

STATE OF NEW HAMPSHIRE
WASTE MANAGEMENT COUNCIL

Docket No. 25-23 WMC

In Re: Appeal of Recycling Services

MOTION FOR REHEARING AND CLARIFICATION

North Country Alliance for Balanced Change (“Petitioner”), by its attorneys, BCM Environmental & Land Law, PLLC, pursuant to RSA 541:3 and Ec-Wst 203.18, moves for rehearing of the Order on Motion for Rehearing and Clarification dated June 10, 2026 (“Order”), stating as follows in support:

I. RELIEF REQUESTED

Petitioner requests rehearing and clarification of the Order as detailed below. Specifically, now that the Hearing Officer has clarified that Petitioner had been granted: (1) limited intervenor status; plus (2) amicus curiae status for the purpose of submitting a hearing memorandum, but have now been granted only limited intervenor status, Petitioner asserts that the scope of intervention limits is too narrow under RSA 541-A:32, IV. Petitioner also maintains that denying it full, or at least broader, intervenor status was an error of fact, reasoning, and law because its rights, duties, privileges, immunities, or other substantial interests the proceeding will affect.

II. STANDARD

The Council may grant a motion for rehearing “if in its opinion good reason for the rehearing is stated in the motion.” RSA 541:3. “Good reason” may constitute “error of fact, reasoning, or law that could change the outcome of the appeal.” Ec-Wst 203.18(b)(1)(b). The Order warrants clarification because it is ambiguous, unclear, or similar, and no law prohibits clarification in this venue, and the Council has clarified previously.

III. SUMMARY OF THE ORDER

In the Order, the Hearing Officer clarified that the Petitioner has been granted limited intervenor status and that the intervention is limited to: (1) being added to the service list so that Petitioner can receive copies of pleadings filed in this matter; and (2) receiving notice of hearings so that Petitioner may attend through counsel or individually. Order at 1, 3.

Simultaneously, the Hearing Officer clarified that Petitioner had been, *sua sponte*, granted status as amicus curiae for the purpose of filing a hearing memorandum because otherwise it would not be able to do so with its limited intervention. But then the Order withdrew Petitioner's amicus curiae status and by extension its ability to file a hearing memorandum at the conclusion of the case. The Order left the door open for Petitioner to request permission to file a memorandum upon a showing that the Department will not adequately defend its decision. *Id.* at 3.

The Order did not clarify whether, in light of narrowing intervention to the two aspects outlined above, Petitioner is still considered a party consistent with prevailing law, including Ec-Wst 203.08(c) ("Once a petition to intervene is granted, the intervenor shall be entitled to participate in the proceeding as a party.").

IV. GROUNDS FOR REHEARING & CLARIFICATION

Good cause exists to rehear and clarify the Order for the following errors of fact, reasoning, and law, and the following ambiguities, lack of clarity, and the like.

- A. The scope of intervention deprives Petitioner of due process because it does not allow Petitioner to defend its rights, duties, privileges, immunities, and other substantial interests that the proceeding will affect.**

Pursuant to Ec-Wst 203.08(a), a request to intervene must conform to the requirements of RSA 541-A:32. Likewise, a presiding officer's ruling on a petition for intervention must be in accordance with RSA 541-A:32. Ec-Wst 203.08(b). Section III of RSA 541-A:32 permits a presiding officer to impose conditions on an intervenor's participation in the proceeding (i.e., limit intervention), such as by limiting the intervenor's participation to certain issues, limiting the intervenor's use of cross-examination and other procedures, and requiring multiple intervenors to coordinate participation in the proceeding. However, the right to limit intervention is not unfettered. Intervention limits "shall not be so extensive as to prevent the intervenor from protecting the interest which formed the basis of the intervention." RSA 541-A:32, IV.

Here, the Hearing Officer contravened RSA 541-A:32, IV, and in doing so deprived Petitioner of its due process rights, by restricting Petitioner's intervention such that it has no ability to defend its interests in this proceeding. Petitioner's so-called intervention has been so neutered as to be entirely meaningless.

1. Limited Intervention Goes Too Far; So-Called Intervenors Cannot Participate in Appeal

The Hearing Officer erred by constricting Petitioner's intervention to such an extent and by depriving Petitioner of party status (in the event the Order did so).

By granting Petitioner even limited intervenor status, the Hearing Officer acknowledged that Petitioner has some level of interest in the proceeding even if, in the Hearing Officer's view, that interest is slight. However, limiting Petitioner's intervention to receiving filings and notices of hearings gives Petitioner no practical means to participate in the proceeding. In other words, Petitioner's intervention as currently contemplated does not give it any means by which to advocate for its interests; they will essentially be an intervenor in name only, a mere bystander to the proceeding. While RSA 541-A:32, III certainly empowers the Hearing Officer to impose

conditions on Petitioner's intervention, RSA 541-A:32, IV prevents the Hearing Officer from doing so to the point that Petitioner can no longer protect its interests. By limiting Petitioner's participation in this proceeding to that of observers, the Hearing Officer has prevented Petitioner from defending its interests and has thereby contravened RSA 541-A:32, IV.

2. So-Called Intervenors Granted Nothing More Than What Public Already Has

Indeed, the limited intervention granted by the Hearing Officer gives Petitioner little more than any member of the general public. Waste Management Council hearings are already open to the public, so Petitioner (or its counsel) would be able to attend and observe any hearings in this case regardless of them receiving hearing notices. *See* RSA 91-A:2, II (“[A]ll meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public.”); *Waste Management Council Meetings*, NEW HAMPSHIRE ENVIRONMENTAL COUNCILS, <https://www.nhec.nh.gov/waste-management-council/meetings> (last visited July 8, 2026) (“[Waste Management Council] meetings are open to the public and the Waste Management Council welcomes public attendance.”). The same is true of any pleadings in this case, which would likewise be available to Petitioner regardless of its inclusion on the service list. *See* RSA 91-A:4, I (“Every citizen . . . has the right to inspect all governmental records in the possession, custody, or control of such public bodies or agencies . . . and to copy and make memoranda or abstracts of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91-A:5.”); Ec-Wst 203.16(a)(3) (“Evidence shall . . . [b]e public records unless the presiding officer determines that all or part of a transcript or document is exempt from disclosure under RSA 91-A:5 or applicable case law.”); *Enforcement Actions and Appeals*, NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES, <https://www4.des.state.nh.us/Legal/index.html> (last visited July 8, 2026) (Waste Management

Council appeals docket publicly available online). Therefore, the intervention granted to Petitioner gives it nothing beyond a non-intervenor to the case—not even more than any member of the public.

3. Intervention Limits Here Unlawfully Outsized for the Purpose of Intervention Limits

The purpose of allowing a presiding officer to impose conditions on intervention is “to promote the orderly and prompt conduct of the proceedings.” RSA 541-A:32, III(b). In recognition of the need to maintain the orderly and prompt conduct of this proceeding, undersigned counsel represented at the April 15, 2026 pre-hearing conference regarding the scope of Petitioner’s participation in the appeal that Petitioner would not expand the scope of the appeal by adding in any new issues, not engage in any duplicative witness examination, not need discovery, not need motion practice (except having the right to object to motions), and not call its own witnesses. This is consistent with the letter and spirit of promoting orderly and prompt proceedings. Limiting Petitioner to receiving filings and notices of hearings has neither any basis in law nor the record.

Petitioner made no representations about giving up any rights as parties if its intervention were granted. Nevertheless, as explained above, pursuant to the Order, Petitioner would be relegated to the same playing field as any other member of the general public, with no rights specific to parties.

Of greatest concern to Petitioner is that, if its intervention is truly limited to only the two aspects explicitly mentioned by the Hearing Officer (i.e., receiving filings and notices of hearings), then that means it has not been granted party status that would make it eligible to appeal in the event of an adverse ruling. Ec-Wst 203.08(c) provides that “[o]nce a petition to intervene is granted, the intervenor shall be entitled to participate in the proceeding as a party.”

The Hearing Officer granted Petitioner's Petition to Intervene, which suggests that Petitioner is a party pursuant to Ec-Wst 203.08(c). However, because the Hearing Officer also limited the scope of Petitioner's intervention to receiving filings and notices of hearings, this suggests that Petitioner is not a party.

Also, Petitioner never indicated at the pre-hearing conference that they did not want to submit a hearing memorandum. Nor did Petitioner do so in its first Motion for Rehearing and Clarification; Petitioner merely pointed out that amicus curiae status is different from intervenor status. The Order has now, inexplicably, stripped Petitioner of that right, too.

4. Requests for Clarifications and/or Rehearing

As such, Petitioner requests that the Hearing Officer clarify that, consistent with Ec-Wst 203.08(c), Petitioner is a party. To the extent Petitioner's intervention the Order granted did not also confer party status, the Hearing Officer contravened Ec-Wst 203.08(c), and Petitioner requests that the Hearing Officer reconsider the decision and grant Petitioner party status as part of its limited intervention.

Petitioner also requests that the Hearing Officer clarify that, consistent with RSA 541-A:32, IV, Petitioner's intervention is not literally limited to only the two aspects the Hearing Officer explicitly ordered (i.e., receiving filings and notices of hearings), but instead is limited only in that Petitioner may not add any issues to the appeal, may not engage in duplicative witness examination, may not receive or propound discovery, may not engage in motion practice (except having the right to object to motions), may not call its own witnesses or be called as witnesses. To the extent Petitioner's intervention the Order granted did not limit intervention only as described in the last sentence, the limits violated RSA 541-A:32, IV.

B. The Hearing Officer erred by not granting Petitioner full intervenor status because they have rights, duties, privileges, and/or other substantial interests that the proceeding will affect.

Petitioner reiterates its position that the Hearing Officer committed reversible error by failing to give Petitioner full intervenor status. In the Hearing Officer's view, "Petitioner failed to demonstrate a direct and apparent interest that must be vindicated through this appeal." Order at 3. However, as explained in detail in Petitioner's June 1, 2026 Motion for Rehearing and Clarification, this appeal implicates Petitioner's property rights, and property rights are of the upmost importance in New Hampshire. Most of Petitioner's members live in close proximity to the proposed site, so they would be among the *first* and *most* impacted by the externalities associated with the proposal and would see their property values suffer. Petitioner has a constitutional right to protect its property rights, and it is in the best position to do so. Therefore, the Hearing Officer erred by not granting Petitioner full intervention.

V. CONCLUSION

For the reasons set forth above, Petitioner has shown good cause for rehearing to correct errors of fact, reasoning, and law in the Order that could change the outcome of its intervention in these proceedings and that clarification would alleviate ambiguity and lack of clarity in the Order.

WHEREFORE, Petitioner respectfully requests this honorable Council:

- A. Grant Petitioner full intervenor status;
- B. In the alternative, expand the scope of Petitioner's limited intervention to allow Petitioner to actively participate in the proceeding, including but not limited to permitting Petitioner to submit a hearing memorandum; and
- C. Grant such further relief as is necessary and proper.

Respectfully submitted,

**NORTH COUNTRY ALLIANCE FOR
BALANCED CHANGE**

By its Attorneys,

BCM Environmental & Land Law, PLLC

July 10, 2026

/s/ Amy Manzelli, Esq.

Amy Manzelli, Esq. (NH Bar No. 17128)

3 Maple Street

Concord, NH 03301

(603) 225-2585

manzelli@nhlandlaw.com

CERTIFICATION

I certify that, pursuant to Ec-Wst 201.01(a), on this date the foregoing was submitted in PDF format to appeals@des.nh.gov and within five (5) business days, the original and one copy will be delivered by First Class Mail or hand-delivery to the Office of Waste Management Council Appeals Clerk.

I also hereby certify that on this date I have sent by electronic mail copies of this Motion to all persons listed on the service contact list.

Dated: July 10, 2026

/s/ Amy Manzelli, Esq.