

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Case No. 217-2023-CV-00285

Casella Waste Systems, Inc.

v.

Jon Swan

MOTION TO COMPEL (PARTIALLY SEALED)

Jon Swan, Defendant in this matter, moves to compel documents and answers that the Plaintiff has refused to provide. Incorporated herein is the contemporaneously filed Motion to Seal and its accompanying exhibits. In support hereof, he states:

1. Mr. Swan served discovery on the Defendant on or about July 23, 2024. The Plaintiff produced its responses on or about August 29, 2024. The Defendant's requests and the Plaintiff's responses are attached as Exhibit A. The Plaintiffs produced no responsive discovery. This, despite the request having been for specific individuals and subject matter.

2. As required in New Hampshire practice, and in an effort to meet and confer and resolve the dispute, counsel for the Defendant reached out to Attorney Rhodes, for the Plaintiff on September 27, 2024.

3. Without waiving any rights to complete responses, the parties reached agreement on a narrower set of documents that, if produced in good faith, the Defendant would review to determine whether additional discovery was required. Following that telephone call, the Defendant's undersigned counsel forwarded a narrowing request to Attorney Rhodes on October 4, 2024. *See* Exhibit B.

4. The narrowed discovery demand asked for communications and emails from any Casella person, employee or agent, to a list of specific individuals, using specific email search terms, for the period January 1, 2023 to present. This was a good faith effort to narrow requests 1 and 2 in Mr. Swan's original requests. Exhibit A.

5. The narrowed documents demand requested all memoranda, reports, studies, analyses and test results produced by Sanborn Head (or any engineering firm) to Casella from 2019 to present, concerning, impliedly, any New Hampshire project; memoranda, reports, studies, analyses and test results produced by Sanborn Head (or any engineering firm) to Casella at any time concerning Casella's Bethlehem NH landfill site (current or proposed). In addition, the narrowed request demanded any email communications between 2019 and 2024 that included a series of search terms, specifically delineated. This was a good faith effort to narrow requests 3, 4 and 5 in Mr. Swan's original requests.

6. The undersigned sent follow-up requests to Attorney Rhodes on October 16, 2024 and on October 22, 2024. Exhibit C. On October 24, 2024, Attorney Rhodes asked for a conversation with the undersigned and Attorney Gould. Counsel spoke the next day.

- a. Regarding the email/communication requests narrowing Requests 1 and 2, Attorney Gould said that there was one document that the Plaintiff had identified that responded to the Defendant's narrowed discovery request. The undersigned noted that this seemed like an impossible outcome given the search terms the Defendant had advanced, but agreed to withhold a motion to compel until he could review the document for himself. Attorney Gould stated that the document contained non-responsive communications that would have to be redacted before

it was disclosed, or alternatively it could be produced for attorneys-eyes-only, but that, in any event, counsel for the Plaintiff had to finalize the decision with their client before they could release it. The undersigned agreed to take this proposal to the Defendant and get back to counsel.

- b. Regarding the reports and communications concerning environmental concerns at Casella New Hampshire sites, counsel for the Plaintiff declined to produce the materials requested citing relevance issues. This came as a surprise to counsel, given that this was a narrowed request, theoretically already the byproduct of an agreement between the parties, whereby the Defendant agreed to seek less than he requested, and the Plaintiff agreed to produce what was asked for. Be that as it may, counsel for the Plaintiff agreed to review the classes of documents for content that addressed the Defendant's discovery effort, which was to identify documents that factually discussed the factual issues the Defendant had made statements about which the Plaintiff was asserting were breaches of the parties' settlement agreement. In particular, counsel all agreed that there were categories of statements by the Defendant that would not be actionable under the parties' settlement agreement, even if the Defendant accidentally omitted an expression of opinion, due to their unquestionable veracity. The theory behind this defensive position is that an agreement must be interpreted reasonably, and it would be unreasonable for the parties, the court or the jury to interpret the parties' settlement agreement to impose any amount of liquidated damages for an objectively verifiable truth (e.g., "Casella's trucks are out picking up trash this

morning.”). During the phone call of counsel on October 25, 2024, counsel for the Plaintiff agreed that they would identify the claims in the Plaintiffs’ complaint included assertions by the Defendant which reasonably fit within that category of items, and then the parties would revisit the discussion of discoverability of engineering reports, etc., in light of that review.

7. Counsel for the Defendant followed up with Plaintiffs’ counsel on November 7 and 11, 2024. Exhibit D. Counsel for the Plaintiff promised to have the “review of the claims we had previously discussed” to the undersigned by Friday, November 15, 2024. *Id.*

8. On November 15, 2024, Attorney Gould responded with an agreement to continue the trial and continue discussions concerning the outstanding discovery. Exhibit E. Attorney Gould reiterated the proposal that the single email “hit” Casella got be produced either “for-attorneys-eyes-only” *or* redacted; and the undersigned reiterated his doubts that the narrowed email search produced only one “hit” and suggested that counsel discuss the protocols employed.

9. The parties moved jointly to continue the trial and extend discovery deadlines, and to convert the December 15, 2024 pretrial conference to a status and scheduling conference.

10. At the December 15, 2024 conference, counsel advised the Court of the status of the case, the parties’ agreement to continue and reschedule, and the outstanding discovery issues that might require resolution through motion practice. The parties filed a revised CSO by agreement on December 27, 2024.

11. The undersigned was occupied with a week-long trial in Carroll County Superior Court for most of January.

12. In February, the undersigned again took up the issue of the yet-unproduced discovery material. On February 5, 2025, the undersigned conditionally agreed to receive the document(s) that Casella claims to have identified on an “attorney’s eyes only” basis subject to the right to seek court approval to disclose it to the Defendant if necessary, and further subject to potential motion practice owing to the fact that the undersigned’s “intuitive reaction that it is unlikely there were so few documents that triggered a hit on your searches. To flesh that out, I probably would need to depose the person who conducted the search—but I’m willing to hold off on that for the time being.” Exhibit F. In addition, the undersigned declared his intent to depose former Casella employee John Gay, and requested Casella’s position as to whether Casella would produce him or let the undersigned subpoena him. *Id.*

13. On February 11, 2025, the Plaintiffs’ attorneys still had not produced the documents they had described. Counsel held a telephone call in which the undersigned proposed yet another amended discovery effort, this time concerning the deposition of John Gay. The undersigned proposed to first send a list of requests for admission, provided the Defendant responded to them with alacrity, and then determine whether the deposition of Gay would be necessary on that basis. Regarding the documents that the parties had been discussing since October 4, 2025, Attorney Rhodes promised Attorney Eggleton he would have the single responsive document shortly. Attorney Rhodes produced the document in question at 3:38 pm. It was labeled Attorney’s Eyes Only *and* was redacted. *See* Exhibit G (SEALED).

14. The undersigned followed up with two communications. The first of these, Exhibit H (SEALED),¹ immediately requested that the Plaintiff forward the unredacted copy of

¹ Exhibits H and I are sealed in an abundance of caution as they discuss, in general terms, Exhibit G, which is labeled “Attorney’s Eyes Only.” Although the undersigned does not believe Exhibits H or I breach any purported

Exhibit G (SEALED) as this was the deal that the parties had reached. Exhibit H (SEALED). Regarding this document, this Motion asks that the Court strike the redaction and the “attorney’s eyes only” designation so that the undersigned can share it with his client.

15. The second communication, Exhibit I (SEALED), reviewed the undersigned’s original, narrowed agreement with counsel for the Plaintiff and pressed the Plaintiff for a fully responsive search for email communications based on the search terms identified on October 4, 2024. Furthermore, Exhibit I (SEALED) identified aspects of the Plaintiff’s produced email, Exhibit G (SEALED), which suggested the existence of other off-record communications between Casella and one of the email chain participants, that had not been produced. *Id.* In addition, counsel’s request added a new search term “suit” based on the language that obtained a “hit” for Exhibit G. *Id.* Lastly, the undersigned asked whether the communicant of Exhibit G, or the President of Casella, would be willing to execute an affidavit that they had no other communications “with these individuals, or anyone else, that mention the search terms in question.” *Id.* Finally, the undersigned observed that the Plaintiff had not responded at all the undersigned’s narrowed requests regarding Requests 3, 4 and 5. *Id.*

16. On February 20, 2025, counsel for the Plaintiff responded rejecting the undersigned’s efforts and discovery requests. Exhibit L. Attached to that communication was a new redaction of Exhibit G, in which the dates of prior emails in the chain were uncovered, but nothing more. In essence, counsel for the Plaintiff has decided what is relevant and discoverable, and that is virtually nothing. Included within this Motion will be the Defendant’s request for depositions of current or former employees of Casella, John Gay, a representative of Sanborn,

agreement, the undersigned seals them out of respect for this process. The undersigned requests that they be unsealed with Exhibit G as part of his request for relief in this Motion.

Head (Casella's engineering firm) and the Casella employee who performed the search term review within Casella's records and communications systems. The undersigned has not abandoned the proposal to seek admissions from the Plaintiff to guide the content of depositions, but if the undersigned is going to have to resort to a Motion to Compel to produce the requested discovery, it is best to bring all outstanding issues to the Court for review.

Regarding Defendant's Requests 1 & 2 and the first set of narrowed search terms from Oct. 4, 2024.

17. One principle defense asserted by the Defendant regarding the Plaintiff's Amended Complaint is that he is entitled to rescission of the Settlement Agreement in this case on account of the Plaintiff's disclosure of the nature, existence and terms of the Settlement Agreement when it filed this action originally, and indeed, shortly after the Settlement Agreement was reached on or about May 12, 2023.

18. The Defendant is in possession of a public social media exchange in which a north-country resident who publicly supports Casella's landfill efforts in Dalton and Bethlehem reveals the existence of a settlement agreement and one of its core terms, a non-disclosure, confidentiality provision. Exhibit J. The writer, Dave Leonard responded on Facebook to a post by Lucy Golden stating, "Looks like Goliath gave up..." and posting the URL to a newspaper article entitled "Casella Drops Defamation Lawsuit Against Dalton Landfill Opponent." Exhibit J. In his response and in the chain of conversation that followed, Mr. Leonard stated:

- a. "You don't have the specifics of the case, if you do *then someone is violating the gag order.*" *Id.* (emphasis added).

- b. “It’s funny that an article can be written about a case *that part of the settlement is non-disclosure.*” *Id.* (emphasis added).
- c. “Just pointing out that per the settlement there’s not to be outside discussions and all the facts of the case should not be known except by the parties.” *Id.* (emphasis added).
- d. “Lucy S. Golden, all I know is *there was a non-disclosure clause put down by the court.* With that mom [sic] disclosure clause in place, I know nothing but *I guess the person knows more than he should.*” *Id.* (emphasis added).

19. The Defendant had no contact with Mr. Leonard as they are in strenuous opposition over the Plaintiffs’ landfill plans. There is no source from which Mr. Leonard could have learned about the Settlement Agreement and its terms than the Plaintiff and its employees or agents, whether directly or indirectly. The Defendant’s discovery request is narrow, in the sense that it asks the Plaintiff to conduct a reasonable search of its electronic files for communications with a list of people who are close to the Plaintiff, have allied with the Plaintiff on its landfill plans, and have served as formal and information liaisons for the Plaintiff’s public lobbying and influence efforts within the Dalton and Bethlehem communities.

20. Exhibit G (SEALED) further supports the suggestion that someone at Casella was leaking information about the Settlement Agreement. *Id.* One party expresses dismay that the case was settled, and another party, seemingly with inside information, provides reassurances that, the undersigned believes, suggest that there were more communications on this issue that the speaker was privy to, and which would be unauthorized under the Settlement Agreement. At minimum, the Defendant asserts that a jury could so conclude, because as this conversation

occurred days before the Plaintiff filed its action against the Defendant. Thus, the speaker's reassurances appear to have been informed by her knowledge of the Plaintiff's next strategic moves.

21. Based on the excised and redacted portions of Exhibit G, it is clear that the Plaintiff and/or its employees and agents were in regular email contact with at least three of the individuals listed on the Defendant's Request 1 & 2 and narrowed email search term list. The Defendant asserts that it is impossible that the Plaintiff conducted a good faith search of its communications for the search terms requested. The undisclosed documents are discoverable because they would tend to prove or disprove, or lead to facts that proved or disproved, the disclosure by the Plaintiff of the existence, nature or terms of the Settlement Agreement, including specifically the provision governing its confidentiality. That provision, Mr. Swan will testify, was a key inducement for him to enter a settlement agreement because compromising with Casella after his long and public opposition could have substantial detrimental repercussions for him. Indeed, other than the termination of the original action itself, that was the only facet of the Settlement Agreement from which Mr. Swan derived any benefit. If the Plaintiff was disclosing and discussing the Settlement Agreement publicly within days of executing it, then the Defendant's request for the relief of rescission is reasonable. The documents sought are appropriate discovery concerning that issue.

22. In light of what appear to be substantiated contact between members of the community and the Plaintiff, through its employees and agents, the undersigned asserts that the Plaintiff has not disclosed information and documents within its possession, custody or control

that would be responsive to the Defendant's requests. **To rectify this issue, the Defendant requests the following:**

- a. Appointment of a third-party e-discovery consultant, controlled by and answerable to the Defendant but paid for by the Plaintiff, to perform an email and electronic records search on the Plaintiff's system using the names and search terms identified in the Defendant's Requests 1 & 2, its narrowed search term and recipient list of October 4, 2024, and counsel's email of February 11, 2025.**
- b. If any alternative other than the above request for relief is considered, then the Defendant requests that the Plaintiff specifically identify the person inside the Plaintiff's operations (or externally if the Plaintiff's third party IT provider) who will *actually perform the search* using the terms in question; that the identified person provide an affidavit for the Court detailing the sources searched, the terms searched, and the results obtained, with documentary support.**
- c. Any documents produced through either of the above procedures shall be deemed discoverable, publicly disclosable, and not attorney's eyes only. This is without prejudice to objections to admissibility. In the event that the Plaintiff has *a limited number of specific documents* about which it has *legitimate and specific* confidentiality concerns (*e.g.*, private employee banking information or social security numbers), the Defendant will consider a reasonable non-disclosure agreement to be entered as a protective order. The Plaintiff shall identify such specific documents and the specific reasons for its concerns in a summary to the undersigned within ten days of disclosure. The Defendant will agree not to disclose the said documents to any party, except the Defendant personally, until the Court resolves any dispute over the confidentiality and legitimacy of the need for non-disclosure of *those specific documents*.**

Regarding Requests 3, 4 & 5 and narrowed request for documents and communications about Casella operations at NH Landfills.

23. As noted, *supra*, another of the Defendant's defenses in this case is that the Settlement Agreement could not be reasonably construed to require him to assert, with *any* factual assertion he might make about Casella, that it is a matter of opinion. It would be

unreasonable, for example, for the Plaintiff to sue the Defendant for making factual assertions that *even the Plaintiff* would be compelled to admit are true.

24. Many of the allegedly offending statements made by the Defendant are factual assertions about the Plaintiff, Casella's landfills leaking landfill leachate, PFAS, PFOA, 1, 4-Dioxane and other undesirable or toxic fluids into the ground water or the Ammonoosuc River. Based on public filings by the Plaintiff in regulatory proceedings, Sanborn Head, the Plaintiff's engineering team, has detected these chemicals and other dangerous chemicals repeatedly over years of testing. *See* Exhibit K (letter of October 21, 2019 from N.H. Dept. of Env. Svcs to John Gay, Casella Waste Management) (detailing detections of, e.g., 1,4-dioxane ("1,4-dioxane was detected ... [at] the highest detection on record for the monitoring well"), PFOA ("concentrations of PFOA have been detected above the new [Ambient Groundwater Quality Standard] during the most recent monitoring rounds at monitoring wells"), PFAS ("reoccurring detections"), chloride ("highest [detection] since 2016"))².

25. The Defendant is entitled to argue that these facts are irrefutable and therefore were not the kind of factual assertions that were contemplated as requiring an "opinion" qualifier in his public communications under the Settlement Agreement.³

26. To that end, the communications and reports that the Defendant has demanded in discovery, and attempted to obtain through compromise—only to be thwarted—likely contain substantial admissions that the things the Defendant said, which the Plaintiff has sued over, are irrefutably true. A jury is less likely to find that a given statement by the Defendant violated the

² 1,4 dioxane, PFAS, and PFOA are all human carcinogens and are all subject to regulation under NH and US law.

³ Even if the other terms of the Settlement Agreement is found by a jury to have survived the Plaintiff's disclosure of it.

Settlement Agreement if the underlying facts asserted in the statement have been admitted by the Defendant in other contexts, especially public contexts.

27. The Plaintiff presumably has access to its Sanborn Head communications and reports, and reports by any other environmental agent or consultant concerning the issues identified in the Defendant's discovery requests (formal and narrowed). These documents are likely to be found in one readily accessible location within the Plaintiff's IT architecture—but even if they are diffused throughout, a competent e-discovery agent could find the materials in question in short order. Many are public record already, but it is important to identify all responsive documents, not merely the ones that the Plaintiff disclosed to the public through a public permitting process.

28. For these reasons, the Defendant **requests that the Court grant the Plaintiff's Motion to Compel responses to Requests 3, 4 & 5, and the narrowed request of October 4, 2024, as follows:**

- a. **Appointment of a third-party e-discovery consultant, controlled by and answerable to the Defendant but paid for by the Plaintiff, to perform an email and electronic records search on the Plaintiff's system using the names, categories, items and search terms identified in the Defendant's Requests 3, 4 & 5, and its narrowed search term and recipient list of October 4, 2024.**
- b. **If any alternative other than the above request for relief is considered, then the Defendant requests that the Plaintiff specifically identify the person inside the Plaintiff's operations (or externally if the Plaintiff's third party IT provider) who will *actually perform the search* using the terms and document categories in question; that the identified person provide an affidavit for the Court detailing the sources searched, the terms searched, and the results obtained, with documentary support.**
- c. **Any documents produced through either of the above procedures shall be deemed discoverable, publicly disclosable, and not attorney's eyes only. This is without prejudice to objections to admissibility. In the event that the Plaintiff has *a limited number of specific documents* about which it has**

***legitimate and specific* confidentiality concerns (e.g., private employee banking information or social security numbers), the Defendant will consider a reasonable non-disclosure agreement to be entered as a protective order. The Plaintiff shall identify such specific documents and the specific reasons for its concerns in a summary to the undersigned within ten days of disclosure. The Defendant will agree not to disclose the said documents to any party, except the Defendant personally, until the Court resolves any dispute over the confidentiality and legitimacy of the need for non-disclosure of *those specific documents*.**

Depositions

29. The Defendant seeks the deposition of John Gay, former employee of the Plaintiff Casella whose area of responsibility as regional engineer included oversight of the testing and engineering produced by the Plaintiff as part of its public permitting process. Mr. Gay, on information and belief, left the employment of the Plaintiff in 2024. The Plaintiff's attorneys have expressly instructed the undersigned not to contact Mr. Gay or any Casella employee, or former employee, without their prior authorization. Mr. Gay will be able to testify concerning the truth of the allegations that the Plaintiff alleges to have violated the Settlement Agreement. Again, if Casella agrees, or must agree, or will be deemed disingenuous *if it does not agree*, that certain facts are irrefutably true, then it supports the Defendant's position and defense that his statements were not actionable under the Settlement Agreement or were not a reasonable violation of it. Gay's testimony is critical to the Defendant's defense. Furthermore, the Defendant intends to take a video deposition of Mr. Gay, so that this testimony is available in the event that Mr. Gay, for any reason, cannot be located for trial and the Plaintiff fails to produce him. Since the Plaintiff no longer has control over Mr. Gay, notwithstanding its position regarding him as a former employee, this is a reasonable precaution.

30. The Defendant seeks the deposition of Rebecca Metcalf. It is not yet clear that Casella would seek to deny the Defendant the ability to depose Ms. Metcalf, but insofar as this Motion is being filed, she is included as a desired deponent so that all of these issues can be addressed in one proceeding. As the Court can see from Exhibit G (sealed), Ms. Metcalf is privy to communications with some of the parties that the Defendant has sought Casella communications with—and is, indeed, likely to be the individual most involved in those discussions. The Defendant is entitled to depose Ms. Metcalf about whom she spoke with, whom she emailed with, and what she discussed in those communications, from the period on or around the time of the parties' Settlement Agreement through the weeks and months that followed as the Plaintiff refined its public strategy for dealing with the Defendant.

31. Regarding depositions, the Defendant **requests that the Court clarify:**

- a. That the Defendant may take an unrestricted video deposition of Mr. Gay, subject as always to the normal and appropriate objections of counsel for the Plaintiff concerning the admissibility of the deposition testimony.
- b. That the Defendant may take an unrestricted deposition of Ms. Metcalf, subject as always to the normal and appropriate objections of counsel for the Plaintiff concerning the admissibility of the deposition testimony.

WHEREFORE, for the reasons set forth herein, the Defendant requests that the Court:

- A. Grant this Motion;
- B. Order the relief **requested above**; and
- C. Grant such other and further relief as the Court deems to be just and equitable.

Respectfully submitted,

JON SWAN

By his Attorneys:

ORR & RENO, P.A.

Dated: February 24, 2025

By: /s/ Jeremy D. Eggleton
Jeremy D. Eggleton, Esq.
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45 South Main St.
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Concord NH 03302-3550
(603) 224-2381
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was forwarded, this day, to all counsel via the Court's electronic file and serve system.

/s/ Jeremy D. Eggleton
Jeremy D. Eggleton

EXHIBIT A

The State of New Hampshire

Merrimack, SS.

Superior Court

Case Number: 217-2023-CV-00285

Casella Waste Systems, Inc.

v.

Jon Swan

**CASELLA WASTE SYSTEMS, INC.'S RESPONSES TO JON SWAN'S FIRST
SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF**

Plaintiff Casella Waste Systems, Inc. provides the following responses to the requests for production propounded by the defendant Jon Swan pursuant to New Hampshire Superior Court Rule 24 as follows:

I. GENERAL OBJECTION

1. Defendant's requests are overly broad, vague, and unduly burdensome in that they seek the production of documents without limiting the scope of the request to any particular time period. The requests are not reasonably calculated to lead to the discovery of admissible evidence.
2. Defendant's requests seek information completely irrelevant to the underlying litigation.

II. Documents to Be Produced

1. Please produce all Documents and Electronically Stored Information that contain any reference to Mr. Swan (Alvarez), including but not limited to email communications (both internal and external).

Response: The plaintiff objects to this request as irrelevant, vague, overbroad, and unduly burdensome to the extent it seeks information with no bearing on the question of whether Mr. Swan breached the settlement agreement with CWS or the implied covenant of good faith and fair dealing. As such, it is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this request seeks privileged communications between the plaintiff and its attorneys. The plaintiff also incorporates by reference the general objections set forth above.

2. Please produce all Documents and Electronically Stored Information that reflect communications regarding Mr. Swan (Alvarez), the two court proceedings between the parties, or the topic of Contaminants or PFAS at NCES between and/or among Casella and the following individuals: Dave Leonard, Vic StCyr, Pam Kathan, Brian Fuller, Eric Pilotte, Jim Dannis, Scott Kleinschrodt, Eric Moore, Thomas Dubreuil, Donald Mooney, Jessie Wentworth, and Christine Ordinetz.

Response: The plaintiff objects to this request as irrelevant, vague, overbroad, and unduly burdensome to the extent it seeks information with no bearing on the question of whether Mr. Swan breached the settlement agreement with CWS or the implied covenant of good faith and fair dealing. As such, it is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this request seeks attorney work product and/or privileged communications between the plaintiff and its attorneys. The plaintiff also incorporates by reference the general objections set forth above.

3. Please produce all Documents and Electronically Stored Information that contain any information relating to or reflecting testing for, or the detection of, Contaminants in air, soil, groundwater, the SEEP, and/or surface water at NCES.

Response: The plaintiff objects to this request as irrelevant, vague, overbroad, and unduly burdensome to the extent it seeks information with no bearing on the question of whether Mr. Swan breached the settlement agreement with CWS or the implied covenant of good faith and fair dealing. As such, it is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this request seeks privileged communications between the plaintiff and its attorneys and attorney work product. The plaintiff also incorporates by reference the general objections set forth above.

4. Please produce all Documents and Electronically Stored Information that contain any information relating to or reflecting testing for, or the detection of, PFAS in air, soil, groundwater, the Seep, and/or surface water at NCES.

Response: The plaintiff objects to this request as irrelevant, vague, overbroad, and unduly burdensome to the extent it seeks information with no bearing on the question of whether Mr. Swan breached the settlement agreement with CWS or the implied covenant of good faith and fair dealing. As such, it is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this request seeks privileged communications between the plaintiff and its attorneys and attorney work product. The plaintiff also incorporates by reference the general objections set forth above.

5. Please produce all Documents and Electronically Stored Information that contain any information relating to liner leaks, liner damage, liner tears, liner installation issues, liner mistakes, liner errors, leachate spills, leachate releases, and leachate accidents at NCES.

Response: The plaintiff objects to this request as irrelevant, vague, overbroad, and unduly burdensome to the extent it seeks information with no bearing on the question of whether Mr. Swan breached the settlement agreement with CWS or the implied covenant of good faith and fair dealing. As such, it is not reasonably calculated to lead to the discovery of admissible

evidence. Plaintiff further objects to the extent this request seeks privileged communications between the plaintiff and its attorneys and attorney work product. The plaintiff also incorporates by reference the general objections set forth above.

Respectfully submitted,
Jon Swan
By his Attorneys:

ORR & RENO, P.A.
45 South Main St.
PO Box 3550
Concord NH 03302-3550
(603) 224-2381
jspear@orr-reno.com

Dated: July 23, 2024

By: /s/ Jeffrey C. Spear
Jeffrey C. Spear (Bar No. 14938)

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2024 a copy of the foregoing First Request for Production of Documents was sent via email to counsel of record.

/s/ Jeffrey C. Spear
Jeffrey C. Spear

CASELLA WASTE SYSTEMS, INC.,
By Its Attorneys,

Date: August 29, 2024

By: /s/ Jacob M. Rhodes
Bryan K. Gould, Esq. (NH Bar #8165)
gouldb@cwbp.com
Jacob M. Rhodes, Esq. (NH Bar #274590)
rhodesj@cwbp.com
CLEVELAND, WATERS AND BASS, P.A.
2 Capital Plaza, P.O. Box 1137
Concord, NH 03302-1137
(603) 224-7761

AS TO OBJECTIONS:

Date: August 29, 2024

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

EXHIBIT B

From: [Eggleton, Jeremy D.](#)
To: [Jacob Rhodes](#)
Bcc: [16382 2 Save Forest Lake](#) [Defense of breach of contract claim E Mails](#) [16382 2](#)
Subject: update: Production [OR-IMANAGE.FID557659]
Date: Friday, October 4, 2024 9:47:33 AM
Attachments: [image001.png](#)

Dear Jacob,

Thanks for the conversation on Monday of this week. I apologize it's been a couple of days. I was in and out.

Without waiving any rights to seek the full breadth of the documents we requested through a motion to compel, I am sending you this email to narrow my requests in an effort to get the documents we need to prepare our case.

Regarding Requests 1 and 2

I am requesting that you do an email and communications search for and produce any emails from any Casella person, employee or agent, to any of the following individuals:

1. Dave Leonard
2. Vic St. Cyr
3. Pam Kathan
4. Brian Fuller
5. Eric Pilotte
6. Jim Dannis
7. Scott Kleinschrodt
8. Eric Moore
9. Thomas Dubreuil
10. Donald Mooney
11. Jessie Wentworth
12. Christine Ordinetz

Seeking emails with the following search terms:

- A. Swan
- B. Alvarez
- C. Settled
- D. Settle
- E. Settlement
- F. Lawsuit
- G. Defamation
- H. Agreement
- I. Non-Disclosure

- J. NDA
- K. Breach
- L. Paper
- M. Reporter
- N. Confidentiality
- O. Confidential
- P. No comment

For the time period January 1, 2023 to the present.

I note that any attorney communication on behalf of casella to any individual who is not a casella employee, or outside the control group, is not privileged.

Regarding Requests 3, 4 and 5:

Please send me all reports, memoranda, studies, analyses and test results produced by Sanborn Head (or any engineering firm) to Casella from 2019 to present. I assume that these, or at least the vast majority of them, are in one or a few folders on someone's computer.

Please send me all reports, memoranda, studies, analyses and test results relating to the original landfill on Casella's Bethlehem landfill site, from the time of Casella's acquisition of the site to the present.

Please send me any email communications from 2019-2024 which contain the following search terms:

- A. Bethlehem
- B. Leak
- C. Tear
- D. Liner Damage
- E. Leachate spill
- F. Leachate release
- G. Leachate accident
- H. PFAS
- I. Dioxane
- J. SEEP

Thanks!

Jeremy D. Eggleton

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45 South Main Street, P.O. Box 3550

Concord, NH 03302-3550

Phone: 603.224.2381

Direct Ext: 603.223.9122

Fax: 603.223.9022

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Hanover, N.H. Office (physical only):

23 South Main Street, Suite 3C

Hanover, N.H. 03755

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EXHIBIT C

From: [Eggleton, Jeremy D.](#)
To: [Jacob Rhodes](#)
Bcc: [16382 2 Save Forest Lake](#) [Defense of breach of contract claim E Mails](#) [16382 2](#)
Subject: update [OR-IMANAGE.FID557659]
Date: Thursday, October 24, 2024 7:34:35 AM
Attachments: [image001.png](#)

Hi Jacob,

11/13 or 14 would work for Jon. I'm sorry about that change. The week following next I'm out straight with election duties, post-election duties, a hanover ZBA meeting, and our firm's annual meeting.

I am happy to talk with you and Brian about the scope of discovery again. However, I will note that I provided you a narrowed (and more specific list) of search terms for email correspondence three weeks ago, so I am surprised that you are asking for this conversation now. If we cannot reach agreement, I'll need to move to compel—it has been three months since I sent my discovery and I still don't have my documents. Ostensibly we have a trial in January, but I can't take Mr. Gay's deposition and my other deposition until I get your production. So when we speak, if we reach agreement, I'll need a firm commitment from you to get me the documents in short order. I'm putting it out there right now that we may need to reschedule the trial if we can't accomplish that discovery, but first things first.

Thanks,

Jeremy

Jeremy D. Eggleton

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EXHIBIT D

From: [Eggleton, Jeremy D.](#)
To: [Jacob Rhodes](#)
Cc: [Bryan Gould](#)
Bcc: [16382 2 Save Forest Lake Defense of breach of contract claim E Mails 16382 2](#)
Subject: RE: follow up [OR-IMANAGE.FID557659]
Date: Wednesday, November 13, 2024 8:42:51 AM
Attachments: [image001.png](#)
[image003.png](#)

Jacob and Bryan,

Thanks for the update. I'll expect your things Friday the 15th.

Given that timing, we cannot realistically depose the people I need to depose (Gay and a third party), and you need to depose (Jon) and prepare for trial in the first week of January. I think that rationale applies to both of us, so would like to file my motion to continue as assented-to.

Jeremy

Jeremy D. Eggleton

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From: Jacob Rhodes <Rhodesj@cwbp.com>

Sent: Tuesday, November 12, 2024 5:08 PM

To: Eggleton, Jeremy D. <JEggleton@orr-reno.com>
Cc: Bryan Gould <gouldb@cwbp.com>
Subject: RE: follow up

Jeremy,

We are discussing with our client continuing the trial. In the meantime, we are fine with a mutual discovery deadline extension.

As to the discovery issues, Casella has completed its search for email communications. Election responsibilities for Bryan and I have delayed our response for that discovery and the review of the claims as we had previously discussed. I hope to have all of that to you on Friday.

Best,

Jacob

Jacob Rhodes, Esq.

Attorney

CLEVELAND, WATERS AND BASS, P.A.

Affiliated with [Granite State Title Services, LLC](#)

Tel: (603) 224-7761

Email: rhodesj@cwbp.com

Website: www.cwbp.com

Two Capital Plaza, 5th Floor, Concord, NH 03301

With offices also in New London and Dover, NH.



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From: Eggleton, Jeremy D. <JEggleton@orr-reno.com>

Sent: Monday, November 11, 2024 4:56 PM

To: Jacob Rhodes <Rhodesj@cwbp.com>; Bryan Gould <gouldb@cwbp.com>

Subject: RE: follow up

Reiterating the below email.

Please contact me tomorrow.

Jeremy D. Eggleton

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Direct Ext: 603.223.9122

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From: Eggleton, Jeremy D.

Sent: Thursday, November 7, 2024 4:18 PM

To: Jacob Rhodes <Rhodesj@cwbp.com>; Bryan Gould <gouldb@cwbp.com>

Subject: follow up [OR-IMANAGE.FID557659]

Hi Jacob and Bryan,

We are now 60 days out from our ostensible trial and I don't have your document discovery, or your review of your claims for "truly true" alleged violations of the "expression-of-opinion" term of the Agreement. I need your discovery to depose some people, including John Gay and a third party I need to identify using your discovery.

My suggestion would be this: we should continue the trial and work out the discovery issues.

Jeremy

Jeremy D. Eggleton

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EXHIBIT E

From: [Eggleton, Jeremy D.](#)
To: ["Bryan Gould"](#)
Cc: [Jacob Rhodes](#)
Subject: RE: Requesting update
Date: Friday, November 15, 2024 10:07:16 AM
Attachments: [image001.png](#)

Bryan,

Thanks for the update. Regarding the emails, it's hard for me to imagine that the numerous names I gave you produced only one hit. Happy to review the email thread you sent me, but we should discuss the process you employed.

Can you get me an answer today on continuance?

You must be counting with my friend and colleague Betsy McClain. She is an elections genius.

JE

Jeremy D. Eggleton

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From: Bryan Gould <gouldb@cwbp.com>
Sent: Friday, November 15, 2024 10:02 AM
To: Eggleton, Jeremy D. <JEggleton@orr-reno.com>
Cc: Jacob Rhodes <Rhodesj@cwbp.com>
Subject: Re: Requesting update

Jeremy:

I've been in recounts all week (and still am), but I did talk with Jacob about this yesterday.

In terms of the requested email, the search resulted in only one that is arguably responsive. We think it isn't actually responsive, but we will produce it if we can agree that the unrelated parts of the thread can be redacted. In the alternative, we can produce the thread with an agreement that it will be attorney's eyes only. Let us know.

To be honest, I was worn out when I spoke with Jacob about the "true" allegations and we didn't come to a landing. (The worn out part seems to happen more often these days.) I'll try again today when I get a break.

I do appreciate your patience. We have recommended a continuance and will let you know when we have approval.

Best regards.

Bryan

On Nov 15, 2024, at 9:43 AM, Eggleton, Jeremy D. <JEggleton@orr-reno.com> wrote:

Jeremy D. Eggleton
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EXHIBIT F

From: [Eggleton, Jeremy D.](#)
To: [Jacob Rhodes](#); [Bryan Gould](#)
Bcc: [16382_2 Save Forest Lake](#) [Defense of breach of contract claim E Mails 16382_2](#)
Subject: Regarding Casella v. Swan [OR-IMANAGE.FID557659]
Date: Wednesday, February 5, 2025 9:32:25 AM
Attachments: [image001.png](#)

Jacob,

Kindly get back to me about:

1. Our discovery requests. I understand from Bryan there are a small number of documents that you believe were responsive to our requests regarding email or other communications and you wish to show them to me as “attorneys-eyes only” material. I am conditionally open to that, subject to my right to request leave to disclose them to my client if I believe the material in them is relevant to this case. I do not waive any rights regarding my ability to enforce our discovery requests as I have the intuitive reaction that it is unlikely there were so few documents that triggered a hit on your searches. To flesh that out, I probably would need to depose the person who conducted the search—but I’m willing to hold off on that for the time being.
2. Whether you control John Gay for the purposes of deposition. If I don’t hear from you by the end of the week on this one, I’m going to send him a subpoena.

Jeremy D. Eggleton

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EXHIBIT J



Lucy S Golden

May 19 at 11:27 PM · 🌐



Looks like Goliath gave up....

Casella Drops Defamation Lawsuit Against Dalton Landfill Opponent

by Robert Blechl May 18, 2023 ... [See more](#)

IMG1.WSIMG.COM

img1.wsimg.com



4

15 comments Seen by 49



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Fred Cunningham

Brian Fuller anyone who has a problem with a landfill should be given a compost container thing, and be told that all of their trash can not leave their property.

Share 1d



Lucy S Golden [Author](#)

Fred Cunningham unless they live in another state, in which case it can be sent to NH.



Share 1h



Dave Leonard

You don't have the specifics of the case, if you do then someone is violating the gag order.

Share 1d



Lucy S Golden [Author](#)

I just posted the Caledonian article. If you have questions, you can ask them.

Share 1d

Lucy's Post



Dave Leonard

Lucy S Golden do you have permission to post copyrighted material, from the Caledonia record, or are you stealing from them. Myself and others have been told to remove posted articles. Yup breaking ethical standards, common for you. It's funny an article can be written about a case that **part of the settlement is non disclosure**. But ethical standards aren't part of this reporters character.

Share 1d



Lucy S Golden Author

Dave Leonard interesting that you suddenly have developed a concern about ethics. And go ahead and censor if the content of this rocks your boat, as well as that of the Casella crew. And if that's the case, you've answered an unspoken question.

Share 1d Edited



Dave Leonard

Lucy S Golden I do not post full articles, this article doesn't rock anything of mine. Just pointing out that **per the settlement there's not to be outside discussions and all the facts of the case should not be known except by the parties**. But anything to cast a bad light on Casella can be printed, so much for **unbiased reporting**.

Share 1d



Lucy S Golden Author

Dave Leonard sounds like you have more inside info than I do. Care to share more? Or is it too confidential?

Share 1d Edited



Dave Leonard

Lucy S Golden all I know is there was a non disclosure clause put down by **the court**. With that non disclosure clause in place, I know nothing, but I guess the pr person knows more than he should. **Typical for the anti landfill group do anything to claim a win, whether or not it's true.**

Share 1d

EXHIBIT K



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Robert R. Scott, Commissioner



EMAIL ONLY

October 21, 2019

John Gay
Casella Waste Management, Inc.
1855 VT Route 100
Hyde Park, VT 05655

Subject: **Bethlehem** – North Country Environmental Services (NCES) Landfill,
581 Trudeau Road, DES Site #**198704033**, Project #1737

July 2019 Tri-Annual/2019 Annual Water Quality Monitoring Results,
prepared by Sanborn, Head & Associates, Inc., and dated August 22, 2019

August 2019 PFAS Groundwater Results Data Transmittal, prepared by
Sanborn, Head & Associates, Inc., and dated September 3, 2019

Dear Mr. Gay:

The New Hampshire Department of Environmental Services (NHDES) has reviewed the above-referenced documents for the NCES Landfill, as submitted on your behalf by Sanborn, Head & Associates, Inc. (SHA). The subject documents were prepared to comply with the on-going monitoring and reporting requirements of the site Groundwater Management and Release Detection Permit **GWP-198704033-B-007** (the Permit). Based on our review of the most-recent water quality data provided, we note that the monitoring results generally remain consistent with recent prior findings, with the exception of the results discussed below.

Based on our review of the above documents, we developed the comments that follow below. Comments requiring a response from Casella and/or SHA are summarized in ***bolded italicized font***.

1. As noted by SHA within the Annual Report, 1,4-dioxane was detected during the April 2019 monitoring round at a concentration of 1.8 micrograms per liter (µg/L) in the groundwater sample from monitoring well B-304UR, which is above the Ambient Groundwater Quality Standard (AGQS) and the highest detection on record for the monitoring well. We note B-304UR is within the Groundwater Management Zone (GMZ) related to the former (removed) unlined landfill where impacts to groundwater have been noted previously. The 1,4-dioxane detections during the last five monitoring rounds that included 1,4-dioxane analysis each exceeded the revised AGQS of 0.32 µg/L, which took effect September 1, 2018. Included in the Annual Report is an expanded evaluation of the 1,4-dioxane occurrences at B-304UR and B-304DR, as requested by NHDES. The evaluation identified the presence of an unused piezometer couplet, B-304S and B-304D, and historical subsurface infrastructure related to the former landfill gas flare in the vicinity of B-304UR and B-304DR. We understand, as discussed within the Annual Report, that subsurface infrastructure related to the former flare including; conduits, piping, condensate knock-out, and concrete pads, along with approximately 5,000 cubic yards of soil were removed from an area upgradient of B-304UR and B-304DR as part of reconstruction of stormwater pond #4 in May 2019. We note decommissioning of the B-304S and B-304D piezometer couplet was consistent with SHA's June 26, 2019 Work Plan. ***Concentrations of 1,4-dioxane in the groundwater samples collected from monitoring wells B-304UR and B-304DR should be reevaluated following the November 2019 Permit monitoring round. The results should be transmitted to***

www.des.nh.gov

PO Box 95, 29 Hazen Drive, Concord, NH 03302-0095

Telephone: (603) 271-2908 Fax: (603) 271-2181 TDD Access: Relay NH 1-800-735-2964

NHDES as part of the November 2019, due in January 2020, and include an evaluation of the results and any associated recommendations.

2. On July 18, 2019, the New Hampshire Joint Legislative Committee on Administrative Rules (JLCAR) adopted rules that establish Maximum Contaminant Levels (MCLs) and either revised or established AGQS for four per- and polyfluoroalkyl substances (PFAS) that include: 12 nanograms per liter (ng/L) for perfluorooctanoic acid (PFOA), 15 ng/L for perfluorooctane sulfonic acid (PFOS), 18 ng/L for perfluorohexane sulfonic acid (PFHxS), and 11 ng/L for perfluorononanoic acid (PFNA). The rules became enforceable standards on September 30, 2019. In consideration of the new standards we note concentrations of PFOA have been detected above the new AGQS during the most recent monitoring rounds at monitoring wells MW-701 (PFOA 20.6 ng/L), MW-802 (PFOA 14.2 ng/L), B-918M (PFOA 17.3 ng/L), and B-919U (PFOA 14.1 ng/L). As discussed within the Annual Report, MW-802 and B-919U are located within the GMZ for the former unlined landfill where other impacts to groundwater have been noted historically. Although impacts at MW-701 and MW-802 are believed to be associated with previously identified historical issues, the impacts should be tracked closely, as discussed below. ***PFAS occurrences at the site should be reassessed in comparison to the new PFAS standards and the adequacy of the existing monitoring well network should be evaluated.***
3. In consideration of the reoccurring detections of PFAS and consistent with the requirements of NHDES' *Groundwater Release Detection Permits* rules (NH Code of Administrative Rules Chapter Env-Or 700), Assessment Monitoring shall commence at release detection monitoring wells B-701 and B-918M. Sampling shall be completed on a quarterly basis for PFAS, NHDES Waste Management Division Full List of Analytes for volatile organics, including 1,4-dioxane (using a 0.25 micrograms per liter (ug/L) reporting limit), specific conductance @25°C, pH, temperature, turbidity, nitrate, sulfate, TKN, chloride, iron, and manganese. To better understand the occurrence of PFAS, the first round of sampling should include an expanded analytical list, using isotope dilution following the protocols outlined in the United States Department of Defense (USDOD) Quality Systems Manual (QSM) 5.2 (or later), reporting 25 individual PFAS. Results of the assessment monitoring shall be submitted to NHDES within 45 days of the date of each round of sampling. Sampling shall continue until the results indicate two consecutive rounds during which PFAS is not detected or NHDES determines further action is necessary. The list of required analyses may potentially be narrowed if the Assessment Monitoring results support such a reduction. ***Release detection monitoring wells B-701 and B-918M shall be sampled on a quarterly basis for PFAS, NHDES Waste Management Division Full List of Analytes for volatile organics, including 1,4-dioxane (using a 0.25 ug/l reporting limit), specific conductance @25°C, pH, temperature, turbidity, nitrate, sulfate, TKN, chloride, iron, and manganese until the conditions outlined above are met. Results are to be submitted to NHDES' within 45 days of sampling and should include an evaluation of the results and recommendations for corrective actions, further monitoring, and/or additional investigation.***
4. As discussed by SHA within the Annual Report, increased chloride concentrations have been detected above the historical data results at monitoring locations S-1, S-101 and SF-1, with the concentration detected at S-1 being the highest since 1996. Based on information provided within the Annual Report, the recent chloride impacts are likely the result of salt storage and mixing operations performed in the northern portion of the former "Tucker Pit". Based on the above-noted water quality impacts, NHDES requires that corrective measures to mitigate the chloride impacts in the area of the on-site salt storage and mixing operations be undertaken. Improvements to consider should include implementation of best management

practices (BMPs) such as those outlined in NHDES' [WD-DWGB-22-30 Fact Sheet](#). Based on the elevated concentrations of chloride at S-1, S-101, and SF-1, the monitoring locations should continue to be monitored closely. Monitoring locations S-1 and SF-1 are sampled for chloride during each Permit monitoring round. However, sampling of the S-101 location should be included with the November 2019 and April 2020 monitoring rounds and should include the same parameters as are required by Permit at the S-1 and SF-1 locations. **Monitoring location S-101 should be sampled during November 2019 and April 2020 as outlined above. Also please document any mitigation steps or BMPs NCES plans to implement, or has implemented, at the salt operations area as part of the November Data Transmittal, due in January 2020.**

5. As indicated on the "Groundwater Quality Field Sampling Summary" table attached to the Annual Report as Appendix D we note the observed depth to the bottom of monitoring well B-304DR is less than the documented installed depth by nearly 10 feet. Please review the difference and discuss the reason for the discrepancy. If the monitoring well needs to be rehabilitated, please coordinate prior to conducting the November Permit monitoring round. **Please address discrepancy in the depth of monitoring well B-304DR as part of the November Data Transmittal, due in January 2020.**
6. Consistent with NHDES guidance, samples collected for PFAS analysis should be analyzed using an isotope dilution method following the protocols for PFAS by LC/MS/MS outlined in the USDOD or USEPA methods reference in Item #3 above. NHDES recommends that samples be submitted for a broad PFAS analysis to evaluate the potential source, fate, and transport PFAS impacts at your site. Quantification of linear and branched isomers should be completed as required by USEPA Method 537.1. The laboratory should report acid forms, accounting for the mass of the counterion as described in USEPA Method 537.1. NHDES recommends that analytical data summary tables (and laboratory reports) include both CAS Nos. and the analyte names. Laboratory testing guidelines for PFAS can be found at:

https://www4.des.state.nh.us/nh-pfas-investigation/wp-content/uploads/2019/05/201905_Lab-Guidance-1.pdf

In addition, on summary tables, NHDES recommends that the PFAS be ordered by carbon chain length, and split by families.

If you have any questions with regard to our comments, please contact me directly at NHDES' Waste Management Division.

Sincerely,



James W. O'Rourke, P.G.
Waste Management Division
Tel: (603) 271-2909
Fax: (603) 271-2181
Email: James.O'Rourke@des.nh.gov

cc: Jaime Colby, P.E., SWMB/NHDES
Paul Rydel, P.G., HWRB/NHDES
Timothy White, P.G., Sanborn, Head & Associates, Inc.
Board of Selectmen, Town of Bethlehem
Attention Health Officer, Town of Bethlehem

EXHIBIT L

From: [Richard Lehmann](#)
To: [Eggleton, Jeremy D.](#)
Cc: [Jacob Rhodes](#)
Subject: Swan v Casella
Date: Thursday, February 20, 2025 10:35:57 AM
Attachments: [Casella Production Redacted 0029-0035.pdf](#)

Jeremy,

I feel like this is good time for me to chime in.

I am trying to understand your position that you are entitled to most of the documents you seek in your interrogatories. As your February 11 email to Jacob Rhodes reflects, you aim to depose John Gay on “the truth” Sanborn Head reports about leachate, PFAS and other items. I fail to see what potential relevance those issues have to do with the claims or counterclaims in this breach of contract case.

Interrogatory #1: On its face, your request for documents that refer to your client seeks at least potentially relevant information. But documents would only be relevant to this breach of contract case if those documents referenced or related to the settlement agreement in some way. We have produced all documents that reference or relate to the settlement agreement. Anything beyond that is simply a fishing expedition.

Interrogatory #2: As with the preceding interrogatory, this interrogatory sweeps far too broadly and seeks information untethered from any connection to the subject matter of the case. In your email communication with Jacob Rhodes, you wrote that the “rather conspicuous redaction of extensive material occurs right with Jim Dannis’ May 19, 2023 inquiry about the status of the lawsuit.” It appears that you are suggesting that the redacted portion of the production contains additional inquiries or discussion of the settlement of the lawsuit. There is no such communication. However, in an effort to address this apparent concern, attached please find a disclosure containing a more targeted redaction. As you can see, this redaction reflects that the redactions on the prior production documents Bates stamped Casella 0029-0035 are part of the same email chain. Further, as the unredacted dates reflect, the majority of these emails predate the settlement agreement.

I recognize that, at some level, you would like to see proof of the absence of relevant evidence in the redacted portion of the previously-disclosed email chain. However, that is not the standard that governs discoverable evidence. Given the narrow range of issues relevant to this breach of contract action, your insistence on viewing email communications occurring prior to the contract at issue in this case appears to be little more than a fishing expedition.

My client is willing to provide you with more information than is strictly necessary to comply with its discovery obligations. It is not, however, willing to open itself up to a broad inquiry into whatever records your client might be interested in seeing.

Interrogatories #3-#5: These interrogatories all share the same flaw of being irrelevant to this case because they have nothing whatsoever to do with the breach of the settlement agreement that is the basis of the claim and counterclaim. As noted above, in your email communications with Jacob Rhodes you seem interested in pursuing some kind of truth-based theory of the case. I am not aware of any relevant legal theory that would make

the truth or falsity of your client's statements relevant to the question of whether the settlement agreement was breached.

For all of these reasons, we believe that most of the materials you seek are not relevant to the claims or counterclaims, nor likely to lead to the discovery of relevant evidence.

Richard J. Lehmann

Lehmann Major List, pllc

6 Garvins Falls Road

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rick@nhlawyer.com