

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Granite State Landfill, LLC

v.

Docket No. 217-2025-CV-00316

State of New Hampshire Department of Environmental Services

**MEMORANDUM IN SUPPORT OF GRANITE STATE LANDFILL, LLC'S
PROPOSED CASE STRUCTURING ORDER**

Granite State Landfill, LLC (“GSL” or the “petitioner”), hereby submits this memorandum in support of its proposed case structuring order.

1. GSL and the State of New Hampshire Department of Environmental Services (“NHDES”) have met and conferred as to the case structuring order (“CSO”). Despite discussing the CSO, GSL and NHDES were unable to reach an agreement on certain key deadlines.

2. The primary issue is the need for discovery. NHDES’s proposed CSO did not contemplate any discovery. As pleaded, this case requires the court to determine whether or not certain rules, N.H. Code Admin. R. Env-Sw 304.06(d) and Env-Sw 305.03(b)(6), are *ultra vires*. Although that determination involves a legal question, GSL anticipates that NHDES may present certain arguments against the *ultra vires* claim that require discovery. Without knowing which arguments NHDES will actually present, GSL cannot waive its right to discovery.

3. Although a declaratory judgment action based on a claim that an agency adopted rules that are *ultra vires* is largely a legal question, factual issues could arise. For instance, communications occurring during the process of adopting the rules could become relevant. Likewise, historical applications of the rule in other cases could require discovery if the agency argues that the meaning of the rules is affected by administrative gloss. It is simply not possible

to foresee each and every potential development that may require discovery in the case before it occurs.

4. GSL anticipates that the extent of the discovery may be reduced if the parties can agree to certain stipulations. However, not allowing any discovery will prevent GSL from fully and fairly litigating this case. As always, the Court will retain its “broad discretion in the management of discovery....” *Laramie v. Stone*, 160 N.H. 419, 426 (2010).

WHEREFORE, for all the foregoing reasons, GSL respectfully requests this honorable court to approve its proposed case structuring order submitted contemporaneously, and to schedule a hearing if the court deems it necessary to resolve this dispute.

Respectfully submitted,

GRANITE STATE LANDFILL, LLC,
By Its Attorneys,

Date: June 6, 2025

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CERTIFICATE OF SERVICE

I hereby certify that the within pleading is being served electronically through the court's ECF system upon counsel of record and all other parties who have entered electronic service contacts in this case.

Date: June 6, 2025

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

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