

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Granite State Landfill, LLC

v.

State of New Hampshire Department of Environmental Services

Docket No. 217-2025-CV-00316

**GRANITE STATE LANDFILL, LLC'S OBJECTION**  
**TO NCABC'S MOTION TO INTERVENE**

NOW COMES Granite State Landfill, LLC, by and through counsel, and respectfully objects to NCABC's Motion to Intervene, and in support thereof states as follows:

**I. Introduction and Facts**

Granite State Landfill, LLC, ("GSL") seeks to develop a landfill in Dalton, New Hampshire. Obtaining all of the various permits necessary to build a landfill is a long process requiring substantial interaction with the New Hampshire Department of Environmental Services ("NHDES"). As outlined in the Complaint, an application for a landfill permit requires several thousand pages of legal and technical analysis, disclosures, design plans, calculations and narratives addressing the wide array of detailed statutory and regulatory requirements. GSL submitted the relevant application for a standard solid waste permit on October 31, 2023 (the "Application"). As is typically the case, NHDES communicated with GSL on numerous occasions and GSL provided responsive documents, technical information, and explanations over the course of one year. Despite ongoing communication between NHDES and GSL, NHDES denied the Application (the "Denial") on the basis that it was "dormant: under the solid waste rules. As alleged in GSL's petition, there is no statutory authorization for NHDES to deny an application based on

the dormancy rules. In response to the Denial, GSL initiated this action seeking a declaration that the dormancy rules were ultra vires. GSL also appealed the Denial to the Waste Management Council.

NCABC now seeks to intervene as a party to this action. The only interest NCABC identifies in its motion is its generalized opposition to the construction of the landfill and speculative harms that would arise from such construction. If GSL is successful in this action, however, none of the alleged harms would come to fruition as a result of this action. NHDES did not find the Application complete, hold any public hearings, or issue a permit. Moreover, the Denial was without prejudice. Although expensive, wasteful, and time-consuming, GSL can resubmit an application at any time. The only relief GSL seeks here is a declaration that the permitting process continue to move forward on the grounds advanced in the Complaint. GSL seeks no substantive relief related to issuance of the landfill permit. This fact completely defeats any argument that NCABC could be harmed by any outcome of this proceeding. Accordingly, the motion to intervene should be denied.

## **II. Argument**

### **A. Principles Governing Intervention**

As the party seeking intervention pursuant to N.H. Super. Ct. R. 15, NCABC bears the burden of demonstrating that it has “a right involved in the trial and a direct and apparent interest therein.” New Hampshire courts have long held that a proposed intervenor must have a legal right at stake in the litigation’s outcome – an interest that is direct, concrete, and would suffer if intervention were denied. In *Snyder v. New Hampshire Savings Bank*, 134 N.H. 32 (1991), the Supreme Court reaffirmed that a person seeking to intervene “must have a right involved in the trial” and an interest “direct and apparent” in the case, such that it would be *sacrificed* if not

allowed into the action. *Id.* at 35. This principle, echoing the Court’s earlier reasoning in *Scamman v. Sondheim*, 97 N.H. 280 (1952), has been codified in Rule 15’s requirement that “any person shown to be interested may become a party” only upon showing their relation to the cause. In short, New Hampshire law demands a *cognizable legal stake* in the matter before the court in order to permit intervention.

*Snyder* illustrates a situation where the intervenor had a concrete property interest at issue as a grantee of the mortgager, which the Supreme Court found gave it a direct, protectable, statutory right in the litigation. *Id.* at 37-38. And in *In re: Goodlander*, 161 N.H. 490 (2011), the Court permitted intervention by the parties’ adult children for the purpose of protecting their interests in a trust. The Court determined that they had a direct and protectable interest in trust assets sought by one of the parties because any award to the plaintiff that came from the trusts would directly affect their financial interests in those same assets. *Id.* at 506.

Although historically “the right of a party to intervene in pending litigation in this state has been rather freely allowed as a matter of practice,” it is by no means granted as a matter of course. Rather, the would-be intervenor must satisfy Rule 15’s standard. The New Hampshire Supreme Court has repeatedly upheld the denial of intervention where the intervenor’s interest, while perhaps sincere or significant to them, is *unrelated or indirect with respect to the litigation between the existing parties*. For example, in *Samyn-D’Elia Architects v. Satter Companies of N.E.*, 137 N.H. 174, 177-78 (1993), the Supreme Court affirmed the trial court’s refusal to allow intervention because the claimed interest, though real and articulable, was not sufficiently tied to the actual dispute before the court. Likewise, in *Town of Rye v. Ciborowski*, 111 N.H. 77 (1971), the Court drew a clear distinction between a directly affected individual and a mere advocacy group. In that case, a neighbor with a personal property stake was permitted to intervene, but the Aviation

Association of New Hampshire, an advocacy organization like NCABC, was denied intervention because “[t]he issue before the court was not concerning the desirability of an airport from the standpoint of aviation.” *Id.* at 82. In other words, the association showed no legal interest that would be affected by the outcome; it sought only to further its policy preferences. These cases reinforce the principle that a would-be intervenor’s proximity to an issue or philosophical opposition to one party’s goals does not equate to a legal interest that intervention law recognizes. In other words, no matter how passionately a non-party cares about the subject matter, the intervenor’s interest must be a specific legal interest in the case’s outcome – not a general policy interest or a collateral concern.

**B. NCABC Does Not Possess any Right or Interest that Would be Affected by the Outcome of this Litigation**

In light of these principles, NCABC’s claimed interests fall far short of the mark. NCABC identifies two bases for intervention: (1) that as an organization, it opposes development in the North Country (indeed, opposing this landfill is central to its mission); and (2) that it has *organizational standing* via some of its members who allegedly live near or use the area near the proposed landfill. But neither of these assertions establishes a “right involved in the trial” or a “direct and apparent” legal interest in this case. NCABC’s opposition to the landfill is a policy position, not a property right or other legal entitlement. Its generalized interest in preventing development, no matter how deeply felt, is exactly the kind of interest New Hampshire courts deem insufficient for intervention. And while NCABC claims some members live or recreate “near” the site, mere proximity to a potential project does not confer a cognizable stake in a lawsuit about the validity of an administrative rule. The *subject of this litigation* is the lawfulness and application of NHDES’s dormancy rule, an issue that is completely distinct from the actual building of the landfill or the granting of any permit. NCABC and its unidentified members have

no legal right in an agency rule or in GSL's permit application that would be affected by this Court's decision. They identify no legal interest or holders of any legal entitlement that *this* action could impair. In short, NCABC has no "relation to the cause" that rises to the level of a protectable legal interest.

Nor can NCABC manufacture a right to intervene by pointing to its past participation in administrative proceedings or its proximity to the proposed development. An interest in a policy only *indirectly* related to the would-be intervenor's welfare does not meet the intervention standard. NCABC's prior lobbying or testimony in the administrative arena does not transform the organization into a party with rights at stake in this judicial action. A desire to be heard or to advance certain policy goals, without more, is not enough. If it were, *any* group with strong views on a subject could insert itself into litigation at will – a result wholly at odds with the requirement of a direct and apparent interest that could be sacrificed in a litigation. Indeed, allowing intervention on such a basis would turn every high-profile public dispute into a free-for-all, crowding the courts with parties who have no legal rights on the line but merely wish to champion a cause. New Hampshire law rejects that approach.

Finally, NCABC's alleged injuries are entirely speculative and indirect in the context of this case. NCABC paints a grim picture of negative impacts – air pollution, noise, traffic, property value diminution, health and safety risks – that it fears could befall its members if the landfill is built. But even if the Court was to credit those allegations – which GSL disputes in their totality – none of those harms flows *from this litigation*. This declaratory judgment action will determine whether one of NHDES's rules is valid; it will not result in the construction of a landfill or the issuance of any permit. Even in the event GSL prevails here, the immediate consequence is simply that the *permitting process resumes* – *not* that a landfill suddenly exists. NHDES would still need

to hold hearings and decide whether to grant a permit, during which NCABC could participate to the extent allowed by statute and rule. Conversely, if GSL loses, the status quo continues: GSL may pursue its administrative appeal or submit a new application, and NCABC's position remains exactly as it is now. In either scenario, nothing in this lawsuit will directly cause any of the speculative injuries NCABC fears. This is not a case where the Court's action will either prevent or produce the alleged harms at all. The attenuated chain of contingencies that might one day lead to NCABC's members being affected is far too remote to qualify as the kind of "direct and apparent" interest required for intervention. NCABC's situation is thus on all fours with the would-be intervenors in *Samyn-D'Elia* and the Aviation Association in *Town of Rye* – parties who *cared about* the litigation's subject but lacked any *legal stake in* the litigation's outcome. Just as those interventions were denied, so too should NCABC's motion be denied for failure to meet the governing standard.

NCABC's asserted stake in this case arises solely from the prospect of the landfill's construction and the *hypothetical* harms that might result from it. But this litigation will neither result in the construction of the landfill nor halt it definitively. At most, from NCABC's perspective, if GSL is unsuccessful here, it simply continues with its administrative appeal or submits a new application – in either event, NCABC will have opportunities to voice its opposition through the administrative process just as before. Moreover, if GSL is successful, the outcome is that the permitting process continues, meaning NHDES would resume its review and eventually hold a public hearing where NCABC could participate. Either way, the Court's decision in this case will not itself authorize any landfill or cause NCABC's alleged injuries. The only thing at stake here is whether an *administrative rule* is valid – a legal question that, while important to GSL and NHDES, does not implicate any legal right of NCABC.

The only *conceivable* interest NCABC might claim related to this litigation is an interest in preventing GSL from moving forward with the permit process or adding cost and complexity to the process. But that is not a legally protected interest for purposes of intervention. NCABC has no right to freeze the administrative permitting process in perpetuity. It could not, for example, appeal NHDES's mere acceptance of GSL's application or the agency's decision that an application was complete. Yet that is precisely the sort of "interest" NCABC asserts here – an interest in a procedural step. If such a position qualified as a "right or interest" for intervention, then anytime an agency accepted or processed a permit application, an opponent could intervene in a court action simply to stop the project, turning routine administrative steps into endless litigation. The law does not countenance such a Kafkaesque outcome. NCABC cannot bootstrap its generalized desire to thwart the landfill into an intervention-worthy legal interest. In sum, NCABC's motion fails at the threshold: it has no direct, personal right in the subject-matter of this litigation, nor any interest that will be impaired by this Court's decision.

### **III. Conclusion**

In short, NCABC does not possess any right or interest that will be affected by this litigation. Whatever action this Court takes, it will neither prevent nor result in any harm to NCABC. The outcome here will have no direct impact on NCABC or its members' rights. All that will happen if GSL prevails is that GSL may continue pursuing its permit through the administrative process, in which NCABC may participate in the usual course. If GSL does not prevail, it remains free to seek relief through administrative appeals or a new application. Either way, NCABC will stand in no different legal position than it does today. Because NCABC has failed to meet the stringent standard for intervention under New Hampshire law, its motion should be denied.

WHEREFORE, for the foregoing reasons, GSL respectfully requests that this Honorable Court deny NCABC's Motion to Intervene.

Respectfully submitted,

GRANITE STATE LANDFILL, LLC,  
By Its Attorneys,

Date: June 30, 2025

By: /s/ Jacob M. Rhodes  
Bryan K. Gould, Esq. (NH Bar #8165)  
[gouldb@cwbp.com](mailto:gouldb@cwbp.com)  
Jacob M. Rhodes, Esq. (NH Bar #274590)  
[rhodesj@cwbp.com](mailto:rhodesj@cwbp.com)  
CLEVELAND, WATERS AND BASS, P.A.  
2 Capital Plaza, Fifth Floor  
Concord, NH 03301  
(603) 224-7761

-and-

Richard J. Lehmann, Esq. (NH Bar #9339)  
[rick@nhlawyer.com](mailto:rick@nhlawyer.com)  
Lehmann Major List PLLC  
6 Garvins Falls Road  
Concord, NH 03301  
(603) 212-4099

#### 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 30, 2025

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