

STATE OF NEW HAMPSHIRE  
WASTE MANAGEMENT COUNCIL

Appeal of North Country Alliance for Balanced Change

Docket No. 25-08 WMC

**STATE'S MOTION TO DISMISS**

NOW COMES, the State of New Hampshire Department of Environmental Services ("Department"), by and through its counsel, the Office of the Attorney General (collectively, the "State"), and hereby moves to dismiss the appeal of North Country Alliance for Balanced Change ("Appellant") for lack of standing and lack of jurisdiction. In support hereof, the State avers as follows:

**I. Introduction**

This appeal arises from the Appellant's challenge to the Department's April 3, 2025 denial of Standard Permit Application No. 2023-66600 (the "Application") filed by Granite State Landfill, LLC ("GSL"). The April 3, 2025 denial of the Application ("Denial") was based on the Department's application of N.H. Admin. R. Env-Sw 304.06(d) and 305.03(b)(6), which, together with N.H. Admin. R. Env-Sw 102.65, provide that an application that becomes a dormant application, i.e. an application for which an applicant fails to submit the information required to complete the application within 12 months of the first incompleteness determination by the Department, is deemed denied.

Appellant does not challenge the Denial; indeed, Appellant is supportive of the Department's decision to deny the Application. Rather, Appellant is merely unhappy with the scope of the Department's findings that gave rise to the Denial. Accordingly, Appellant is not an aggrieved party that has standing to appeal pursuant to RSA 21-O:14, I-a(a). In addition, only "department decision[s]" may be appealed. RSA 21-O:14, I-a(a). Such decisions are limited

only to “a department permitting decision, a department enforcement decision, and any other [expressly appealable decision].” RSA 21-O:14, I(c). The “department permitting decision” in this matter was the Department’s denial of the Application, which was based on a determination that the Application was dormant and must be denied pursuant to N.H. Admin. R. Env-Sw 304.06(d) and 305.03(b)(6). The decision the Appellant attempts to appeal, however, is the Department’s underlying incompleteness determination. The Department’s incompleteness determinations, which occur during its review of an application, are not “department decision[s]” subject to appeal under RSA 21-O:14, I-a(a). Appellant’s May 5, 2025 Notice of Appeal (“NOA”) should be dismissed as a matter of law for these reasons.

## **II. Statement of Facts and Appellant’s Claims**

As Appellant provides in Section V of its NOA, the Department denied GSL’s Application via a letter dated April 3, 2025. *See* NOA, Exhibit A. The denial letter itself did two distinct things: first, it determined the Application to be incomplete and provided two reasons therefor; and second, it determined that the Application was a “dormant application” and thus denied by virtue of N.H. Admin. R. Env-Sw 304.06(d) and Env-Sw 305.03(b)(6). NOA, Exhibit A.

N.H. Admin. R. Env-Sw 304.06(d) provides that:

The applicant shall submit all information required to complete an incomplete application within one year from the date the application is initially determined incomplete in writing to the applicant by the department. An incomplete application that becomes a dormant application as defined in Env-Sw 102 shall be deemed denied without further action by the department.

N.H. Admin. R. Env-Sw 102.65 defines a “dormant application” to mean “an application for which the applicant has failed to submit the information required to complete the application within 12 months of the date the department first notifies the applicant that the application is

incomplete.” Finally, N.H. Admin. R. Env-Sw 305.03(b) provides, in relevant part, that a “requested approval shall be denied if... [t]he application becomes a dormant application.” Collectively, these rules may be referred to as the “Dormancy Rules.”

Distinct from the Dormancy Rules, are statutory requirements and regulations pertaining to an applicant’s obligation to submit a complete application. RSA 149-M:9, VIII sets forth application review timelines for the Department to abide by “once the department determines that an application is complete...” Accordingly, the Department has created rules for determining whether an application is complete and what process to follow in the event of a complete or incomplete application. *See* N.H. Admin. R. Env-Sw 304.04-304.07.

As the Appellant alleges, the Department issued its first notice of incompleteness on February 28, 2024 and GSL did not submit information required to complete the Application, which resulted in the Department’s determination that the Application was incomplete. NOA, pg. 3-4. The Department then determined that the Application had become dormant because information required to complete the Application had not been received within a year of the initial incompleteness determination and thus was deemed denied by virtue of the Dormancy Rules. *Id.*

Appellant’s NOA describes that “[w]hile the Appellant concurs with the Department’s decision to deny the Application based on dormancy and agrees with the Department’s two bases for concluding that the Application remained incomplete, the Appellant asserts that there were additional grounds for *incompleteness* that should have been included in the Denial...” NOA, pg. 4 (emphasis added). The Appellant takes issue with the fact that the Department “only provided two...grounds for deeming the Application *incomplete*.” NOA, pgs. 4-10 (emphasis

added). Appellant then provides a list of twelve other “bases on which the Department should have concluded that the Application was *incomplete*....” *Id* (emphasis added).

The Appellant concludes that “the Department reached the correct result in denying the Application based on dormancy, but the way in which it reached that conclusion was unlawful and unreasonable because it failed to identify several additional bases upon which the Application was *incomplete*.” NOA, pg. 10 (emphasis added). The Appellant ultimately requests that the Waste Management Council affirm the denial but with the additional alleged bases upon which the Application was incomplete. NOA, pg. 10.

### **III. Argument**

Appellant’s appeal should be dismissed in its entirety for lack of standing and for lack of jurisdiction by the Waste Management Council. Appellant, by its own admission, is not aggrieved by the Department’s denial of the Application but is instead supportive of it. Second, Appellant is not appealing the Department’s denial of the subject permit application but is challenging the Department’s underlying incompleteness determination, which is not an appealable “department decision” under RSA 21-O:14, I-a(a). As such, Appellant has no standing and the Council lacks jurisdiction to hear Appellant’s appeal.

#### **1. Standard of Review**

“The standard of review when considering a motion to dismiss is whether the plaintiff’s allegations are reasonably susceptible of a construction that would permit recovery. This threshold inquiry involves testing the facts alleged in the pleadings against applicable law.” *Cole v. Town of Conway*, 176 N.H. 560, 563 (2024) (internal citations omitted). When considering a motion to dismiss, one “assume[s] the plaintiff’s pleadings to be true and construe[s] all reasonable inferences in the light most favorable to [them].” *Skinny Pancake-Hanover v. Crotix*,

172 N.H. 372, 379 (2019) (internal citations omitted). However, the Hearing Officer “need not assume the truth of statements in the plaintiff’s pleading...that are merely conclusions of law.” *Id* (internal citations omitted).

RSA 21-O:14, I-a(a) provides that “[a]ny person aggrieved by a department decision may...appeal...to the council having jurisdiction over the subject matter of the appeal.” RSA 21-O:14, I-a(a). The Waste Management Council hears appeals of “department decision[s]” and considers whether the decision complained of is “unlawful or unreasonable.” RSA 21-O:14, I-a(a). The Waste Management Council may only consider “those grounds set forth in the notice of appeal.” *Id*. The Hearing Officer decides all questions of law in such appeals. RSA 21-M:3, IX(e).

## **2. Appellant Lacks Standing to Appeal the Department’s Denial of the Subject Permit Application**

Appellant, by its own admissions, is not aggrieved by the Department’s denial of the Application but is instead supportive of it. Rather, the Appellant “concurs with the Department’s decision to deny the Application based on dormancy....” NOA, pg. 4. Appellant attempts to establish its standing by indicating that many of its “members own property and recreate in the natural resources that *would be impacted by the landfill*.” *Id*. at 3. That is, Appellant alleges its members are aggrieved if the proposed landfill is permitted and developed. Here, however, as repeatedly referenced, the Department has denied the permit application for this landfill.

Pursuant to RSA 21-O:14, I-a(a), “[a]ny person aggrieved by a department decision may...appeal to the council having jurisdiction over the subject matter of the appeal...” The Supreme Court has “explained that a ‘person aggrieved’ includes any person who can show some ‘direct definite interest in the outcome of the proceeding.’” *Appeal of N.H. Dep’t of Envtl. Servs.*, 176 N.H. 379, 385 (2023) (quoting *Goldstein v. Town of Bedford*, 154 N.H. 393, 395

(2006)). The State concurs with the general arguments within Section III.B.i. of GSL's June 27, 2025 Motion to Dismiss on this point. By its own statements, the Appellant makes clear that it is in favor of the Denial. No outcome of Appellant's NOA would change that result – whether Appellant wins or loses its appeal, the Application would remain denied. Appellant's alleged harms potentially occur only if the Department approves the proposed landfill, which has not happened.

To the extent Appellant claims it must somehow preserve its claims, such argument is without merit. First, Appellant may attempt to intervene in the present appeal of the Denial by the applicant, GSL, that is currently pending before the Waste Management Council (Docket No. 25-07 WMC) and raise any arguments in support of the Denial there. Otherwise, to the extent GSL is successful in its appeal of the Denial within Docket No. 25-07 WMC and permit processing proceeds (or if GSL merely reapplies for its proposed landfill after either withdrawing its appeal or losing its appeal at the council), Appellant would have the right to appeal any permit issuance of the subject landfill to the extent any such approval occurs. Appellant loses no ability to raise any of its claims if this NOA is dismissed. Because Appellant is not “aggrieved by” the Denial and has no recognizable interest in the outcome of *this* proceeding, Appellant does not have RSA 21-O:14, I-a(a) standing to appeal and the NOA must be dismissed as a matter of law.

### **3. The Waste Management Council Lacks Jurisdiction to Hear Appellant's Appeal**

Pursuant to RSA 21-O:14, I-a(a), only “department decisions” are appealable. RSA 21-O:14, I(c) defines “department decision” to mean “a department permitting decision, a department enforcement decision, and any other decision made by the department that is expressly appealable to a council...” In turn, RSA 21-O:14, I(a) defines “department permitting decision” as “the department's final action on an application....”

The NOA begins with the following clarification of Appellant's position and claim on appeal: "While the Department reached the correct result [in denying the GSL Permit Application], its decision was nonetheless unlawful and unreasonable because it failed to identify all the bases upon which the application was *incomplete*." NOA, pg. 1 (emphasis added). Appellant next "asserts that there were additional grounds for *incompleteness* that should have been included in the Denial" as set forth in the NOA. *Id.* at 4 (emphasis added). Appellant therefore does not challenge the Department's Denial, which provided that the Application was denied "[b]ecause the applicant did not submit information necessary to complete the application within one year of [the Department's] initial determination of incompleteness, the application has been deemed denied in accordance with Env-Sw 304.06(d)." NOA, Exhibit A. Rather, Appellant seeks to add additional grounds to the Department's *incompleteness* determination, which preceded the Denial. Specifically, Appellant requests that the Waste Management Council "affirm the Denial *with the additional bases upon which the Application was incomplete*." NOA, pg. 10. Again, the Denial and the incompleteness determination are distinct albeit related events, as explained above. The Department did not deny the Application because it was incomplete. The Department denied the Application by virtue of the Dormancy Rules because information required to complete the application within one year of the first incompleteness determination had not been received as the final paragraph of the Denial makes clear. NOA, Exhibit A.

Incompleteness determinations as provided by RSA 149-M:9, VIII and N.H. Admin. R. Env-Sw 304.04-304.07, as discussed above, are not final actions on such applications and thus are not appealable. The State recognizes that in order for a party to challenge the present Denial, a party may need to argue that it has indeed submitted all information required to complete the application within the calendar year and that the Dormancy Rules did not apply and thus it was

unreasonable or unlawful for the Department to conclude otherwise. However, here, Appellant is not challenging the Denial as being unlawful and unreasonable – it is instead directly attacking the Department’s underlying incompleteness determination alleging it should have been made differently, which is not an appealable decision under RSA 21-O:14, I-a(a).

Because Appellant is not challenging the Denial but is instead seeking a different result regarding the Department’s incompleteness determination, Appellant has not appealed a “department decision” as required by RSA 21-O:14, I-a(a) and thus the Waste Management Council lacks jurisdiction to hear the appeal. Appeals of the Department’s administrative permit processing determinations, such as the Department’s incompleteness determinations, which are actions that do not constitute “final action[s] on an application,” are not allowed. RSA 21-O:14, I(a). As a matter of law, Appellant’s NOA must be dismissed.

WHEREFORE, the State respectfully requests that the Hearing Officer, pursuant to RSA 21-M:3, IX(e), dismiss Appellant’s NOA as a matter of law for lack of standing and for lack of jurisdiction.



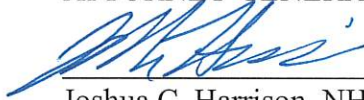
Respectfully submitted,

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF ENVIRONMENTAL  
SERVICES

By its Attorney,

JOHN M. FORMELLA  
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Date: July 17, 2025



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**Certificate of Service**

In accordance with N.H. Admin. R. Ec-Wst 201.03 and Ec-Wst 203.05, I certify that a copy of the foregoing has been emailed this day to the service list associated with this docket number.



Joshua C. Harrison