

The State of New Hampshire

MERRIMACK COUNTY

SUPERIOR COURT

Granite State Landfill, LLC

v.

State of New Hampshire Department of Environmental Services

Docket No.: 217-2025-CV-00316

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

The plaintiff, Granite State Landfill, LLC (“Granite State”), brings this declaratory judgment action against the defendant, the State of New Hampshire Department of Environmental Services (the “Department”). On August 5, 2025, the Court granted a motion to intervene filed by the North Country Alliance for Balanced Change (“NCABC”). The parties now cross-move for summary judgment. For the following reasons, the Department’s motion (which NCABC has joined) is **GRANTED**, and Granite State’s motion is **DENIED**.

I. Standard

When ruling on motions for summary judgment, the Court considers “the affidavits and other evidence, and all inferences properly drawn from them in the light most favorable to the non-moving party.” Donovan v. S. New Hampshire Univ., 175 N.H. 489, 492 (2022). If no genuine issue of material fact exists, “and if the moving party is entitled to judgment as a matter of law, the grant of summary judgment is proper.” Id. When ruling on cross-motions for summary judgment, the Court “consider[s] the evidence in the light most favorable to each party in its capacity as the

nonmoving party and, if no genuine issue of material fact exists, [it] determine[s] whether the moving party is entitled to judgment as a matter of law.” JMJ Props., LLC v. Town of Auburn, 168 N.H. 127, 129 (2015).

II. Background

The parties have agreed that discovery is unnecessary for the Court to rule on Granite State’s declaratory judgment claim as a matter of law.¹ See Doc. 14 (Joint Proposed Briefing Schedule for Cross-MSJs). Granite State’s claim arises from its application for a landfill permit which the Department ultimately denied on the basis that the application was dormant. The Department’s denial was based on the New Hampshire Solid Waste Rules, specifically, Env-Sw 304.06(d) and Env-Sw 305.03(b)(6) (the “Dormancy Rules”). Granite State seeks the Court’s declaration that the Dormancy Rules exceed the Department’s statutory authority under the Solid Waste Management Statute, RSA chapter 149-M, and thus, that the Department improperly denied Granite State’s application on this basis.

III. Analysis

To support its summary judgment motion, Granite State argues that the Solid Waste Management Statute, RSA chapter 149-M, “does not give [the Department] discretion or authority to deny a permit for reasons outside” certain substantive “statutory criteria.” See Doc. 21 at 2–4 (citing RSA 149-M:9, IX-X; :12, I). In particular, Granite State understands RSA 149-M:9, IX and X to be the “exclusive grounds” on which the Department may deny a permit. See id. at 3. Granite State thus argues that

¹ Granite State filed a Statement of Material Facts in Support of Motion for Summary Judgment. See Doc. 22. The Court notes that in its cross-motion, the Department “reserve[d] the right to challenge any factual assertions” made by Granite State in its motion. See Doc. 19 at 2 n.1.

the Department “has effectively created a new condition under which an application will be denied,” that is, dormancy, thereby impermissibly overreaching its statutory authority. See id. at 6.

For its part, the Department argues that Granite State misconstrues the statutory framework. Specifically, the Department emphasizes that RSA 149-M:7, III, grants the Department the responsibility and authority to adopt rules relative to the “[a]dministration of a permit system, including the terms, conditions, and time frames under which the department shall issue, modify, suspend, revoke, deny, approve, or transfer” the required solid waste permits. See Doc. 21 at 5. The Department argues that because the Dormancy Rules are administrative permit processing time-frame measures, the rules directly relate to the application-completeness phase, thus falling squarely within the Department’s authority under RSA 149-M:7, III. See id. at 8. The Department further argues that, if the Court were to interpret RSA 149-M:9, IX, to only allow the Department to deny applications based on the narrow circumstances described in this section, absurd consequences would result. Id. at 10.

When determining whether an administrative rule is ultra vires—that is, whether the rule exceeds the administrative agency’s authority—courts look to the plain language of the enabling statute to determine whether the rule falls within the scope of the statute. See Genworth Life Ins. Co. v. N.H. Dep’t of Ins., 174 N.H. 78, 83 (2021). “An administrative regulation exceeds an agency’s authority when it contradicts the terms of the governing statute.” Id. The legislature may delegate to an administrative agency “the power to make rules necessary for the proper execution of the law[.]” An agency’s authority, however, “is designed only to permit the agency to fill in the details

to effectuate the purpose of the statute.” Id. (quotations and brackets omitted).

Administrative rules therefore “may not add to, detract from, or modify the statute which they are intended to implement.” Id. (quotation omitted).

Under the Department’s rulemaking authority, the commissioner of the Department “shall have the responsibility and authority to adopt rules . . . relative to” the “[a]dministration of a permit system, including the terms, conditions, and time frames under which the department shall issue, . . . deny, approve, or transfer permits required by this chapter[.]” RSA 149-M:7, III.

The first rule at issue, New Hampshire Administrative Rule Env-Sw 304.06(d), provides that an applicant for a solid waste permit

shall submit all information required to complete an incomplete application within one year from the date the application is initially determined incomplete in writing to the applicant by the department. An incomplete application that becomes a dormant application as defined in Env-Sw 102 shall be deemed denied without further action by the department.²

The second rule at issue governs the denial of applications: “A requested approval shall be denied if . . . [t]he application becomes a dormant application[.]” N.H. Admin. R., Env-Sw 305.03(b)(6).

Based on the plain language of these rules, the Court concludes that the rules fit squarely within the plain language of the enabling statute. The statute requires the Department to adopt rules for the administration of solid waste facility permits, including “terms, conditions, and time frames” for their issuance, approval, and importantly here, denial. See RSA 149-M:7, III. The Dormancy Rules at issue do just that, setting the

² A dormant application “means an application for which the applicant has failed to submit the information required to complete the application within 12 months of the date the application is first deemed incomplete by the department.” N.H. Admin R., Env-Sw 102.52.

terms and timeframe for permit application approval. That is, an applicant must submit the relevant required information to the Department within one year from the time the Department initially deems an application incomplete. See supra n.2.

Although Granite State argues that this provision speaks to the Department's obligations to act within certain time frames, the Court disagrees: the plain language of the statute is not so limiting. Rather, the language concerning the Department's "[a]dministration of a permit system" is a broad grant of authority to "carry out or oversee the tasks necessary to run" a permit system.³ Furthermore, the use of the term "including" in RSA 149-M:7 introduces examples and is not an exhaustive list of how the Department may administer the permit system. See Anderson v. Robitaille, 172 N.H. 20, 26–27 (2019) (explaining that the term "includes" in a statutory definition "ordinarily is a term of enlargement rather than limitation" (quotation omitted)). For this reason, the Court concludes that the Department's Dormancy Rules are not ultra vires. See Genworth Life Ins. Co., 174 N.H. at 83.

The Court's determination is not changed by Granite State's argument that the solid waste management statute only focuses on qualitative grounds for denying a permit. As relevant here, RSA 149-M:12, I, provides that the Department "shall approve an application for a permit only if it determines that the facility . . . will [c]omply with this chapter and all rules adopted under it[.]" The statute in no way suggests that applicants need only comply with substantive rules or regulations, and the Court will not add such a limitation into the statutory language. See Genworth Life Ins., 174 N.H. at 84

³ See OED, Administration, https://www.oed.com/dictionary/administration_n?tab=meaning_and_use#234672926 (last visited July 16, 2026).

(explaining courts “will not consider what the legislature might have said or add language that the legislature did not see fit to include”). Similarly, RSA 149-M:9 sets guidelines requiring the Department to deny a permit if a facility fails to meet the terms and conditions required by the Department’s rules. See RSA 149-M:9, X (requiring that the Department “not issue a permit for a solid waste facility unless the facility meets the terms and conditions required in rules adopted by the commissioner”). The statutory language in these sections does not limit the Department to denying permits only on these grounds. Rather, reading the statute as a whole, the Legislature granted the Department broad authority to adopt rules for the administration of solid waste permitting and equally broad authority to deny a permit where an applicant fails to meet the Department’s rules, including rules related to application processing time-frames.

In light of the foregoing, the Court concludes that Granite State’s declaratory judgment claim fails as a matter of law.

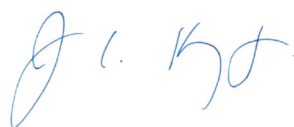
IV. Conclusion

For the foregoing reasons, the Department’s motion for summary judgment is **GRANTED**, see Doc. 19, and Granite State’s competing motion for summary judgment is **DENIED**, see Doc. 21.

SO ORDERED.

July 23, 2026

Date



**John C. Kissinger, Jr.
Presiding Justice**

Clerk's Notice of Decision
Document Sent to Parties
on 07/27/2026