

Dalton Conservation Commission

PRELIMINARY NOTICE OF APPEAL: Shoreland Impact Permit 2024-00766, Granite State Landfill

August 2, 2024

E. Reason(s) why the Decision was unlawful or unreasonable (if more space is needed, attach additional page(s)):

1. The Town of Dalton has been designated as the "Host Community" for the proposed Granite State Landfill project, to be owned and operated by Granite State Landfill LLC. Inclusion in all aspects of the permitting process is required so as to ensure that the Town of Dalton has complete and thorough knowledge of the proposed Granite State Landfill project. As the municipal conservation commission for the Town of Dalton, it is the primary duty of the Dalton Conservation Commission, under **RSA 36-A:2**, to ensure "*the proper utilization and protection of the natural resources and for the protection of watershed resources*" in the Town of Dalton.

The Dalton Conservation Commission notes that **Shoreland Impact Permit 2024-00766**, issued on July 18, 2024, is a part of and for the benefit of the Granite State Landfill project. Page 37 of the Shoreland Permit Application is even titled "*Granite State Landfill Entrance Improvements*".

2. The governing body of the Town of Dalton was excluded by the applicant and permittee, Granite State Landfill LLC, from receiving notice and copies of the Shoreland Permit Application for the Granite State Landfill project, submitted on March 20, 2024. Shoreland Permit Application page 7 requires the applicant to submit certified mail receipts to "*verify that the governing body of the municipality in which the project will be located*" has been notified. As a result of this exclusion, the Dalton Conservation Commission was not afforded the opportunity to comment on the Shoreland Permit Application. Only the governing body of the Town of Bethlehem, the second municipality in which a portion of the Granite State Landfill project is to be located, was provided notice and copies of the Shoreland Permit Application.

3. The governing body of the Town of Dalton was not copied on subsequent communications and documentation submittals between the Granite State Landfill LLC and NHDES on 4/24, 6/21, and the issuance of **Shoreland Impact Permit 2024-00766** on 7/18/24. As a result of this exclusion, the Dalton Conservation Commission was denied the opportunity to provide comment on the Shoreland Permit Application and the merits of **Shoreland Impact Permit 2024-00766** before its issuance by NHDES.

4. Permit segmentation should not be permissible for the Granite State Landfill project, which lies within the boundaries of two municipalities, the Town of Dalton and the Town of Bethlehem. In a June 24, 2024 Request for More Information (RFMI) letter to the Granite State Landfill LLC, NHDES acknowledged this, citing **RSA 482-A:11, V**, and also noting the segmentation concerns of both the Dalton Conservation Commission and the Bethlehem Conservation Commission:

*1. **Avoidance and minimization** - to demonstrate the least impacting alternative has been selected and to address concerns outlined by the **Bethlehem Conservation Commission (BCC)**, **Dalton Conservation Commission (DCC)**, and **Ammonoosuc Local River Management Advisory Committee (LAC)**, please address the following:*

[Env-Wt 311.06(h), Env-Wt 311.06(i), Env-Wt 313.03, and Env-Wt 524.02(b)]

*b. **Aggregation** – please provide an overview of the future project plans that includes **all lots** for the **overall development scheme** to inform the assessment of avoidance and minimization. After-the-fact (ATF) impacts to be retained for the pre-cast concrete company roadway are outside the landfill project*

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footprint and are indicative of a larger overall development scheme. **As commented in BCC and DCC reports, there is both a concern regarding piecemeal of the application and expansion of the landfill. The Department is unable to assess compliance with avoidance and minimization requirements without an overall scheme of development for the lots in question. Please note that under RSA 482-A:11, V, the Department is required to consider a series of projects composing an overall scheme of development in the aggregate even if completed by multiple developers.**

5. NHDES has acknowledged the need for the alignment of the numerous permit applications to “facilitate the construction of a solid waste landfill on the property” in the past. In a letter to Granite State Landfill LLC, dated August 26, 2021, NHDES requested “an amendment to the (prior) Wetlands permit application, pursuant to RSA 482-A:3, XIV(e), and that other Water Division-related permit applications be submitted at the same time to allow for a comprehensive and coordinated review of the impacts of the project on water resources”. This was to “align the proposed areas of impact between the Solid Waste application and the Wetlands application”.

6. The Granite State Landfill LLC description and purpose of the project has been consistent in the project narrative, describing the purported need for the proposed impacts to jurisdictional areas and scope of work to be performed, throughout the various permit applications submitted for the project. The project narrative includes the significant “improvements” to RT116 and Douglas Drive as a necessary component for the Granite State Landfill project. The governing bodies of the municipalities of Dalton and Bethlehem were provided notice within each of the other permit applications submitted for this project, with the exception of the Solid Waste Permit Application, submitted October 16, 2023. The governing body of the Town of Bethlehem was excluded from receiving notice, thus denying the Bethlehem Conservation Commission the opportunity to provide comment on the Solid Waste Permit Application. The Dalton Conservation Commission notes this as another notification error by the Granite State Landfill LLC in the permitting process for the Granite State Landfill project.

The Dalton Conservation Commission also notes that without the required “improvements” to the nearly 1-mile site access road, Douglas Drive, beginning at RT116 in the Town of Bethlehem, continuing across the town line into the Town of Dalton, the Granite State Landfill project would be landlocked and unable to function.

As noted by the Ammonoosuc River Local Advisory Committee (ARLAC) in their April 18, 2024 comment letter on the Shoreland Permit Application, “*The sole reason for the proposed project is to provide access to the proposed Granite State Landfill.*”

7. In a June 7, 2024 “Application for Water Quality Certification – Granite State Landfill (NHDES #2021-404I-002)” incompleteness letter, NHDES wrote: “*The Project involves the proposed construction and operation of a secure solid waste disposal facility, i.e. a landfill, within the Alder Brook/Hatch Brook and Ammonoosuc River watersheds, in Dalton, Coos County and Bethlehem, Grafton County, New Hampshire.*”

8. The Shoreland Permit Application, page 30, includes a copy of the October 3, 2023 NHDOT Driveway Permit Application, with an address of 104 Douglas Drive in **the Town of Dalton**, which also states that the NHDOT Driveway Permit Application is for a solid waste disposal facility. The NHDOT Driveway Permit Application continues on page 31, citing **RSA 236:13 Driveways and Other Accesses to the Public Way, III: For access to a proposed commercial or industrial enterprise, or to a subdivision, all of which for the purposes of this section shall be considered a single parcel of land.**

The NHDOT Driveway Permit Application is listed as a required permit for the Granite State Landfill project within the Solid Waste Permit Application, Vol. 1, page 39, submitted October 16, 2023. It is also stated that “No local approvals with the Town of Bethlehem are anticipated for the driveway entrance”.

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As stated in reasons 4 and 6 above, the segmentation of the permitting process has excluded the governing body of the Town of Bethlehem from the notification process, thus denying the Bethlehem Conservation Commission the opportunity to provide comment on the Solid Waste Permit Application for the Granite State Landfill project. Permit segmentation should not be permissible for the Granite State Landfill project, which lies within the boundaries of two municipalities, the Town of Dalton and the Town of Bethlehem.

The Dalton Conservation Commission continues to note that the nearly 1-mile long access road to the Granite State Landfill, Douglas Drive, which will require significant “improvements” for the significant amount of heavy-duty trash vehicles to access the landfill development, lies within the boundaries of both the Town of Bethlehem and the Town of Dalton.

9. The Shoreland Permit Application is listed as a required permit for the Granite State Landfill project within the Solid Waste Permit Application, Vol. 1, page 39, submitted October 16, 2023. According to **Env-Wq 1406.14, Coordination of Permit Applications**: “*The application for a shoreland permit shall identify whether applications for any of the following permits have been submitted or will need to be submitted to the department for the same project:*

(a) *Wetlands permit under RSA 482-A;*

(d) *Alteration of terrain permit under RSA 485-A:17.*

The governing bodies of both the Town of Dalton and the Town of Bethlehem were provided notice of the Wetlands Permit Application (12/14/2023) and the Alteration of Terrain Permit Application (11/8/2023) submittals for the Granite State Landfill project. The governing body of the Town of Dalton was not provided notice of the Shoreland Permit Application submittal **for the same project**.

10. The Granite State Landfill LLC failed to provide an accurate narrative description of the Granite State Landfill project, as required by **Env-Wq 1406.07(i)** and **Env-Wq 1406.17(b)(3)** in the Shoreland Permit Application, dated March 20, 2024.

11. The Granite State Landfill LLC failed to adequately address the numerous items listed within the NHDES Request for More Information (RFMI) letter, dated April 24, 2024. NHDES subsequently failed to respond to any of the non-answers provided by the Granite State Landfill, LLC in their response letter of June 21, 2024.

Shoreland Impact Permit 2024-00766 was then issued by NHDES on July 18, 2024.

12. The NHDES RFMI letter of April 24, 2024, item 12, requested that the Granite State Landfill LLC: “*provide certified mail receipts verifying that the governing body of the municipality in which the project will be located and all abutters to Douglas Ingerson have been notified as required by **Env-Wq 1406.12**”.*

The Granite State Landfill LLC failed to notify the governing body of the Town of Dalton in accordance with **Env-Wq 1406.12** and **RSA 483-B:5-b, IV-a**. While the governing body of the Town of Bethlehem was provided notification and copies of the Shoreland Permit Application by Granite State Landfill LLC, the governing body of the Town of Dalton was not notified, nor provided copies of the Shoreland Permit Application.

Per **RSA 483-B:5-b, IV-a**: *At the time of the permit application, the applicant shall provide postal receipts or copies, verifying that the governing body of the municipality **or municipalities** in which the property is located and the local river management advisory committee, if the project is within a*

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*designated river corridor defined in RSA 483:4, XVIII and contains river and river segments designated in RSA 483:15, and all abutters have been notified of the application by certified mail. Applicants for the construction of public roads, public utility lines and associated structures and facilities, and public water access facilities shall only be required to provide postal receipts or copies, verifying that the governing body of the municipality **or municipalities** in which the property is located, and the local river management advisory committee if **the project** is within a designated river corridor defined in RSA 483:4, XVIII and contains river and river segments designated in RSA 483:15, have been notified of the application by certified mail.*

13. The Granite State Landfill LLC failed to adequately address the concerns of the Ammonoosuc River Local Advisory Committee (ARLAC) as expressed in their April 18, 2024 comment letter submitted to NHDES and referred to in the NHDES April 24, 2024 RFMI letter. The primary response provided by Granite State Landfill in their response letter to NHDES, dated June 21, 2024, was: “*GSL declines to respond to comments that exceed the LAC’s prescribed authority or the shoreland program’s jurisdiction*”.

14. The Dalton Conservation Commission requests that NHDES revoke **Shoreland Impact Permit: 2024-00766**, and that the Granite State Landfill LLC re-submit the Shoreland Permit Application, with the inclusion of the Town of Dalton in the notification process. This would allow for the Dalton Conservation Commission to provide comment as the “Host Community” for the proposed “Granite State Landfill” project, sited in both the Town of Dalton and the Town of Bethlehem.

15. Any approval of a re-submitted Shoreland Permit Application should, at a minimum, be conditioned upon all other applicable permits being approved. To allow the construction of shoreland 'improvements' while other permits are still being evaluated is segmenting the permitting process and may authorize unnecessary shoreland impacts in the event any of the required permit applications for the Granite State Landfill project are denied. The construction of shoreland impacts should not be allowed to proceed until all other required permits for the Granite State Landfill project have been obtained, including the completion of the Army Corps Environmental Impact Statement (EIS), and all permit appeal deadlines have passed

16. The Dalton Conservation Commission requests that NHDES and the applicant, Granite State Landfill LLC, acknowledge that the Shoreland Permit Application is for a singular project, the Granite State Landfill project, which is reliant upon multiple permit application approvals, and is sited within the boundaries of both the Town of Dalton and the Town of Bethlehem. We also request that the governing bodies of both the Town of Dalton and the Town of Bethlehem be provided notice in the permitting process for the Granite State Landfill project.

Respectfully submitted,

The Dalton Conservation Commission