

STATE OF NEW HAMPSHIRE
WASTE MANAGEMENT COUNCIL

DOCKET NO. 20-14 WMC

IN RE: CONSERVATION LAW FOUNDATION, INC. APPEAL

**ORDER ON NORTH COUNTRY ENVIRONMENTAL SERVICES, INC.'S MOTION TO
SUPPLEMENT THE RECORD ON REHEARING AND TO HOLD AN EVIDENTIARY
HEARING**

ORDER: MOTION DENIED

BACKGROUND

On May 11, 2022 the Waste Management Council (the “Council”) issued its Final Order on Appeal (the “Final Order”), wherein the Council denied seven out of eight of Conservation Law Foundation’s (“CLF”) appeal claims regarding New Hampshire Department of Environmental Services’ (“NHDES”) issuance of a Type 1-A Permit Modification and Waiver for Expansion, Permit No. DES-SW-03-002 (the “Permit”) to North County Environmental Services, Inc. (“NCES”). On June 10, 2022 NCES filed a Motion for Rehearing regarding the Council’s decision to remand. On August 12, 2022 NCES filed a Motion to Supplement the Record on Rehearing and to Hold an Evidentiary Hearing (“Motion to Supplement”). CLF and NHDES filed objection on August 16 and 17, 2022, respectively. On August 18, 2022 NCES filed a Motion for Leave to File a Reply to CLF’s and NHDES’s objections, to which CLF objected on August 23, 2022. The Council **GRANTS** NCES’s August 18, 2022 Motion for Leave to File Reply, and NCES’s provided reply was considered in preparation of this Order.

RELEVANT LAW AND RULES

The rules of evidence do not apply in adjudicative proceedings. See RSA § 541-A:33; Env-WMC 205.07. Relevant and material evidence shall be admissible, while evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded. Env-WMC 205.07.

DISCUSSION

The heart of NCES’s Motion to Supplement was an argument that administrative gloss should have been applied by the Council when interpreting RSA § 149-M:11, III. See Motion to

Supplement, p. 2; see also NCES’s Motion for Rehearing, p. 22-23. The Motion to Supplement is entirely focused on the Council considering additional evidence NCES assembled in support of NCES’s argument that administrative gloss requires RSA § 149-M:11, III be interpreted in alignment with NHDES’s allegedly consistent application of said statute. See Motion to Supplement, p. 2 (“[t]he evidence submitted with NCES’s motion [for rehearing] and with this motion to supplement demonstrates a substantial issue of fact as to whether NHDES has adopted an administrative gloss on the meaning of RSA § 149-M:11 . . .”). NCES sought to supplement its Motion for Rehearing by including the arguments and evidence articulated in and with its Motion to Supplement. See Id., p 7.

Though NCES has provided a considerable amount of evidence which it claims reflects NHDES’s past application of RSA § 149-M:11, III, NCES has failed to overcome the first hurdle to considering administrative gloss. Administrative gloss is only considered when a statute is ambiguous. See Hamby v. Adams, 117 N.H. 606, 609 (1977). “[A] lack of ambiguity in a statute or ordinance precludes application of the administrative gloss doctrine.” Anderson v. Motorsports Holdings, LLC, 155 N.H. 491, 502 (2007). NCES has repeatedly affirmed that ambiguity is a condition precedent for the application of administrative gloss. See NCES’s Motion for Rehearing, pp. 20-21, citing to Hamby v. Adams; p. 22 (“[a]dministrative gloss is a rule of statutory construction that pertains to ambiguous statutory language”); NCES’s July 6, 2022 Reply to CLF’s Objection, p. 8.

NCES has not, however, argued that RSA § 149-M:11, III is ambiguous thereby warranting the application of administrative gloss. Instead, NCES incorrectly concluded the Council found the statute ambiguous. NCES clearly misapprehended the Council’s discussion of the language in RSA § 149-M:11, III in the Final Order, Subsection C, as a conclusion that the statute is ambiguous. See NCES’s Motion for Rehearing, p. 18 (“the hearing officer apparently found the statute to be ambiguous . . .”); NCES’s July 6, 2022 Reply to CLF’s Objection, p. 7 (“if the hearing officer is correct and the statute is ambiguous . . .”). Nowhere in the Final Order, Subsection C, did the Council state or indicate that the relevant language regarding NHDES’s requirement to calculate capacity need in RSA § 149-M:11, III is ambiguous: to the contrary, the Council explicitly limited its interpretation of the statute to its plain language. See Final Order, pp. 8-11.

NCES agreed with the Council that RSA § 149-M:11, III as it relates to the capacity need requirement is unambiguous. See NCES’s Motion for Rehearing, p. 20 (“the statute was unambiguous in the first place”); NCES’s Motion to Supplement, p. 7 (“[t]he plain meaning of RSA 149-M:11 supports the aggregate capacity need method of determining public benefit”). The issue is that NCES argued an inaccurate interpretation of the statutory language. The Council determined NCES’s and NHDES’s interpretations of the statute failed to ascribe to the plain meaning of the language therein and therefore rejected their argued interpretations.

NCES has not argued that the RSA § 149-M:11, III language as addressed in the Final Order, Subsection C, is ambiguous. The Council did not conclude said language is ambiguous. As none of the Parties have argued the statutory language is ambiguous, the Council affirms its previous determination that the relevant RSA § 149-M:11, III language is unambiguous. As the relevant statutory language is not ambiguous, NCES’s argument that the Council was required to consider administrative gloss when interpreting the statute is immaterial to the present appeal. Ergo, NCES’s evidence regarding the effect of administrative gloss on the Council’s interpretation of the statute is immaterial.

CONCLUSION

As the evidence NCES seeks to add to the record is immaterial, NCES’s Motion to Supplement is **DENIED**. Likewise, NCES’s request for an evidentiary hearing is **DENIED**.

For the Council, and by Order of the Hearing Officer,

/s/ Zachary Towle Date: 11/3/2022
Zachary N. Towle, Esq., NH Bar 270211
Hearing Officer, Waste Management Council

Pursuant to RSA § 541, any party whose rights are directly and adversely affected by this decision may file a motion for reconsideration with the Council within 30 days of the date of the decision.