

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF ENVIRONMENTAL SERVICES  
WASTE MANAGEMENT COUNCIL

Docket No. 20-14 WMC

In re: Conservation Law Foundation, Inc. Appeal

**PERMITTEE'S OBJECTION TO CLF'S MOTION TO STRIKE**

North Country Environmental Services, Inc. ("NCES") hereby objects to the Conservation Law Foundation's ("CLF") motion to strike exhibits attached to NCES's Motion for Rehearing.

1. CLF moves to strike the exhibits appended to NCES's motion for rehearing. It challenges the exhibits as untimely, lacking foundation, and irrelevant, and it also claims that new evidence cannot be submitted pursuant to council rules. CLF Mot. to Strike (6/24/22). CLF's motion to strike incorporates by reference the arguments set forth in detail on pages 3-11 of its Memorandum in Support of Objection to NCES's Motion for Rehearing and in Support of CLF's Motion to Strike. CLF Mot. to Strike (6/24/22).

2. This motion must be denied. NCES is required by law to state each and every reason why the contested order is unlawful and unreasonable. Exhibits A through H are provided to support those arguments and explain the legal errors requiring a rehearing. The tables and permitting information contained in Exhibits A-F and H are derived from publicly available documents and reflect simple arithmetic that details the department's past application of the capacity need criterion. These exhibits are directly relevant to the arguments raised in the motion for rehearing and only became necessary when the hearing officer issued an order that converted NCES into an aggrieved party. Accordingly, they are not untimely, as they only became

necessary when the hearing officer issued his order that put NCES at a legal disadvantage and required a response to the conceptual predicate of the hearing officer's order.

3. Exhibit G is an affidavit prepared by a person who attended the hearing and deliberations to establish what occurred in those proceedings when a copy of the official recording could not be obtained before filing the motion for rehearing. It is therefore not "additional evidence," but rather a memorialization of what transpired at proceedings witnessed by both NCES and CLF.

4. Exhibit I is simply an email between NCES's council and the appeals clerk concerning the status of deliberations in this matter. This motion was not specifically addressed in CLF's papers, but it nonetheless seeks to strike this exhibit, too.

5. None of the grounds seeking to strike these exhibits are sustainable, and CLF's motion must be denied.

6. NCES develops its arguments for this objection in greater detail in its reply to CLF's objection to the motion for rehearing and thus incorporates these arguments by reference as if fully set forth herein. *See* NCES's Reply to CLF's Obj. to NCES's Mot. for Rehearing (7/6/22) at 14-18.

7. For the reasons set forth in this objection and NCES's detailed reply to CLF's memorandum in support of the objection and motion to strike, NCES respectfully requests the council deny CLF's motion to strike and grant such other and further relief as justice may require.

Respectfully submitted,

NORTH COUNTRY ENVIRONMENTAL  
SERVICES, INC.,  
By Its Attorneys,

Date: 7/6/22

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CERTIFICATE OF SERVICE

I hereby certify that, in accordance with the Prehearing Order issued on this matter on June 8, 2021, the within document was this day sent by e-mail transmission to:

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