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Local Environmental Group Seeks Landfill Appeal Member Recusal

Judge Rules NCABC Can Also Be Intervenor In Landfill Lawsuit

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Aug 11, 2025

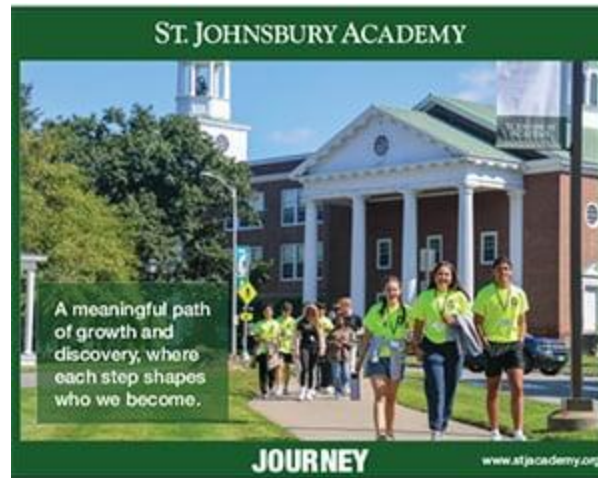


For the hearing of Casella Waste Systems' appeal, the North Country Alliance for Balanced Change is seeking the recusal of New Hampshire Waste Management Council member Eric Steinhauser, whom it argues has connections to Casella and the company's Dalton landfill proposal that was rejected by the state. (Contributed photo)

A judge has granted a motion to allow a local environmental group to intervene in the lawsuit that Casella Waste Systems filed against the state after the New Hampshire Department of Environmental Services denied its landfill permit application.

At the same time, the nonprofit North Country Alliance for Balanced Change is asking the New Hampshire Waste Management Council for a recusal of one of its members for a possible conflict of interest.

Lawsuit Intervener Status



Since 2019, Casella has sought a new commercial landfill in Dalton, but on April 3, NHDES issued a denial by dormancy of Casella's standard permit application, stating that, after multiple application submissions and department requests for more information, the application still contained incomplete and redacted information.

The department gave the company four opportunities to provide the complete information, including if Casella can demonstrate it will have a legal right to use the properties as required by state rules.

Several days after the denial, Casella sued NHDES through an action that asks the Merrimack Superior Court to declare that NHDES exceeded its statutory authority by rendering a denial by dormancy.

A month later, in May, the company appealed NHDES's permit denial to the New Hampshire Waste Management Council with much of the same arguments in its lawsuit.

In June, NCABC filed to be an intervener in the lawsuit, arguing that its members and donors own property and live near the proposed landfill site and would suffer potential impacts, such as noise, odors, decreased property values, and possible drinking water contamination.

Casella's attorneys filed an objection, arguing that NCABC has no interest that would be impacted by the outcome of the litigation.

Last week, on Aug. 5, Judge John Kissinger granted NCABC's motion to intervene.



"Though the Court recognizes the nature of the present dispute involves application of administrative rules related to dormancy and not a decision based on the substance of the permit application, given NCABC's longstanding involvement in the administrative process opposing the landfill, the Court finds that intervention is appropriate in this matter," wrote Kissinger.

Requested Council Recusal

Meanwhile, in NCABC's appeal to the Waste Management Council that argues NHDES did not include all of the legal reasons it should have denied Casella's permit application, NCABC, in a new motion filed Friday, seeks to have a Waste Management Council member recused because of a potential conflict of interest.

In addition to serving on the council that is tasked with reviewing Casella's appeal, Eric Steinhauser is an environmental engineer and senior vice-president at Sanborn, Head and Associates, for which he has worked on design and permitting of landfill and solid waste projects.

For what Casella calls the Granite State Landfill (GSL) in Dalton, Casella has retained Sanborn Head as its engineering firm to provide technical expertise, perform hydro-geological explorations, advance engineering, and prepare reports to assess the suitability of Casella's proposed site, Amy Manzelli, environmental attorney for NCABC, wrote in the motion for recusal.

"Assuming for the sake of the argument that Council member Steinhauser did not directly work on the GSL project, he would have received and presumably continues to receive his share of the pecuniary benefit stemming from the fees GSL paid to Sanborn Head for several years of services, which services presumably remain ongoing," said Manzelli. "Further, assuming for the sake of argument that Council member Steinhauser did not directly work on the GSL project, the work his Sanborn Head colleagues did on the project would be imputed to him as members of the same firm."

One of the standards for recusal under the solid waste rules states good cause exists if "the council member ... has had direct personal involvement with the matter under appeal or with a party, such that a reasonable person would conclude that the council member ... could not hear the appeal impartially," said Manzelli.

"Council member Steinhauser's role at Sanborn Head, which performed crucial services in the advancement of GSL's application, presents a clear conflict of interest in this appeal," she said. "NCABC wishes to emphasize it does not allege that Council member Steinhauser has done anything wrong or engaged in malfeasance. On the contrary, counsel for NCABC has had positive professional experiences with Council member Steinhauser in his capacity as a consulting engineer with Sanborn Head overall. However, Council member Steinhauser's position at Sanborn Head coupled with GSL's retention of Sanborn Head for the past several years necessarily creates a conflict of interest in his role on the Council and a bias (even if the bias might be subconscious or apparent) in favor of GSL in this appeal."

A reasonable person, therefore, could conclude that Steinhauser's connections to Casella is good cause for recusal, and "to preserve the integrity of this appeal process ... Council member Steinhauser must recuse himself from this appeal," argues Manzelli.

As of Monday, the council had not made a decision.



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