

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Casella Waste Systems, Inc.

v.

Docket #217-2023-CV-00285

Jon Swan

**MOTION IN LIMINE TO PRECLUDE DEFENDANT FROM
TESTIFYING AS AN EXPERT**

The plaintiff, Casella Waste Systems, Inc. (“Casella” or the “Plaintiff), hereby moves to preclude any testimony of the Defendant that would require Defendant to be an expert, including, but not limited to, any scientific or engineering evidence regarding the substantive truth or falsity of Defendant’s statements, generally about landfill design and engineering, and specifically about the Plaintiff’s subsidiary’s landfill (the “Landfill”) design and engineering, and states as follows in support thereof:

Background and Introduction

1. In a contemporaneously filed Motion to Exclude Expert Testimony, the Plaintiff has requested this Court to exclude any evidence or testimony that the Defendant may introduce through his expert witness. Regardless of how the Court rules on that motion, the Defendant should not be permitted to provide opinion testimony regarding any matter that requires scientific or technical expertise, including, but not limited to, whether or not the statements the Defendant made about the Landfill are substantively true or false.

2. As addressed in the Plaintiff’s Motion to Preclude Expert Witness Testimony, the scope of the trial on Plaintiff’s claims is limited to whether or not the Defendants’ statements attributed acts or omissions to the Plaintiff.

3. Casella anticipates that the Defendant will seek to testify regarding the substantive truth of his statements, generally about landfill design and engineering, and specifically about the Landfill's design and engineering, as well as about the presence of chemicals at various locations, and their source. The Defendant has produced no evidence of any training or expertise in any field related to landfill design, engineering, or any other similar field. As the Defendant does not possess the requisite scientific or technical expertise, he cannot provide opinion testimony.

Discussion

4. Under Rule 701, a lay witness may only provide opinion testimony if all of the following are true: “[the testimony is] rationally based on the witness’s perception, helpful to clearly understanding the witness’s testimony or to determining a fact in issue, and not based on scientific, technical or other specialized knowledge within the scope of Rule 702.” N.H. R. Evid. 701.

5. The Defendant is a lay witness, not expert witness. *See* Deposition of Jon Swan at 185-192, excerpts of which are attached hereto as Exhibit 1. He has no background or training in engineering, landfill design, chemistry, or any other scientific field. *Id.*

6. Without any such background or training, the Defendant is not competent to testify regarding landfill design, let alone the design of the Landfill discussed in Defendant’s social media posts that are the subject of this lawsuit.

7. Accordingly, the anticipated testimony is not admissible and should be excluded.

WHEREFORE, plaintiff Casella Waste Systems, Inc. respectfully moves that this Honorable Court:

- A. Preclude the Defendant from providing opinion testimony regarding the substantive truth of his statements, generally about landfill design and engineering, and specifically about the Landfill's design and engineering.; and
- B. Grant such other relief as may be just and proper.

Respectfully submitted,

CASELLA WASTE SYSTEMS, INC.,
By Its Attorneys,

Date: December 15, 2025

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CERTIFICATE OF SERVICE

I hereby certify that the within pleading is being served electronically through the court's ECF system upon counsel of record and all other parties who have entered electronic service contacts in this case.

Date: December 15, 2025

/s/ Jacob M. Rhodes
Jacob M. Rhodes, Esq.

EXHIBIT 1

COPY

CASELLA WASTE SYSTEMS

VS

JON SWAN

Docket No. 217-2023-CV-285

JON SWAN

July 31, 2025



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THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.
CASE NO. 217-2023-CV-285

SUPERIOR COURT

COPY

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CASELLA WASTE SYSTEMS, INC.*

* Volume: I

v.

* Pages: 1-223

* Exhibits: 1-12

JON SWAN

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DEPOSITION OF JON SWAN

Deposition taken by counsel at the law
offices of Orr & Reno, 45 South Main
Street, Concord, New Hampshire, on Thursday,
July 31, 2025, from 10:10 a.m. to 5:10 p.m.

Court Reporter:

Karen L. Leach, LCR NH #38
(RSA 310-A:179)

I N D E X

3 WITNESS: Jon Swan

6 EXAMINATION BY:

7 Attorney Lehmann 8

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10 INDEX TO EXHIBITS*

11 | Description Page

12 | Swan

13 | Exhibit 1 Barry Yeoman Article dated

14 August 30, 2004

5

15 Exhibit 2 PABAHAH Article dated June 17, 2005

5

16 Exhibit 3 Jimmy Vielkind Article dated 7/28/09 5

17 | Exhibit 4 February 20, 2010 Article

5

18 Exhibit 5 The Post-Standard Article 9/30/11

5

19 Exhibit 6 CantonRep.com Article dated 1/2/14 5

20 Exhibit 7 HB1420 Legislative Committee Minut

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Exhibit 8 Flash Drive - Retained by Attorney

22 | Schmann

23 | [Fachbeiträge](#) | [Fachberichte](#) | [Berichterstattung](#) | [Fachberichterstattung](#) | 28

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5	Exhibit 11 Second Amended Complaint	117
6	Exhibit 12 Twitter Posts	209

7

8

9 NOTE: Exhibits scanned and attached. Exhibit 8
10 retained by Attorney Lehmann. Originals returned to
11 Attorney Lehmann.

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1 APPEARANCES:

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STIPULATIONS

17

It is agreed that the deposition shall be taken
in the first instance in stenotype and when
transcribed may be used for all purposes for which
depositions are competent under New Hampshire
practice.

20

Notice, filing, caption and all other formalities
are waived. All objections except as to form are
reserved and may be taken in court at time of trial.

21

It is further agreed that if the deposition is
not signed within thirty (30) days after submission to
counsel, the signature of the deponent is waived.

23

1 health hazards posed by PFOA, including -- gosh, I
2 think I just saw something recently in the -- some --
3 some scientific documentation about AGQS limits in New
4 Hampshire, and I believe liver -- liver cancer, maybe
5 kidney cancer. I can't remember, but PFOA also has
6 endocrinological impacts on the -- on the body,
7 especially with babies, and if you're not familiar
8 with endocrinology, that has to do with the -- again I
9 -- just like as I said previously, I really don't want
10 to get into any further than that just for sake of
11 time and --

12 Q. Are you primarily self-trained in terms of
13 your understanding of the effects that chemicals have
14 on -- on the human body and the way in which they
15 enter the ground and the way in which they move
16 through the ground?

17 A. Am I self-trained in my understanding of
18 harmful landfill contaminants and their impacts on
19 water, groundwater, the human body? To answer that, I
20 would say over the course of -- what? -- going on
21 seven years now, I'm a hodgepodge or mixture of
22 training, whether it's attending numerous state agency
23 and business enterprise Zoom conferences, in-person

1 meetings, including scientists, lots and lots of
2 reading, numerous consultations with other experts in
3 the field, particularly relative to PFAS contaminants
4 and their impacts, a lot of networking others,
5 especially down in the Merrimack region where
6 obviously PFAS contaminants from the Saint Gobain
7 plastics facility has impacted the groundwater supply
8 of that community and obviously contributing to health
9 impacts in -- in -- including firsthand accounts from
10 people who have been impacted.

11 So to answer your question, I would say I'm
12 not formally in terms of like the University of Texas
13 training, but I have attended enough scientific
14 seminars and done enough reading and research,
15 especially as a former educator and history teacher,
16 to -- to be able to understand what I'm reading in
17 front of me and to understand that when DEA or EPA
18 deems PFOA as a hazardous compound under -- or
19 hazardous substance under CERCLA, I understand that
20 that's -- that's not good.

21 Q. Do you have an engineering degree of any
22 kind?

23 A. Do I have an engineering degree of any kind?

1 I don't, but it's actually funny you say
2 that because engineering aspects as they relate to the
3 NCES Landfill is something I'm -- I'm -- I'm taking a
4 stronger interest in because of my concern about the
5 impacts of the numerous expansions of the NCES
6 facility, and I'm motioning with my hands in kind of
7 stacking motion because the NCES Landfill has had
8 grown -- to grow vertically as opposed to laterally
9 over the stage one liner system, which I'm of the
10 belief that the engineering specifications of that
11 stage one liner system is not -- was not designed to
12 handle the stress that these numerous expansions at
13 NCES Landfill over the years, past 30 years, the
14 impact, the stress that that is putting on that stage
15 one liner system, and as we learned just last year in
16 the -- the incident reports submitted by Joe Gay of
17 NCES before he was released by Casella, over a
18 ten-year period from 2014 to 2024 unbeknownst to
19 Casella and Mr. Gay, their chief engineer at NCES
20 Landfill, gas wells had been installed over a period
21 of ten years, and the stage four overlay liner had
22 been pierced unknowingly by the installation of those
23 landfill gas monitoring wells, which within that 2024

1 incident report submitted to the Department of
2 Environmental Services it is noted that every -- and
3 I'm kind of paraphrasing here in the messaging, but it
4 seems to be that the message from Mr. Gay is that it's
5 not that big of a deal to paraphrase because the stage
6 one liner is capturing whatever may have been passing
7 through that overlay liner.

8 Thus again to get back to your question, my
9 interest in engineering and probably learning more
10 about engineering as a result because of that
11 potential pressure and such on the stage one liner
12 system, which I will also add for the record was not
13 installed by Casella Waste Systems, at least if I'm
14 remembering correctly from the record, stage one Phase
15 I, II and III I believe were installed by
16 Sanco/Consummate Sanco, Inc. before selling the
17 landfill to Casella in 1993, 1994.

18 So Casella really in my opinion on the
19 matter purchased a landfill with a base liner system
20 that I believe from reading the construction reports
21 within the historical record may have issues in the
22 construction and sealing of the liner seams because a
23 lot of that was done or most of that was done, at

1 least with Phase I, in November of I want to say 1987,
2 '88, and we know what weather in Bethlehem, New
3 Hampshire, in November is like, and it's even stated
4 within the -- there's like four construction reports
5 submitted to DES by Sanco's owner at that time, Roy
6 Sanborn, that there were delays in the completion of
7 the liner system due to weather, particularly rain
8 and ice, and as you know, if you know anything about
9 sealing the seams on those liner systems, they're heat
10 sealed, and I believe there's one thing I want to look
11 closer at is the specs and what temperature those
12 seams need to be sealed because I believe in my
13 opinion the stage one liner system is ultimately the
14 -- I think that's the -- the weak link in the landfill
15 and why we're seeing an ongoing release of
16 contaminants into the surrounding watershed of the
17 Ammonoosuc River.

18 Q. Okay. I'm going to ask you a yes or no
19 question, Mr. Swan. Do you have any scientific degree
20 from a college or university?

21 A. Do I have a -- any kind of scientific degree
22 from a university? I have a bachelor of science
23 degree from the University of Texas in education. So

1 I don't know if that's a yes or a no to your question
2 because there's science within that.

3 Q. Other than the bachelor of science degree
4 from the University of Texas in education, do you have
5 any other college or university degrees?

6 A. Aside from my bachelor of science degree in
7 education, do I have any other degree in science?

8 The answer to that would be no.

9 Q. Do you hold any license issued by the State
10 of New Hampshire in any -- for any occupation or
11 profession?

12 A. Do I own --

13 Q. Hold.

14 A. -- hold any degree or license -- is that
15 what you asked?

16 Q. Yep.

17 A. For any kind of occupation?

18 Q. Or profession.

19 A. Or profession in the State of New Hampshire?
20 I do not. I do know several engineers though that we
21 have -- and wetland scientists that we have employed
22 or collaborated with in various instances relative to
23 both the NCES Landfill as well as the proposed GSL

1 Landfill project in Dalton. So I'm one of those kind
2 of people that I -- I've learned how to read reports,
3 but I also -- I look before I leap, and I'm very good
4 at working with experts in the field and -- and
5 obviously sometimes, especially in my role as the
6 chairman of the Dalton Conservation Commission in
7 Dalton, employing scientists to assist us in their
8 reports and whatnot.

9 Q. Turn to Exhibit 14, please. 14 of Exhibit
10 11. This appears to be a -- a tweet that you sent.
11 Is this a tweet that you sent?

12 A. So this is Exhibit 14 of Exhibit 11, and is
13 this a tweet that I sent?

14 It look like it's got a date on it of
15 November 15, 2023. So again after the settlement
16 agreement date of May 11, 2023, as I believe all of
17 the exhibits have been, and this -- yes, this looks
18 like a tweet I put out maybe November. There's an
19 earlier one for the safe -- included in this is the
20 SFL blog post of November 14 with a link to the
21 SaveForestLake.com. So it has a link to a PFAS report
22 detected in NCS landfill runoff in the Ammonoosuc
23 River.