

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<https://www.courts.nh.gov>

Court Name: _____
Case Name: _____
Case Number: _____
(if known)

CASE STRUCTURING AND ADR ORDER
(See Superior Court Civil Rules 5 and 32)

1. Plaintiff's Counsel: Trial _____
At conference _____
2. Defendant's Counsel: Trial _____
At conference _____
3. Causes(s) of action: _____
Counterclaims _____
4. Insurance carrier: _____ Disclosure of policy limits by: _____
5. ☐ The parties consent to this case being transferred to the Business and Commercial Dispute Docket. A motion requesting this transfer shall be filed with the Court within 30 days. Upon receipt, the Clerk will submit the motion to the Merrimack Superior Court for ruling.
6. If defendant claims that unnamed parties are at fault (see DeBenedetto v. CLD Consulting Engineers Inc., 153 N.H. 793 (2006)), defendant shall disclose the identity of every such party and the basis of the allegation of fault no later than _____. Plaintiff shall then have 30 days from the date of disclosure to amend the initiating pleading.
7. Is there an agreement to waive statutory expert disclosure requirements under RSA 516:29-b?
☐ Yes ☐ No
8. ☐ The parties have exchanged e-mail addresses and agree that the e-mail service of pleadings between the parties shall be considered in compliance with Superior Court Administrative Order 46.
9. Plaintiff's disclosure of experts and reports due: _____
Defendant's disclosure of experts and reports due: _____
10. The following deadlines apply:
All interrogatories propounded by _____
All depositions to be completed by _____
All dispositive motions to be filed: no later than 120 days prior to the trial
Completion of all discovery: _____
Deadline for filing all other pre-trial motions: 14 days prior to trial management conference
Deadline for filing of witness and exhibit lists: 14 days prior to trial management conference
11. Jury trial requested? ☐ Yes ☐ No
12. If jury trial previously demanded, is it now being waived? ☐ Yes ☐ No
13. Requested trial date: _____ Estimated trial length: _____
14. Jury trial assignment: Trial Mgt Conf.: _____ Jury Selection: _____
15. Bench trial assignment: Trial Mgt Conf.: _____ Week of: _____

Case Name: _____

Case Number: _____

CASE STRUCTURING AND ADR ORDER

16. Trial counsel and self-represented parties shall appear at the trial management conference and be prepared to address settlement potential. Parties represented by counsel shall be available for contact by telephone during the trial management conference. All pending pretrial motions shall be heard at the trial management conference, or as scheduled by the court. Failure to appear at the trial management conference or trial may result in dismissal, default or other sanctions.

ADR (Alternative Dispute Resolution)

Superior Court Civil Rule 32 requires the Court to assign all civil cases to ADR unless the parties represent by joint motion they have engaged in formal ADR before a neutral third party before filing suit or the Court exempts the parties by motion for good cause shown.

17. **ADR Order:**

- ☐ The parties stipulate and agree to an ADR process. **OR**
☐ The parties do not agree to an ADR process and request the Court complete this section.

A. Type of ADR

☐ **Mediation** ☐ **Neutral Case Evaluation** ☐ **Arbitration**

☐ **Other Neutral Third Party Process:** _____

Name of person chosen to conduct ADR: _____ ☐ Paid ☐ Volunteer

Address: _____

Phone: _____ Email: _____

Names of alternates: 1. _____ 2. _____

B. Scheduling your ADR Session: Date ADR shall be completed by _____

You and the other side must contact the person selected to schedule the ADR session. Please contact the neutral *as soon as possible* after the ADR Order is approved. If the parties and counsel decide to use an alternate, see court-approved here:

[Civil Cases | New Hampshire Judicial Branch \(nh.gov\)](#)

C. ADR Reporting: The Plaintiff shall file a copy of the ADR report with the court within 30 days of the ADR session. If the ADR report is not timely filed, the court may schedule a show-cause hearing to determine the status of the ADR process and to impose sanctions appropriate to the circumstances, if necessary.

18. ☐ The Court has determined the parties are exempt from Rule 32 ADR.

19. Other orders:

Name of Filer

Signature of Filer

Date

Law Firm, if applicable

Bar ID # of attorney

Telephone

Address

E-mail

City

State

Zip code

Case Name: _____

Case Number: _____

CASE STRUCTURING AND ADR ORDER

Name of Filer

Signature of Filer Date

Law Firm, if applicable Bar ID # of attorney

Telephone

Address

E-mail

City State Zip code

Name of Filer

Signature of Filer Date

Law Firm, if applicable Bar ID # of attorney

Telephone

Address

E-mail

City State Zip code

Name of Filer

Signature of Filer Date

Law Firm, if applicable Bar ID # of attorney

Telephone

Address

E-mail

City State Zip code

SO ORDERED:

Date

Presiding Justice

Attachment A

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 217-2025-CV-00316

Granite State Landfill, LLC

v.

State of New Hampshire Department of Environmental Services

STATE’S PROPOSED CASE STRUCTURING ORDER SUPPLEMENT

NOW COMES the Respondent, the State of New Hampshire Department of Environmental Services (“the Department”), by and through its counsel the Office of the Attorney General (collectively, the “State”), and hereby submits this State’s Proposed Case Structuring Order in accordance with N.H. Super. Ct. R. 5. In support hereof, the State avers as follows:

1. Petitioner, Granite State Landfill, LLC (“GSL”) filed its Petition for a Declaratory Judgment on April 8, 2025 (“GSL Petition”). GSL seeks a declaratory judgment, pursuant to RSA 541-A:24, that N.H. Admin. R. Env-Sw 304.06(d) and Env-Sw 305.03(b)(6) are ultra vires and void “because they exceed [the Department’s] statutory authority.” GSL Petition, pg. 6. GSL does not seek a declaratory judgment regarding the interpretation of the rules, that the Department’s application of the rules is unlawful as applied to GSL, nor that the rule was unlawfully promulgated and invalid as a result.
2. The State filed its Answer on May 9, 2025.
3. Following a short extension of time, the State, through undersigned counsel, and GSL, through its counsel, met and conferred in accordance with N.H. Super. Ct. R. 5 on June 5-6, 2025 to agree on a stipulated proposed case structuring order.

4. The parties have been unable to agree on a proposed case structuring order due to a fundamental disagreement on the necessity of discovery in this matter.¹ Counsel for GSL believes discovery is necessary while the State believes no discovery is needed based on the sole and purely legal ultra vires claim set forth in the GSL Petition. Because of the impact on the case structuring order resulting from such a disagreement, the parties are proceeding with the filing of separate proposed case structuring and ADR orders.

5. “[A]dministrative rules may not add to, detract from or modify the statute they are intended to implement’.... Thus, the determination of whether an administrative rule is ultra vires involves statutory interpretation.” *Appeal of Mader 2000 Trust*, 174 N.H. 520, 525 (2021) (quoting *Appeal of Mays*, 161 N.H. 470, 473 (2011) and citing *In re A.D.*, 172 N.H. 438, 441 (2019)). The sole claim in GSL’s Petition requires only that the Court review the enabling statute involved and compare it to the challenged administrative rules. Discovery is therefore not relevant and not necessary for the resolution of the claims made in the GSL Petition. As such, the State believes the declaratory judgment claim may be resolved by dispositive motions without the need for any discovery or scheduling of trial and requests that the case proceed with the filing of cross motions for summary judgment on the schedule set forth below. The State also requests that pursuant to N.H. Super. Ct. R. 1(d), that the applicable rules regarding discovery be waived in this matter.

¹ The Parties do, however, agree that the Court should exempt the Parties from the Rule 32 ADR requirements for good cause. Please see the second supplement to the State’s Proposed Case Structuring Order provided as Attachment B, which provides an assented-to motion to waive the ADR requirements in this matter.

Schedule for Filing of Cross-Motions for Summary Judgment

EVENT	FILING DATE (ON OR BEFORE)
Cross-Motions for Summary Judgment	7/29/2025
Objections to Motions for Summary Judgment	8/29/2025
Replies to Objections to Motions for Summary Judgment	9/15/2025

WHEREFORE, the State respectfully requests that this Honorable Court:

- A. Order that, pursuant to N.H. Super. Ct. R. 1(d), no discovery is needed in this matter and that applicable rules regarding discovery are waived as set forth in the State's Proposed Case Structuring and ADR Order;
- B. Enter the above dates regarding the filing of cross motions for summary judgment; and
- C. Grant such other relief as this Court deems just.

Respectfully submitted,

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL
SERVICES

By and through its attorney

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: June 6, 2025

/s/ Joshua C. Harrison
Joshua C. Harrison, NH Bar #269564
Assistant Attorney General
Environmental Protection Bureau
New Hampshire Department of Justice
Office of the Attorney General
1 Granite Place South
Concord, New Hampshire 03301
(603) 271-3679
Joshua.C.Harrison@doj.nh.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via this Court's electronic filing service on counsel for the Plaintiffs, Cleveland Waters & Bass, P.A. and Lehmann Major List PLLC.

/s/ Joshua C. Harrison

Joshua C. Harrison, NH Bar #269564

Attachment B

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 217-2025-CV-00316

Granite State Landfill, LLC

v.

State of New Hampshire Department of Environmental Services

**SECOND SUPPLEMENT TO STATE’S PROPOSED CASE STRUCTURING AND ADR
ORDER AND MOTION TO WAIVE RULE 32 ADR REQUIREMENTS FOR GOOD
CAUSE**

NOW COMES the Respondent, the State of New Hampshire Department of Environmental Services (“the Department”), by and through its counsel the Office of the Attorney General (collectively, the “State”), with the assent of the Petitioner, Granite State Landfill, LLC (“GSL”) and hereby submits this second supplement to the State’s Proposed Case Structuring and ADR Order requesting that the Court waive the Rule 32 ADR requirements for good cause. In support hereof, the Parties aver as follows:

1. The Parties conclude that the legal issues in this matter are ill-suited for resolution through ADR and thus respectfully request that this Court waive the Rule 32 ADR requirements for good cause pursuant to N.H. Super. Ct. R. 32(a)(2)(b).

WHEREFORE, the Parties jointly request that this Honorable Court:

- A. Exempt the Parties from the Rule 32 ADR requirements; and
- B. Grant such other relief as this Court deems just.

Respectfully submitted,

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL
SERVICES

By and through its attorney

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: June 6, 2025

/s/ Joshua C. Harrison

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via this Court's electronic filing service on counsel for the Plaintiffs, Cleveland Waters & Bass, P.A. and Lehmann Major List PLLC.

/s/ Joshua C. Harrison

Joshua C. Harrison, NH Bar #269564