Dalton Conservation Commission