

February 5, 2025

Via Email

New Hampshire Department of Environmental Services

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

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

**Re: NHDES File Number: 2023-66600 Solid Waste Standard Permit
Application; Subject Properties: Dalton Tax Map 406, Lots 2.1, 2.3, 2.4,
2.5, 3, and 3A and Bethlehem Tax Map 406, Lots 1 and 2
("Application")**

Dear Director Wimsatt and Ms. Colby,

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

In light of the recent adoption and approval of updated solid waste rules, which went into effect on December 21, 2024, I write to first request clarification as to which rules the Department plans to apply to the Application—the previous version of the rules that were in effect at the time the Application was submitted (the "Old Rules") or the newly adopted version of the rules (the "New Rules").

Additionally, as the Department considers the completeness of the Application based on the Applicant's recent supplemental submissions, I provide a detailed itemization below demonstrating that the Application remains incomplete and unapprovable, regardless of which rules apply. We have reviewed the Department's fourth determination of incompleteness and request for more information to the Applicant dated January 27, 2025, and we generally agree with its contents. This letter amplifies some of the topics in that letter and discusses additional topics. Please make this letter part of your record in this matter.

Application of Solid Waste Rules: Old Rules or New Rules?

On November 28, 2023, I submitted a [letter](#) to the Department requesting that the Department suspend its processing of the Application until the New Rules were in effect. In part, I noted that because many of the New Rules would likely address public health, safety, and welfare, it was important for the Department to assess the Application under the New Rules. In a response [letter](#) dated December 6, 2023, the Department (via Director Wimsatt) asserted that it could not suspend processing of the Application and it “[would] work with its counsel to determine how to apply rules properly during the application process.” It also clarified that no rules would be applied prior to enactment, but now that the New Rules have been enacted and the Application is still being processed to determine whether it is complete, there is an open question as to which rules the Department will apply going forward.

A recent intra-department communication describing a January 3, 2025 meeting between GSL, CMA Engineers, Sanborn Head, and Department personnel, attached as **Exhibit A**, suggests that the Department will apply the New Rules as it continues its review of the Application. (“NHDES also suggested GSL revise Attachment V(2) of the GSL Siting Report to address compliance with all updated Solid Waste Rules”) (“NHDES also stated there are additional changes in Env-Sw 805, Design and Construction Requirements, that GSL will need to address, and other updates to the Landfill Requirements in Env-Sw 800; as well as changes to Env-Sw 1000, Universal Solid Waste Facility Requirements; and Env-Sw 1100, Additional Solid Waste Facility Requirements”).

Please confirm whether the Department will apply the Old Rules or the New Rules moving forward as it processes the Application to determine if it is complete or whether it must deny the permit due to an incomplete Application. It is important that interested stakeholders and members of the public have clarity on which standards are being applied to the Application and Proposal.

Application Still Incomplete and Unapprovable on the Following Bases

Regardless of whether the Old Rules or New Rules apply, based on the Applicant’s submissions to date and the Department’s responses, the Application remains incomplete and unapprovable on numerous fronts. According to our review of the pertinent materials, the following items are still missing from the Application.

1. **Landowner Requirement:** The Applicant has not sufficiently demonstrated complete ownership and/or legal control of the proposed site or provided all related agreements pursuant to Env-Sw 804.06, Env-Sw 1003.03, and Env-Sw 314.09. According to its most recent response from November 26, 2024, the Applicant plans to address this requirement separately, but we see no record that it has done so.

2. **Ownership of Douglas Drive:** Related to #1, the Applicant has failed to demonstrate full ownership of Douglas Drive—which will serve as the site’s ingress and egress—pursuant to Env-Sw 1003.03(a) and Env-Sw 804.06. It is important to note that, for landfills such as the Proposal, *ownership* is required. Access, such as an easement or right-of-way, which may be sufficient for other types of solid waste facilities, does not meet the ownership requirement for landfills. Env-Sw 804.06 (“A new landfill shall be sited only on property which is owned by the permittee.” [old]) (“A landfill or landfill expansion shall be sited only on property which is owned by the permittee.” [new]).
3. **Easements and Rights-of-Way:** The Applicant has not provided information to demonstrate that all easements and rights-of-way meet applicable requirements, nor has it clearly identified all easements and rights-of-way in its plans. *See* Env-Sw 1003.02, 1003.03; *see also* #9 below. The Applicant indicated that these issues would be addressed under separate cover, but it appears that a response has not yet been provided.
4. **Agreements with Leachate Disposal Facilities:** Pursuant to Env-Sw 806.05(b)(3) [old] / 806.05(c)(2) [new], the Applicant is required to have written agreements with at least two (2) leachate treatment/disposal facilities to manage the leachate generated from the Landfill during its active life. While the Applicant has provided a list of *proposed* facilities to accept leachate, it has not produced written agreements with any of these facilities, so this requirement is unresolved. This issue was discussed extensively in our [letter](#) to you dated September 20, 2024.
5. **Reliability, Expertise, Integrity, & Competence:** According to RSA 149-M:9, IX(a) and Env-Sw 303.13–303.15, the Applicant must demonstrate sufficient reliability, expertise, integrity, and competence to operate the Landfill. As explained in our letters dated [January 3, 2024](#) and [December 18, 2024](#), the Applicant both made misrepresentations in this regard in the Application and severely lacks sufficient reliability, expertise, integrity, and competence due to its extensive environmental noncompliance and many violations of environmental laws. The onus is on the Applicant to prove its eligibility, and it has failed to do so.
 - **Settlement Agreement with Bethlehem:** Env-Sw 303.14(b)(8) specifically provides that, as part of its compliance certification, the Applicant must certify that it is “in compliance with all terms and conditions under every ... settlement agreement relating to programs implemented by the department.” The Applicant’s parent company, Casella, entered into settlement agreements with the Town of Bethlehem in relation to the NCES Landfill. Part of the agreements was that Casella (nor any of its subsidiaries) would

attempt to site another landfill in Bethlehem. The Proposal is partially in Bethlehem, so the Applicant is violating the settlement agreements. The settlement agreement is related to the solid waste program implemented by the Department (and makes numerous references to the Department and related approvals/permitting), so the Applicant misrepresented again by certifying that it was in compliance with Env-Sw 303.14(b)(8).

6. **Public Benefit Analysis:** The Applicant must prove that the Proposal meets the public benefit requirement of RSA 149-M:11. As explained in our [letter](#) to you dated January 17, 2024, this means that the Landfill itself—not affiliated facilities and entities—must meet the public benefit requirement on its own merits. Therefore, the Department should strike and not consider portions of the Application concerning the Applicant’s affiliated facilities and entities, namely a proposed new, separate recycling facility in an unknown location. When these outside considerations are stripped from the Application, the Applicant’s public benefit analysis is left wanting and does not provide a sufficient basis for the Department to determine that the Landfill would provide a substantial public benefit and thereby satisfy RSA 149-M:11.
7. **Risk Assessment for Leachate Contamination of Water Resources:** As detailed in our [letter](#) to you dated February 12, 2024 and accompanying [report](#) by Calnex Environmental Consulting, the Application lacks information to characterize the risk assessment for leachate contamination to water resources, especially groundwater. Without this data—which is critically important given the Landfill would generate leachate for decades near Forest Lake, the Ammonoosuc River, and other water resources—the Department cannot know the fate and transport of leaking leachate.
8. **Bethlehem Wrongfully Excluded as Host Municipality:** Host municipalities are afforded special treatment under the solid waste scheme. *See e.g.*, Env-Sw 314.08 [old]; Env-Sw 304.08(c)(2) [new]. As explained in our [letter](#) to you dated August 5, 2024, Bethlehem has not been treated as a host municipality for purposes of the state permitting process even though part of the Proposal is within Bethlehem and Bethlehem and its residents will be exposed to the negative consequences of the Landfill.
9. **Hunter Farm Road:** As set forth in our [letter](#) to you dated September 24, 2024, Hunter Farm Road is a public way that spans the proposed site and has never been discontinued. The Application makes no provision for the fact that a public way runs through the proposed site. Notably, no work may be done in a highway right-of-way without permission from municipal officials. *See* RSA 236:9; *see also* RSA 41:11. The public also maintains rights to pass over and use Hunter Farm Road as a

public way. The legal existence of Hunter Farm Road creates limitations on construction on and around it.

10. **Peak vs. Residual Shear Strength:** In comments to the U.S. Army Corps of Engineers dated May 2, 2024 (the Department was copied via a [letter](#) we sent to the U.S. Army Corps of Engineers dated July 3, 2024), Dr. Anirban De, the current Interim Dean of the School of Engineering and a professor of civil and environmental engineering at Manhattan College, highlighted the Applicant's erroneous use of peak shear strength rather than residual (post-peak) strength when dealing with liners on sloped surfaces.
11. **Financial Assurance Plan:** As the Department explained in its October 22, 2024 letter of incompleteness, the financial assurance plan included as part of the Application contains inconsistencies that must be resolved before the Application can be considered complete. *See* Env-Sw 314.12, 1403.
12. **Failure to Obtain Local Approvals:** As mentioned above, part of the Proposal is located within Bethlehem. Because Bethlehem has a zoning ordinance and site plan review regulations, the Applicant is subject to those municipal legal requirements. This remains true even if the Department applies the New Rules, which have removed Old Env-Sw 314.07. Further, in fact, the Application can *never* meet these municipal requirements because of Bethlehem's zoning ordinance and settlement agreements with Casella. We detailed this extensively in our [letter](#) to you dated August 5, 2024. The Applicant would also need to obtain municipal approvals pursuant to RSA 674:41 from both Bethlehem and Dalton for constructing facilities on a private road, which the Applicant has refused to do.

Conclusion

As a threshold matter, please confirm whether the Department intends to apply the Old Rules or the New Rules to the Application.

Additionally, on behalf of NCABC, I respectfully request that the Department note the several deficiencies that still pervade the Application and render it incomplete and unapprovable. The Department lacks sufficient information under the law to determine the Application is complete.

To the extent the Applicant cannot complete the Application by the February 28, 2025 deadline (i.e., one year of the date of the first incomplete application letter), the Department must deny the Application, unless the Applicant opts to withdraw the Application before the deadline.

Very truly yours,



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Enclosures

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STATE OF NEW HAMPSHIRE

INTRA-DEPARTMENT COMMUNICATION



TO: File

FROM: Mary F. Daun, P.E., Solid Waste Management Bureau, NHDES

SUBJECT: Granite State Landfill (GSL), Dalton, NH
Application Completeness Requirements / Updated Landfill Rules: Env-Sw 800 eff 12/21/2024

DATE: January 3, 2025

ATTENDEES: Mary Daun, P.E., NHDES; Jaime Colby, P.E., NHDES; James O'Rourke, P.G., NHDES; Toni King, Granite State Landfill, Inc./Casella Waste systems, Inc.; Adam Sandahl, P.E., CMA Engineers; Adam Roy, CMA Engineers; Tim White, P.G., Sanborn Head; Lilly Corenthal, Sanborn Head

GSL, CMA Engineers, Sanborn Head, and NHDES personnel met via MS Teams on January 2, 2025 at about 2:00 pm to discuss the GSL application completeness requirements and the revised siting requirements in the NH Solid Waste Rules, Env-Sw 800, Landfill Requirements, effective 12/21/2024.

Meeting commenced with introductions.

Adam Sandahl provided the status of abutter notifications for which a USPS return receipt has not been provided to NHDES. Solid waste rule requirements regarding abutter filing notifications were reviewed.

The new requirements regarding groundwater protection standards under Env-Sw 804.02 were then discussed. Sanborn Head questioned whether a specific format is required for application supplemental information on the hydrogeological report. NHDES stated there is no specific format required for supplemental information. NHDES stated that GSL can submit an updated hydrogeological report or a supplemental report to address the siting requirements. NHDES also suggested GSL revise Attachment V(2) of the GSL Siting Report to address compliance with all updated Solid Waste Rules. CMA asked if a version of the rules showing all changes (between the 2014 and the 2024 rules) was available. NHDES provided a link to meeting attendees to NHDES' objection response to JLCAR, dated December 12, 2024, which includes a comparison of the 2014 to 2024 Landfill Requirements, Env-Sw 800, with the changes highlighted.

NHDES proceeded to outline some of the changes and additions to the landfill siting requirements in Env-Sw 804. A short discussion was held on the definition of a residence.

NHDES also stated there are additional changes in Env-Sw 805, Design and Construction Requirements, that GSL will need to address, and other updates to the Landfill Requirements in Env-Sw 800; as well as changes to Env-Sw 1000, Universal Solid Waste Facility Requirements; and Env-Sw 1100, Additional Solid Waste Facility Requirements.

The meeting was adjourned at approximately 2:35 pm.