

STATE OF NEW HAMPSHIRE

WETLANDS COUNCIL

DOCKET NO. 24-21 WtC

IN RE APPEAL OF DALTON CONSERVATION COMMISSION

Dalton Conservation Commission's
Objection to Motion to Dismiss

Introduction

Casella, which operates NCES' Bethlehem landfill facility and is the parent of the Granite State Landfill, LLC ("GSL" or "Casella"), is the Applicant for the shoreland protection permit in this case. Casella's overall project entails the creation of a new landfill in Dalton, N.H., adjacent to Forest Lake. In moving to dismiss, the Applicant takes the position that the permit in this case was merely relating "to safety improvements along N.H. Route 116 in Bethlehem" and that, as a consequence, the Dalton Conservation Commission has no standing in this matter.

This is sleight of hand. The "safety improvements" requiring a shoreland permit in this case are for a driveway accessing the proposed Dalton landfill site through the Town of Bethlehem. The driveway's mouth joins Route 116 in Bethlehem but virtually its entire length, together with the landfill project it would provide access to, is in Dalton. Dalton is a "Host Community" for the Granite State Landfill project. This is, in other words, a smaller part of a much larger project that the State has already determined to be a project of regional significance. See Motion at 2 (acknowledging that the Shoreland Permit for work at the mouth of its driveway on Route 116 is a required permit "to construct and operate a landfill"). Both this permit and the broader Granite State Landfill project have been deemed to affect the Town of Dalton and its natural resources, and the Dalton landfill project, of which this is but a component, must be considered in the aggregate. *See* June 24, 2024 Request for More Information, Standard Dredge

and Fill Wetlands Permit Application (confirming that the aggregate project definitions under RSA 482-A:11, V apply to Casella's Dalton landfill project, of which the present Shoreland Permit Application is a part).

Since this shoreland permit is an essential component of the larger landfill project proposed for the Town of Dalton, the Dalton Conservation Commission has standing as the municipal entity in the Town of Dalton with the duty to ensure "the proper utilization and protection of the natural resources and for the protection of watershed resources" in Dalton. RSA 36-A:2.

Argument

I. The Dalton Conservation Commission has standing.

The Dalton Conservation Commission has standing in this matter by virtue of its statutory duty to "ensure the proper utilization and protection of the natural resources and for the protection of watershed resources." RSA 36-A:2. The work to be performed relating to the Shoreland Permit on appeal is essentially this: to create the mouth of a driveway spilling out onto Route 116 in Bethlehem, through which all the traffic from the proposed Granite State Landfill in Dalton would come and go. Without the actual landfill being created and permitted, the driveway permit (and the work under the Shoreland Permit) is meaningless. Similarly, the proposed access to and from Route 116 is necessary for the landfill to go forward. Without the driveway, there can be no landfill. The Applicant will not be performing the Shoreland Permit work in a vacuum. If the landfill is not ultimately permitted, then the Applicant will not need to reconfigure Route 116 for a massive new driveway. In other words, this case is not about multiple projects requiring different permits; it is one project, requiring an array of relevant permits. See

Application (identifying Wetlands Permit and Alteration of Terrain Permit as “permits that have been submitted or will need to be submitted to the department for the same project.”).

As the targeted municipal host of the Granite State Landfill, the Town of Dalton has a cognizable interest in the outcome of a Shoreland Permit that would allow the landfill to be accessed, *i.e.*, to go forward or not. The proposed landfill requires dredge and fill and solid waste permits that will have effects on the natural resources and watershed resources of the Town of Dalton. If the driveway is permitted, the increase in traffic volume, size, weight and speed will affect the roads, the natural resources and the sensitive watersheds of the Town of Dalton. Since the Dalton Conservation Commission is the body charged with the proper utilization and protection of those resources as a matter of law, RSA 36-A:2, then it must have notice of permits that relate to the proposed landfill in order to discharge those duties. And, lest there be any confusion about whether the Dalton Conservation Commission’s duties are implicated by the landfill project, the wetlands statute does require notice to the Conservation Commission for dredge and fill permit application that forms its heart. RSA 482-A:8. Because the Shoreland Permit in this case is one component of this larger project, the proposed driveway and the Shoreland Permit will ineluctably concern (and in the view of the Dalton Conservation Commission, harm) the natural resources and watershed resources of Dalton. *See* N.H. Dept. of Transportation Driveway Permit Application (noting that the driveway will access 104 Douglas Drive, Dalton, N.H.) (*citing* RSA 263:13, III (referring to a proposed commercial or industrial enterprise as “a single parcel of land”)). Because the Dalton Conservation Commission’s duties under the law are directly implicated by the Department’s approval in this case, it has standing to appeal the Department’s decision.

Casella's effort to limit standing solely on the basis of the notice statute under RSA 483-B is also misplaced given that the Shoreland Permit is but one facet of a much larger landfill project affecting multiple communities, but in particular, the Town of Dalton. The notice provisions of RSA 483-B, concerning shoreland water quality protection, are spelled out in RSA 453-B:5-b, IV ("At the time of the permit application, the applicant shall provide postal receipts or copies, verifying that the governing body of the municipality or municipalities in which the property is located and the local river management advisory committee, if the project is within a designated river corridor defined in RSA 483:4, XVIII and contains river and river segments designated in RSA 483:15, and all abutters have been notified of the application by certified mail."). While it is true that RSA 483-B:5-b only requires notice to the "governing body of the municipality or municipalities in which the property is located," RSA 483-B:5-b is part of a much broader statutory scheme to protect New Hampshire's waters. That statutory scheme is found under Title L: Water Management and Protection and includes wetlands protections (RSA 482-A), river protections (RSA 483), lake protections (RSA 483-A), groundwater protection (RSA 485-C), coastal marine protections (RSA 485-G), as well as shoreland protections (RSA 483-B). RSA 483-B specifically requires that decisions made on shoreland permits serve to:

- I. Further the maintenance of safe and healthful conditions.
- II. Provide for the wise utilization of water and related land resources.
- III. Prevent and control water pollution.
- IV. Protect fish spawning grounds, aquatic life, and bird and other wildlife habitats.
- V. Protect buildings and lands from flooding and accelerated erosion.
- VI. Protect archaeological and historical resources.
- VII. Protect commercial fishing and maritime industries.
- VIII. Protect freshwater and coastal wetlands.
- IX. Control building sites, placement of structures, and land uses that may potentially damage the public waters.
- X. Conserve shoreline cover and points of access to inland and coastal

waters.

XI. Preserve the state's lakes, rivers, estuaries and coastal waters in their natural state.

XII. Promote wildlife habitat, scenic beauty, and scientific study.

XIII. Protect public use of waters, including recreation.

XIV. Conserve natural beauty and open spaces.

XV. Anticipate and respond to the impacts of development in shoreland areas to the extent they may potentially damage the public waters.

XVI. Provide for economic development in proximity to waters.

RSA 483-B:2.

Overarchingly, the purpose section of RSA 483-B recognizes that New Hampshire shorelands are “among [the State’s] most valuable and fragile resources and their protection is essential to maintaining the integrity of public waters.” RSA 483-B:1, I. Furthermore, the legislature has found that “[t]he public waters of New Hampshire are valuable resources held in trust by the state. The state has an interest in protecting those waters and has the jurisdiction to control the use of the public waters and the adjacent shoreland for the greatest public benefit... There is great concern throughout the state relating to the utilization, protection, restoration and preservation of shorelands because of their effect on state waters.” *Id.* at II, III. Finally, and most importantly, “[u]nder current law the potential exists for *uncoordinated, unplanned and piecemeal development* along the state's shorelines, which could result in significant negative impacts on the public waters of New Hampshire.” *Id.* at IV. Thus the signal purpose of RSA 483-B was to prevent “uncoordinated, unplanned and piecemeal development.” *Id.*

Therein lies the error in the Applicant’s Motion to Dismiss. The Applicant argues that the several water protection schemes under Title L: Water Management and Protection are different statutory frameworks serving different goals, so no weight should be given to the fact that the Granite State Landfill project, as a whole, must adhere to the protections of RSA 482-A,

which in the case of notice are more stringent than those under RSA 483-B:5-b, IV. Specifically, RSA 483-B:5-b, IV requires notice to the governing body of the municipality where the project is proposed. *Id.*¹ Whereas under RSA 482-A:8, notice of a DES hearing concerning work in wetlands—which is one of the major permits required for the Granite State Landfill, must also go to “the municipal conservation commission[.]” However, under RSA 483-B:3 (**Consistency Required**), II, “When the standards and practices established in this chapter conflict with other local or state laws and rules, *the more stringent standard shall control.*” *Id.* (emphasis added). Thus, in a case where the Shoreland Permit is but one part of a larger whole, then the stricter notice standards that govern the whole project should govern the Shoreland Permit aspects of it, if it is to have the “consistency required” by RSA 483-B:3.

The Applicant’s effort to parse away the unity of its overall project by seizing on statutory distinctions is reflective of the Dalton Conservation Committee’s concern in this case that the Applicant’s purpose and objective is to disaggregate the pieces of its unwelcome landfill project and understate the enormity of the impact. Such “uncoordinated, unplanned and piecemeal” consideration could not be further from the objective of the legislature in enacting the Shoreland Permit and consistency requirements of RSA 483-B.

II. The Department considers the Granite State Landfill Project to be one unified project.

¹ As a matter of fact, in this case notice was not provided to the Dalton Selectboard either. This was error. Had even the Dalton Selectboard been duly noticed, the Town’s Administrative Assistant would have forwarded the notice to the Dalton Conservation Committee which then could have submitted public comment. Although the Applicant has submitted a letter purportedly from the Dalton Selectboard, the letter signals only that it has not authorized the Dalton Conservation Commission to appeal the Applicant’s DES Shoreland Permit—something it has no control over and which has no relevance to the Hearing Officer’s decision in this case. The Selectboard does not seek to weigh in on the merits of the case, nor does it argue that the Dalton Conservation Commission has no injury in the case.

If the Dalton Conservation Commission has cognizable interest in the landfill project as a whole, which it unquestionably does, then the Department cannot permit the Applicant to exclude the Town of Dalton and the Dalton Conservation Commission from a constituent permitting process. The Department has recognized the Granite State Landfill project as one that requires aggregate consideration. For example, in a June 24, 2024 deficiency letter relating to the Applicant's dredge and fill permit, the Department asked the Applicant:

Please provide an overview of the future project plans that includes all lots for the overall development scheme to inform the assessment of avoidance and minimization. After the fact (ATF) impacts to be retained for the pre-cast concrete company roadway are outside the landfill project footprint and are indicative of a larger overall development scheme. As commented in BCC and DCC reports, there is both a concern regarding piecemeal of the application and expansion of the landfill. The Department is unable to assess compliance with the avoidance and minimization requirements without an overall scheme of development for the lots in question. Please note that under RSA 482-A:11, V, the Department is required to consider a series of projects composing an overall scheme of development in the aggregate even if completed by multiple developers.

June 24, 2024 Letter DES to John Gay (Applicant). Similarly, on August 26, 2021, the Department told the application it had to allow a “holistic assessment of impacts on water resources” and to do so required that the “Wetlands application be submitted in connection with other required applications under the NHDES Water Division’s purview and related federal programs.” August 26, 2021 Letter DES to John Gay (Applicant). Thus, the Department already considers the GSL landfill project to be an “overall scheme of development,” substantial portions of which have an undisputed requirement to notice the Dalton Conservation Committee for relevant investigation and hearings. *E.g.* RSA 482-A:8; RSA 482-A:11. The Department cannot take that position as to one set of water protection permits and reject or ignore that position for the Shoreland Permit. *See* RSA 483-B:3 (requiring that shoreland permitting be

performed consistently with the intent of the chapter, including the application of more stringent standards when they exist in other statutes). If the Dalton Conservation Commission is party to the proceedings concerning one or more of the required permits for the Applicant's landfill, RSA 482-A:11, then it must have a cognizable interest that gives it standing concerning the other, unseverable aspects of the overall scheme of development—including this Shoreland Permit.

III. Both RSA 483-B:5-b and the Shoreland Protection Rules do not require permits for projects that are subject to permitting under RSA 482-A, which includes minimization and avoidance requirements.

RSA 483-B:5-b, IV notes: "Impacts in the protected shoreland that receive a permit in accordance with RSA 482-A and commercial or industrial redevelopment in accordance with RSA 485-A:17 shall not require a permit under this section." *See* Env-Wq 1406.02(b)(2)(a). Thus, contrary to the assertions of the State and the Applicant, the driveway and its Shoreland Permit could have, and should have, been part of a universal application under RSA 482-A for the landfill project in Dalton of which this driveway construction is a part—indeed, it is a part of the landfill project *sine qua non*. Without the driveway, there is no landfill project. Not only would this have been the proper response for what is, at the end of the day, a single project; but it would have provided the stricter standards and protections of RSA 482-A, including avoidance and minimization criteria. *See* RSA 483-B:3, II (consistency and control under the stricter standard).

The reason that the Applicant did not do this is that it is trying to thread the needle by pretending that the landfill is only in the Town of Dalton, and the driveway project is only in the Town of Bethlehem. This allows the Applicant not to serve notice of landfill-related permits to the Town of Bethlehem, and not to serve notice of shoreland-related permits to the Town of

Dalton. This is important for the Applicant because it reached agreement with the Town of Bethlehem in relation to its existing landfill in that town operated by North Country Environmental Services. As part of its agreement with the Town of Bethlehem, GSL's parent, Casella, agreed that neither it nor any of its subsidiaries would attempt to site another landfill in Bethlehem. See Env-Sw 303.14(b)(8) (requiring "compliance with all terms and conditions under every ... settlement agreement relating to programs implemented by the department."). By presenting its present project as "just a driveway in Bethlehem" requiring an independent Shoreland Permit artificially disassociated from the larger landfill project of which it is the essential and sole access point, the Applicant is ignoring its agreements with the Town of Bethlehem. It does this because it knows that considering the Shoreland Permit to be part of the larger landfill project will make its non-compliance with its Bethlehem agreements evident.

It is exactly for scenarios like this one that RSA 483-B was enacted: to prevent Applicants from playing communities off against one another, obtaining piecemeal relief that masks the regional impact of a project, and obtaining through loopholes and subtleties what could not be obtained otherwise. For these reasons, and to honor the letter and spirit of RSA 483-B and RSA 482-A, the Motion to Dismiss should be denied.

Respectfully submitted,
Dalton Conservation Commission

By its Attorneys,

Date: March 28, 2025

By: /s/ Jeremy D. Eggleton
Jeremy D. Eggleton, Esq.
NH Bar #18170
45 South Main Street
PO Box 3550

Concord, NH 03302
603-224-2381
jeggleton@orr-reno.com

CERTIFICATION OF SERVICE STATEMENT

I hereby certify that this Assented-to Motion, has/had been served in accordance with Ec-Wet 201.03 and Ec-Wet 203.01(d); (2) was/has been served upon persons appearing on the attached Service List via electronic mail and/or First Class Mail on March 12, 2025 and (3) otherwise meets the requirements set forth in Ec-Wet 203.01(b)(5).

Date: March 28, 2025

/s/ Jeremy D. Eggleton
Jeremy D. Eggleton