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Via Email

New Hampshire Department of Environmental Services

Michael Wimsatt
Director, Waste Management Division
michael.wimsatt@des.nh.gov

Jaime Colby
Supervisor, Engineering and Permitting Section
Jaime.M.Colby@des.nh.gov

Re: NHDES File Number: 2023-66600 Solid Waste Standard Permit Application; Subject Properties: Dalton Tax Map 406, Lots 2.1, 2.3, 2.4, 2.5, 3, and 3A and Bethlehem Tax Map 406, Lots 1 and 2 (“Application”) Striking Non-Facility Portions of Application from Public Benefit

Dear Director Wimsatt and Ms. Colby,

I write in continued representation of North Country Alliance for Balanced Change (“NCABC”). On October 31, 2023, Granite State Landfill, LLC, a subsidiary of Casella Waste Systems, Inc., (“GSL” or “Applicant”) submitted a new application for a Standard Permit for Solid Waste Landfill (“Application”) to the Solid Waste Management Bureau (“Bureau”) of the New Hampshire Department of Environmental Services (“Department”) for its proposed landfill on the private road of Douglas Drive in Dalton and Bethlehem, New Hampshire (“Landfill” or “Proposal”). Please make this letter part of your record in this matter.

NCABC respectfully urges as follows in connection with the Department’s completeness review. The Department should strike from the Application, and therefore the Department should not consider, those portions of the Application about affiliated facilities and entities—outside of and apart from the proposed Landfill—which the Applicant uses to bolster its public benefit analysis.

To meet the public benefit test set forth in RSA 149-M:11, III, the Applicant must show how the *proposed facility*—not affiliated facilities and entities—provides a substantial public benefit. In short, the Application is for a new landfill. It is not an application for a separate, new recycling facility and not an application for the Casella universe to continue services it already provides. Accordingly, with respect to satisfying the public benefit standard, this Application must stand on its own. The law authorizes the Department to consider only the public benefit accruing from the proposed Landfill, if any.

A Proposed Facility Must Satisfy the Public Benefit Test on its Own Merits

As noted above, RSA 149-M:11 mandates that the Department determine whether a proposed solid waste facility provides a substantial public benefit before approving the facility. RSA 149-M:11, III establishes a test with three factors for the Department to consider in making this determination:

- (a) The short- and long-term need for a solid waste facility *of the proposed type, size, and location* to provide capacity to accommodate solid waste generated within the borders of New Hampshire, which capacity need shall be identified as provided in paragraph V.
- (b) The ability of the *proposed facility* to assist the state in achieving the implementation of the hierarchy and goals under RSA 149-M:2 and RSA 149-M:3.
- (c) The ability of the *proposed facility* to assist in achieving the goals of the state solid waste management plan, and one or more solid waste management plans submitted to and approved by the department under RSA 149-M:24 and RSA 149-M:25.

(Emphasis added.)

Each of these factors speaks to the proposed facility itself and its ability to meet the needs, hierarchy, and goals of the State of New Hampshire. RSA 149-M:11, VIII reiterates this, “[e]ach applicant for a solid waste permit under this chapter shall have the burden of demonstrating that a proposed solid waste facility provides a public benefit by showing *how the proposed facility satisfies the criteria* listed under paragraph III.” (Emphasis added.) Again, the proposed facility itself must satisfy the substantial public benefit test; nowhere does the statute or common law suggest that an applicant can use affiliated facilities or entities to artificially inflate the public benefit of a proposed facility. See e.g. *Appeal of Conservation Law Foundation*, 174 N.H. 59 (2021) (holding that a condition of approval of a solid waste permit that was directly associated with waste diversion to the landfill being permitted was permissibly considered as part of the public benefit). The law authorizes the Department to consider only the landfill facility being considered for a permit and its public benefit, if any.

The Applicant asserts that “[i]t would be contrary to the statutory scheme to consider GSL’s public benefit demonstration outside of the context of the integrated set of solutions in which it participates.” Standard Permit for Solid Waste Landfill, Volume 6, Section XI at 16. The Applicant argues that the Department must consider the Proposal in light of “the role CWS [Casella Waste Systems, Inc.] plays in the coordinated management of solid waste throughout its service territory, including New Hampshire, to advance the

State’s goals and hierarchy.” *Id.* at 17. In other words, because the Landfill will be part of Casella’s overall system, the Applicant believes other Casella facilities, affiliates, and stakeholders should be considered as part of the Landfill’s public benefit.

This interpretation flies in the face of RSA 149-M:11. The statute specifically states that the proposed facility itself must satisfy the substantial public benefit criteria. The law recognizes that each facility should be reviewed on its own merits. *If it were otherwise, an applicant could justify any facility—no matter how little public benefit the facility itself provides—by merely pointing to affiliated facilities and entities that do provide a public benefit.* The statute is clear on its face—the Department may not look beyond the proposed facility itself in determining whether the facility satisfies the substantial public benefit test.

The Applicant’s Public Benefit Unlawfully Relies on Affiliated Facilities and Entities

As established above, the law permits the Department to consider only the facility itself when deciding whether a proposed facility provides a substantial public benefit under RSA 149-M:11. The Applicant’s public benefit analysis for the Proposal, however, heavily relies on affiliated facilities and entities to support its claim that the Landfill provides a substantial public benefit. These impermissible and unlawful considerations should be stripped away.

For example, one of the principal components of the Applicant’s public benefit analysis is the promise of a new materials recovery facility (“MRF”). Standard Permit for Solid Waste Landfill, Volume 6, Section XI at 1. The Applicant asserts that this new recycling facility will “complement” the Landfill’s operations. *Id.* However, this materials recovery *facility* would be just that: a separate, distinct facility. In fact, the MRF would be located in southern New Hampshire, nowhere near the Landfill. *Id.* The MRF is so obviously not a part of the Landfill that the Applicant’s project representative (Joe Gay) recently told the Dalton Selectboard at a public presentation he did not know where the MRF was proposed to be located. The Applicant’s public benefit analysis mentions the proposed MRF numerous times in an effort to reach several of the state goals and initiatives that are part of the public benefit test. *See e.g., id.* at 16 (state solid waste reduction goal); 20 (recycling and reuse); 36 (maximize diversion of residential, commercial, and industrial solid waste); 40 (ensure adequate capacity for management of New Hampshire-generated waste) but none of these benefits bear any relation to the proposed Landfill. In fact, Casella could certainly provide the MRF without the Landfill.

The proposed MRF may provide a public benefit, but this is immaterial to the Application because any public benefit the MRF would generate may not lawfully be included as part of the Landfill’s public benefit. The Landfill and MRF would be discrete facilities. To be sure, the facilities would be on opposite sides of the state. The Applicant and the Department may not rely on the public benefit of a completely separate project to

pad the public benefit of the Landfill at issue. The Landfill itself must provide a sufficient public benefit to satisfy the test.

Further, the Applicant attempts to use its position within the Casella network as a crutch to make up for the Proposal's lack of public benefit on its own merits. For example, the Applicant highlights "GSL's location and its role in an integrated waste and recycling management company." *Id.* at 13. The Applicant also continuously points to Casella and its other subsidiaries, affiliates, and stakeholders and how those entities provide a substantial public benefit. *See e.g., id.* at 14 ("GSL highlights the efforts of CWS company and its subsidiaries in advancing those goals and initiatives in New Hampshire"); 19 ("GSL will be a new component of CWS's integrated solutions for waste reduction and management in New England. As such, CWS and its affiliates – including GSL – are well-positioned to promote recycling in this state and encourage greater implementation of recycling across the private and public sectors."); 22 ("This section provides an overview of CWS's continued recycling and reuse initiatives, which will complement and support the work GSL proposes to do to promote recycling in New Hampshire."); 31 ("This application thus examines how GSL will assist the State in achieving each of these goals and how GSL can advance the 'action' items associated with each goal, either with its own operations or in partnership with CWS affiliates and other stakeholders."). Again, none of these bear any relation to the proposed Landfill and Casella could certainly continue these.

The fact that GSL is a subsidiary of Casella does not mean that GSL can rely on Casella and its other subsidiaries, affiliates, stakeholders, and facilities to bolster the public benefit of its Proposal. **RSA 149-M:11 does not ask whether a proposed facility is part of a corporate system that provides a public benefit—it asks whether the *specific facility an applicant proposes provides a public benefit.*** The Department should look beyond all the information the Applicant provided related to the Casella universe and scrutinize solely the public benefit of the Landfill itself, as contemplated by RSA 149-M:11.

Conclusion

The plain text of RSA 149-M:11 and the common law is clear in that the Department must determine whether *a proposed facility itself* meets the public benefit test when reviewing an application for a solid waste facility; the Department may not consider affiliated facilities and entities. The Applicant's public benefit analysis relies on a separate proposed MRF facility and GSL's connection to Casella and its affiliates. The Department must peel away these distractions to winnow the Application to lawful content. Therefore, the North Country Alliance for Balanced Change respectfully requests the Department exercise its discretion to strike the requested portions of the Application.

Thank you for your attention to this matter.

Very truly yours,



Amy Manzelli, Esq.
Licensed in New Hampshire
(603) 225-2585
manzelli@nhlandlaw.com

Enclosures

cc: Clients

Town of Dalton Conservation Commission and Zoning Board,
town.clerk@townofdaltont.com; adminassistant@townofdaltont.com
Town of Dalton Selectboard, selectmen@townofdaltont.com
Town of Dalton Planning Board, planningboard@townofdaltont.com
Town of Littleton Selectboard, selectmen@townoflittleton.org
Town of Bethlehem Selectboard c/o Town Administrator Mary Moritz
admin@bethlehemnh.org
Town of Carroll Selectboard, selectmen@townofcarroll.org
Town of Whitefield Selectboard c/o Judy Ramsdell, Administrative Assistant
administrativeassistant@whitefieldnh.org
North Country Council, mmoren@nccouncil.org; nccinc@nccouncil.org
Ammonoosuc River Local Advisory Committee, Richard Walling, Chair,
onthefarm21@gmail.com