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To: saveforestlake@yahoo.com



Fri, Sep 3 at 10:28 AM



Dear Mr. Swan,

Thank you for your inquiry on this matter. My office has reviewed this issue and has concluded that NHDES' actions on the referenced permit are lawful under both RSA 482-A:3 and RSA 541-A:29. As required by the Wetlands Act, the amended application will receive a full review by NHDES, including the opportunity for further public comment and another public hearing. Accordingly, the requested amendment will not limit the public's right to be heard.

If you have further questions on this matter, you may direct them to Chris Aslin in my office. He can be reached at christopher.aslin@doj.nh.gov or 603-271-3679.

Thank you,

John

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Good Morning Chris:

Please convey my appreciation to Attorney General Formella for his timely response to my inquiry relative to the August 26, 2021 letter from Rene Pelletier of NHDES to Casella Waste Systems. While I am not an attorney, I would like to once again, state my position relative to the law and the actions of NHDES personnel relative to their failure to deliver a decision, and instead, request an amendment to the wetlands permit application. AG Formella cites RSA 541, which I am gathering he is referring to section IV:

RSA 541-A:29 Agency Action on Applications, Petitions and Requests. –

IV. An agency may extend the time periods for review provided for in this section or in any other provision of law upon written agreement of the applicant.

However, while he also cites RSA 482-A:3, I would like to point out that under section XIV(a)(5), it states:

RSA 482-A:3 XIV(a)(5) Where the department has held a public hearing on an application filed under this chapter, within 45 days following the closure of the hearing record, approve the application in whole or in part, and issue a permit or deny the application and issue written findings in support of the denial.

Thus, my point is that while NHDES has the authority as per RSA 541-A:29, as cited by the Attorney General, to extend the period for review, RSA 482-A:3 XIV(a)(5) seemingly supports my position that **since a hearing was held on July 14, 2021**, by law, the department **must either approve or deny the permit application within 45 days**. The RSA does not allow for an "amendment" or extension of the review period. Thus, I feel the actions of Mr. Pelletier, following the holding of the public hearing on the permit application, are not legal as per the state RSA cited above and by the Attorney General. I believe that the department is required to issue either an approval, a partial approval, or denial, and within 45 days of the closing of the hearing record, which was stated to be September 13, 2021. Thus, a decision is due by or around October 28, 2021.

While I appreciate AG Formella's assurances that "As required by the Wetlands Act, the amended application will receive a full review by NHDES, including the opportunity for further public comment and another public hearing", the point of the matter is, we just did all of that, and apparently, for naught. What was the point of going thru that entire exercise, taking up so much time, effort, and cost, with so much public input, only to be begun anew, at the whim of the permitting agency, if the approval or denial is not to be issued, as apparently required by NH state law? **[RSA 482-A:3 XIV(a)(5)]**

Furthermore, just under the above cited **RSA 482-A:3 XIV(a)(5)**, you will find

RSA 482-A:3 XIV(a)(5)(b)(1) *The time limits prescribed by this paragraph shall supersede any time limits provided in any other provision of law. The time limits prescribed by this paragraph shall not apply to applications submitted by the department of transportation, for which time limits shall be set by a memorandum of agreement between the commissioner of the department of environmental services and the commissioner of the department of transportation. If the department fails to act within the applicable time frame established in subparagraphs (a)(3), (a)(4), and (a)(5), the applicant may ask the department to issue the permit by submitting a written request. If the applicant has previously agreed to accept communications from the department by electronic means, a request submitted electronically by the applicant shall constitute a written request.*

Thank You!

Jon Swan