

Giallongo, Stefanie

From: Brenda Barnard <barnardb@cwbp.com>
Sent: Wednesday, June 30, 2021 4:45 PM
To: Scott, Robert
Cc: Giallongo, Stefanie; Pelletier, Rene; manzelli@nhlandlaw.com; Brooks, Kelvin; pblair@clf.org; Bryan Gould; Cooley Arroyo
Subject: NH DES File #2020-02239 Wetlands Standard Permit Application
Attachments: 2021-06-30 GSL Letter to Comm'r Scott.pdf

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Good afternoon,

Attached please find a letter being sent on behalf of Granite State Landfill.

Thank you.

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June 30, 2021

VIA E-MAIL TRANSMISSION

Robert R. Scott, Commissioner (robert.r.scott@des.nh.gov)
N.H. Department of Environmental Services
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

Dear Commissioner Scott:

We represent Granite State Landfill, LLC ("GSL"). I am writing to respond to the June 28, 2021, correspondence from counsel for the group calling itself "North Country Alliance for Balanced Change" ("NCABC") and the June 29, 2021, correspondence from the Conservation Law Foundation ("CLF") to you asking NHDES to deviate from its rules and defer the public hearing on GSL's pending wetlands application. Although the lawyers for NCABC and CLF did not extend me the professional courtesy of copying me on their letters despite knowing of my representation of GSL, I have copied them along with Allen Brooks at NHDOJ.

Both NCABC and CLF predicate their request for a postponement upon their understanding of the statutory authority of the Dalton Conservation Commission ("DCC") and of the status of the DCC's request for a third site visit. There are several errant assumptions in their letters.

First, neither of the lawyers purports to be representing the DCC but they both attempt to assert authority allegedly held by the DCC. Neither lawyer has standing to assert the rights of a municipal commission the lawyer does not represent.

Second, as your wetlands staff can confirm, the DCC conducted two site visits in the past year. In response to its request for a third visit GSL has asked the DCC to explain its purpose for the visit (which it did) and the source of its authority to conduct the kind of exploratory work it was proposing to do. The DCC has failed for nearly a month to acknowledge or respond to the latter request.

Third, although CLF and NCABC rely on RSA 482-A:11, III, as the basis for the DCC's authority to investigate, they ignore the deadline for DCC action in the very statute on which

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they rely. The statute requires that the conservation commission notify NHDES within fourteen days of the applicant's filing of notice with the municipal clerk whether it intends to investigate. If it does provide that notice to NHDES, the commission has forty days within which to present any report of its investigation to NHDES. This forty-day deadline may be extended by another forty days by NHDES for good cause shown.

GSL filed its notice that it was seeking the wetlands permit with the Dalton town clerk in August of 2020. Even if the DCC had requested and obtained the full extension – which it did not – the statutory deadline for the report would have expired no later than mid-December 2020. That is why, when the DCC informed NHDES on May 17 that it wanted to conduct another site visit, Craig Rennie responded by email and told the DCC that the deadline for its report had passed.

In its last letter to the DCC in early June, GSL held open the possibility of another site visit if the DCC could satisfy GSL's request for the source of authority for the visit. Given the DCC's failure to respond, the new evidence that NCABC and CLF are orchestrating the DCC's request for a third visit, the litigation CLF and NCABC have brought already attempting to enjoin NHDES permitting, and the coordinated attempt by the DCC, NCABC, and CLF to delay NHDES's consideration of the wetlands application on any ground that occurs to them, GSL will not agree to another site investigation by the DCC unless NHDES can cite unambiguous authority requiring it.

NCABC's and CLF's suggestion that NHDES will intrude on due process rights if it does not delay the processing of GSL's application has it exactly backwards. NCABC and CLF have no investigative rights so their lawyers have no standing to challenge the sufficiency of the DCC's investigation. The DCC's authority is carefully spelled out in statute, and neither NCABC nor CLF has described any act or omission that would interfere with that authority. Both NCABC and CLF also question whether the DCC's previous site visits have been "meaningful," but that is not only a subjective judgment coming from organizations dedicated to stopping this project, it also has no basis in the statute. Nothing in the statute contemplates that there can be an interruption of permitting until there is "meaningful" investigation.

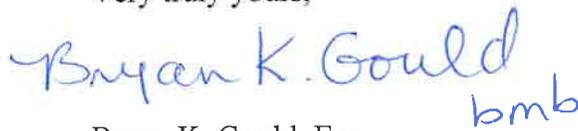
On the other hand, by statute and rule an applicant is entitled to a decision on its application within a prescribed period of time and in accordance with the law. NHDES's failure to satisfy these requirements would be a clear violation of the law. In the name of "due process" for an entity they do not represent, NCABC and CLF are asking NHDES to disregard the statutory rights of GSL. We respectfully request that NHDES reject their request.

Finally, we think it would taint NHDES's consideration of GSL's application if the agency were to meet with opponents of the project as NCABC has requested without GSL's

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participation. If opponents submit written arguments and comments to NHDES we can obtain them through a request under RSA ch. 91-A. If there is a meeting from which GSL is excluded, however, it has no way of knowing the content and is prevented from responding to it. Accordingly, we ask that NHDES deny NCABC's (and Mr. Alvarez's) requests for a meeting, but if NHDES decides to go ahead with a meeting we ask to be provided with notice and an opportunity to attend.

Very truly yours,

 bmb

Bryan K. Gould, Esq.

BKG:bmb

cc: Stephanie Giallongo, NHDES Wetlands Bureau (via e-mail)
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