

STATE OF NEW HAMPSHIRE
WASTE MANAGEMENT COUNCIL

Docket No. 25-07 WMC

In Re: Appeal of Granite State Landfill, LLC

MOTION FOR REHEARING AND CLARIFICATION

North Country Alliance for Balanced Change (“Petitioner”), by its attorneys, BCM Environmental & Land Law, PLLC, moves pursuant to RSA 541:3 and Ec-Wst 203.18 for rehearing and clarification of the Order on Petition to Intervene dated May 4, 2026 (“Order”), stating as follows:

I. RELIEF REQUESTED

Petitioner requests rehearing and clarification of the Order as detailed below. Specifically, Petitioner requests clarification as to whether the Order granted it intervenor status because, on the one hand, the Council granted the Petition to Intervene dated August 8, 2025 (“Petition”), while on the other hand explaining that Petitioner would be *amicus curiae*, which means not intervenors. In the event Petitioner was not granted intervenor status, Petitioner moves for rehearing of that decision because denying Petitioner the right to intervene was an error of fact, reasoning, and law, as set forth in detail below.

II. STANDARD

The Council may grant a motion for rehearing “if in its opinion good reason for the rehearing is stated in the motion.” RSA 541:3. “Good reason” may constitute “error of fact, reasoning, or law that could change the outcome of the appeal.” Ec-Wst 203.18(b)(1). The Order warrants clarification because it is ambiguous, unclear, or similar and no law prohibits clarification in this venue.

III. GROUNDS FOR REHEARING & CLARIFICATION

Good cause exists to rehear and clarify the Order for the following errors of fact, reasoning, and law, and the following ambiguities, lack of clarity, and similar.

A. The Order is ambiguous and unclear because it both grants Petitioner intervention and classifies it as *amicus curiae*, which are mutually exclusive.

On two occasions, the Order explicitly states that “Petitioner’s petition for intervention is **GRANTED**.” Order at 5 (emphasis in original). However, at the same time, the Order explains that Petitioner “will be permitted to join as an *amicus curiae*, not as a full party to the case.” *Id.* These conclusions are at direct odds with each other because one cannot be both an intervenor and an *amicus curiae*; under New Hampshire law, these roles serve materially different functions and have different rights in a proceeding.

In appeals before the Council, “[o]nce a petition to intervene is granted, the intervenor shall be entitled to participate in the proceeding *as a party*.” Ec-Wst 203.08(c) (emphasis added); *see also* Gordon J. MacDonald, Wiebusch on New Hampshire Civil Practice and Procedure § 6.22 (4th Ed. Matthew Bender & Co.) (“Intervention is the admission of a person as a party to a case for the purpose of protecting an interest in the subject matter of the case. Once a person has been allowed to intervene, as a party, the intervenor has all the rights of a party in the case as it then exists and thereafter develops.”). Therefore, when a petition to intervene is granted, the petitioner becomes a party (even if limits are placed on the petitioner’s participation).

Conversely, an *amicus curiae* is *not* a party. As the New Hampshire Supreme Court has explained, “[o]ne not having the rights of a party is frequently permitted to appear for limited purposes as *amicus curiae*. But he does not thereby become a party entitled to control the course of the litigation. His function is merely to make useful suggestions to the court.” *Blanchard v. Boston & M. R. R.*, 86 N.H. 263, 266 (1933). Further, “[i]t is not ordinarily the function of the

amicus curiae to take upon himself the management of a cause.” *Id.* (quoting *Taft v. Northern Transp. Co.*, 56 N.H. 414, 416 (1876)) (internal quotation marks omitted). Consequently, a petitioner cannot be both an intervenor and an *amicus curiae* because the former is a party while the latter is not.

Here, the Council granted Petitioner’s Petition, so Petitioner became party to the proceeding by operation of Ec-Wst 203.08(c). However, the Council’s classification of Petitioner as *amicus curiae* suggests that Petitioner is not a party. *See Blanchard* 86 N.H. at 266. Both things cannot be true; either Petitioner was granted intervention and is party to the case (subject to the Council’s limitations on their participation, as discussed subsequently) or it is merely *amicus curiae* and was not, in fact, granted intervention.

The Council’s description of Petitioner’s role (Order at 5) sounds more akin to the “limited intervenor” status discussed during the pre-hearing conference than “*amicus curiae*” status. The Council is authorized to limit intervention. Env-Wc 203.08(c); RSA 541-A:32, III. Indeed, Petitioner’s classification as a limited intervenor would present no conflict between the Council’s grant of intervention and the limitations imposed. Conversely, as explained above, classifying Petitioner as *amicus curiae* cannot be reconciled with the Council’s grant of intervention. The distinction is key because, as a limited intervenor, Petitioner would have the right, as a party, to appeal the Council’s final decision if necessary (even with the limitations applied on its participation). Conversely, as *amicus curiae*, Petitioner would not be a party and, by extension, would have no right to appeal. This is a significant difference because, if the Council were to reverse the Department’s decision, Petitioner would lose their only opportunity to challenge the aspects of incompleteness at issue. In other words, if the Council reverses and remands to the Department, the Department should not thereafter be able to rely upon the same

reasoning (i.e., the reasoning that was overturned) to again deny the permit, so if Petitioner is not permitted to intervene now, it will have forever lost its only opportunity to speak on those aspects of the permit.

Ultimately, the Order is ambiguous because it grants Petitioner intervention, which under the Council's rules automatically makes it a party, while at the same time conferring upon them the non-party status of *amicus curiae*. The Council must clarify whether Petitioner has indeed been granted intervention and the attendant party status or has been granted only *amicus curiae* status, in which case the Petition must have been denied. The path of least resistance would be to clarify that Petitioner has been granted limited intervenor status, which harmonizes the Council's grant of intervention with the limitations it imposed on Petitioner's participation.

B. If Petitioner was not granted intervention, the Council erred by not doing so.

To the extent the Council clarifies it did not, in fact, grant Petitioner intervention (whether as full or limited intervenors) and by extension make Petitioner party to the case, this was in error. For one, Petitioner alleged rights and/or substantial interests that may be affected by the permit and waiver. Additionally, contrary to the Council's assertion, the Council's reversal and remand of the Department's decision would constitute *de facto* finding of completeness of the underlying application, severely hampering, essentially to the extent of eliminating, Petitioner's ability to participate in the process to assure the Department has the lawfully required data.

1. *Petitioner has rights, duties, privileges, and/or other substantial interests that may be affected by the proceeding.*

The Council concluded that Petitioner "have not demonstrated rights, duties, privileges, immunities, or other substantial interests may be affected by the proceeding." Order at 3. This is not the case. Petitioner set forth clearly in their Petition and related pleadings that both the

organizations and its Members' rights and substantial interests are implicated by this appeal, identified and described them in the Petition and related pleadings, and affiants swore to them with detailed particularity.

Most of Petitioner's Members live in close proximity to the proposed site. Petitioner explained that, due to this proximity, they would be among the *first* and *most* impacted by externalities associated with the proposal (e.g., odors, vectors, noise, traffic, water contamination, air pollution, windblown litter). Petitioner also averred that having the facility so near their properties would negatively affect their property values.

There are few rights in New Hampshire that are more sacred than property rights. As Petitioner has previously noted, the right to protect real property is enshrined near the top of New Hampshire's Bill of Rights at Article 2. *See* N.H. Const. pt. I, art. 2 ("All men have certain natural, essential, and inherent rights—among which are . . . acquiring, possessing, and protecting, property."). The New Hampshire Supreme Court has also recognized that real property is a unique resource. *DeLucca v. DeLucca*, 152 N.H. 100, 104 (2005). Therefore, Petitioner's right to protect their properties from the ill effects associated with the proposal and depreciation in value cannot be disregarded.

Petitioner also described its organizational interests at great length, namely, clean air and water in New Hampshire's North Country, and its Board President swore to the details with detailed particularity.

Aside from the fact that Petitioner itself has a unique, constitutionally protected right to protect its interests, Petitioner itself is in the best position to do so. Petitioner has no doubt in the State's vigor in pursuing this appeal to defend the Department's decision. However, the State does not have the same perspective in Petitioner's interests as Petitioner itself does. *See State v.*

Tallman, 139 N.H. 223, 225–26 (1994) (in the context of adverse possession, explaining that the State’s rights in land are not always enforced and protected with the same vigilance as private rights). Put simply, Petitioner has rights and substantial interests at stake in this appeal, and it has the right to protect those rights and interests in this appeal.

As a final point, Petitioner wishes to clarify that the facts alleged and arguments made in support of their intervention are in no way meant to expand the scope of the appeal. Indeed, Petitioner has no qualms with the limitations imposed by the Council to restrict the scope of the appeal to the reasons the Department used to justify its decision and the issues GSL raised in its appeal.¹ Petitioner is fully aligned with the Council’s desire to ensure the administrative process remains structured and streamlined, but it wants to ensure that it is party to the proceeding so that it can adequately protect its rights and interests, as only it can.

2. Remand of the Department’s decision would eliminate some of Petitioner’s rights and interests forever.

In its Order, the Council explains that, even if the Council were to grant GSL’s appeal (i.e., reverse the Department’s decision), this would not result in the permit being issued because the Council would merely remand back to the Department. Order at 3. While this is true in a technical sense, the practical reality is that, in the event of a reversal, the application will essentially be ripe for substantive review as complete. This is because any grounds for denying the permit as incomplete are already necessarily part of this appeal (or should have been).

¹ However, as a general matter not applicable in this instance, Petitioner denies the Council’s assertion that raising new claims at this early stage of the proceeding would be unfair (Order at 4). *See* Gordon J. MacDonald, Wiebusch on New Hampshire Civil Practice and Procedure § 6.26 (4th Ed. Matthew Bender & Co.) (“It is unclear whether an intervenor may add a claim to the issues for which he or she was admitted . . . There is no apparent reason why such additional claims should not be allowed as a general matter, although care must be taken to prevent an intervention from creating unnecessary expense or delay to the original parties.”).

Per Env-Sw 305.03(a)(2), when the Department denies a permit application, it must issue a written decision that “[s]tate[s] the specific reason(s) for the denial.” Put differently, the Department must include every ground for denial in its decision. Consequently, the Department’s written decision in this case (presumably) includes every basis on which it was based. Therefore, if the Council ultimately overturns the Department’s decision, even if the Council’s authority is limited to remanding back to the Department, this action will amount to *de facto* finding that the application is not incomplete because any grounds on which the Department could deny for incompleteness were already included in the current written decision.

This would stymie Petitioner’s ability to participate in the process and challenge the many technical types and amounts of data required to constitute a complete application. Even assuming for the sake of argument that Petitioner could eventually appeal the Department’s approval of the permit, it would never again be able to speak to any of the issues being disposed of in the current proceeding; regardless of Petitioner’s ability to possibly appeal down the line, now is the only opportunity Petitioner has to address the issues raised in the Department’s current decision (e.g., incompleteness). As explained above, any subsequent decision by the Department would not be able to rely on any of these factors, so now is Petitioner’s only opportunity to address them. Further, it would be a waste of time and resources for Petitioner to be excluded from this proceeding only to initiate a second appeal down the line when Petitioner can simply be included in the current appeal (subject to reasonable limitations imposed by the Council). And excluding them as an intervening party now (wrongfully) risks establishing a precedent of Petitioner being excluded as an intervening party later (again, wrongfully).

In sum, based on Env-Sw 305.03(a)(2), the Department’s decision being appealed included all the reasons for the Department’s denial, so if the Council reverses those reasons and

remands back to the Department, no additional reasons exist for the Department to deny the application, meaning the Council's action will constitute *de facto* finding of completeness. In this scenario, even if Petitioner is eventually able to appeal later if the Department were to subsequently approve the permit, Petitioner will have lost the opportunity to speak to any of the issues disposed of in this appeal, and resources will have been wasted in the meantime.

IV. CONCLUSION

For the reasons set forth above, Petitioner has shown good cause for rehearing to correct errors of fact, reasoning, and law in the Order that could change the outcome of its intervention in these proceedings and that clarification would alleviate ambiguity and lack of clarity in the Order.

WHEREFORE, Petitioner respectfully requests this honorable Council:

- A. Clarify whether Petitioner is intervenor or *amicus curiae*;
- B. To the extent the Council did not grant Petitioner intervenor status in the Order, grant Petitioner's status as intervenor or limited intervenor; and
- C. Grant such further relief as is necessary and proper.

Respectfully submitted,

**NORTH COUNTRY ALLIANCE FOR
BALANCED CHANGE**

By Its Attorneys,

BCM Environmental & Land Law, PLLC

June 1, 2026

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CERTIFICATION

I certify that, pursuant to Ec-Wst 201.01(a), on this date the foregoing was submitted in PDF format to appeals@des.nh.gov and within five (5) business days, the original and one copy will be delivered by First Class Mail or hand-delivery to the Office of the Waste Management Council Appeals Clerk.

I also hereby certify that on this date I have sent by electronic mail copies of this Motion to all persons listed on the service contact list.

Dated: June 1, 2026

/s/ Amy Manzelli, Esq._____