STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WASTE MANAGEMENT COUNCIL

Docket No. 25-08 WMC

In re: North Country Alliance for Balanced Change Appeal

MOTION TO DISMISS

Granite State Landfill, LLC ("GSL") moves the council, through its hearing officer, to dismiss this appeal because North Country Alliance for Balanced Change ("NCABC") lacks standing under RSA 21- O:14, I-a, and the Constitution of the State of New Hampshire to appeal the New Hampshire Department of Environmental Services' ("NHDES") denial (the "Denial") of GSL's Solid Waste Permit Application #2023-66600 (the "Application") as dormant. This motion rests on the following grounds:

1. No Injury in Fact: NCABC has suffered no injury-in-fact from the Denial. Indeed, NCABC expressly agrees with that decision.
2. No Redressable Harm: NCABC cannot establish redressability, as no possible outcome of this appeal would inflict any harm on NCABC.
3. No Organizational Standing: NCABC fails to satisfy the requirements for organization standing because it identifies no specific members who were harmed by the Denial.
4. No Generalized Grievance Standing: NCABC's generalized opposition to development in the North Country is a policy preference, not a direct and definite interest sufficient to confer standing.

I. Introduction

Only a "person aggrieved" by an agency decision may appeal that decision. RSA 21-O:14, I-a ("[a]ny person aggrieved by a department decision may…appeal to the council having

jurisdiction over the subject matter of the appeal."). In this context, to be "aggrieved" means the party must allege a concrete injury in fact *caused by* the NHDES decision under appeal. NCABC is attempting to appeal a decision that gave it exactly what it wanted – denial of GSL's permit application. NCABC's purported bases for standing boil down to two meritless theories: (1) an asserted organizational mission against *any* development in the North Country; and (2) an undefined injury to some of NCABC's unidentified and unenumerated members. NCABC further claims it was *somehow* injured by NHDES's decision because the Denial did not state every conceivable reason why the Application was incomplete – a procedural gripe about decisional hygiene, not a genuine harm. In truth, NCABC has suffered no injury from the Denial, and its broad ideological opposition to the project does not transform it into an aggrieved party. NCABC's lack of any concrete stake in the outcome is fatal to its appeal, and its appeal must therefore be dismissed in its entirety.

II. Statement of Facts

GSL seeks to develop a landfill located in Dalton, New Hampshire. To construct and operate the landfill, GSL must obtain a permit under the State of New Hampshire's (the "State") solid waste statutes and rules. GSL filed an Application for a standard solid waste permit on October 16, 2023. NHDES never deemed the Application complete, and no public hearing was ever held on it. After GSL responded to four "incompleteness" letters, NHDES denied the Application based solely on procedural grounds, claiming that the application was dormant under the solid waste rules.

GSL appealed the Denial in a separate proceeding, seeking to reverse NHDES's decision. *See* Docket No. 25-07 WMC – *Appeal of Granite State Landfill, LLC*. A successful appeal by GSL does not result in a permit application approval. Rather, it would only mean that GSL can resume

its pursuit of the permit through the application process. NCABC has similarly appealed the Denial, despite the fact that it agrees with NHDES's decision. NCABC's theory appears to be that NHDES did not go far enough in justifying the Denial. In other words, NCABC wanted NHDES to list even more reasons why the Application was incomplete. Critically, however, NCABC will only suffer any harm if the proposed landfill is ultimately constructed. At this point, GSL has no permit to build the landfill, and even if GSL's own appeal succeeds, it would merely return to the application process, not obtain an immediate construction approval. Moreover, the Denial was without prejudice; GSL remains free to submit a new application at any time. In short, NCABC is attempting to appeal a *favorable* outcome, and an affirmance of the Denial will not definitively prevent the landfill's construction. Thus, NCABC's appeal is fundamentally flawed at the outset.

III. Argument

A. *Governing Principles for Standing*

To have standing to appeal, an appellant must have been a "person aggrieved" by the decision. RSA 21-O:14, I-a ("[a]ny person aggrieved by a department decision may . . . appeal to the council having jurisdiction over the subject matter of appeal."). New Hampshire law defines "person aggrieved" as a person *directly affected* by the challenged administrative action, one who has a direct and definite interest in the outcome, not simply all persons in a community who feel they are hurt by the decision. *Weeks Restaurant Corp. v. City of Dover*, 119 N.H. 541, 544-45 (1979). *Weeks* also laid out a non-exhaustive list of factors to weigh for or against a finding of standing. *Id.* This list includes (1) proximity of the plaintiff's property to the site for which approval is sought, (2) the type of change proposed, (3) the immediacy of the injury claimed, and (4) the plaintiff's participation in the administrative hearings. *Id*.

In the decades since *Weeks*, the New Hampshire Supreme Court has repeatedly reaffirmed that standing requires an appellant to show a concrete "injury in fact" caused by the agency's decision and that the appellant has been "directly affected" by it. *Appeal of Richards*, 134 N.H. 148, 154 (1991). In other words, a party must demonstrate that the decision inflicted an "injury in fact" on that party, meaning "a legal injury against which the law was designed to protect." *Roberts v. General Motors Corp.*, 138 N.H. 532, 535 (1994). Speculative or indirect harms will not suffice. *Golf Course Investors of NH, LLC v. Town of Jaffrey*, 161 N.H. 675, 683-84 (2011) (appellants' speculation that the decision would result in increased traffic and noise did not grant standing since it alleged no direct and definite injury). Simply having a general interest or policy preference about an issue does not confer standing. *Caspersen v. Town of Lyme*, 139 N.H. 637, 640-41 (1995) (party's "general interest" in effect of zoning amendment on "divers[ity] of community" insufficient to create standing; ordinance must actually affect party's property). Likewise, a "generic interest in seeing the law enforced" is insufficient." *Goldstein v. Town of Bedford*, 154 N.H. 393, 394 and 396 (2006); *see also Golf Course Investors*, 161 N.H. at 684 (same); *Petition of Lath*, 169 N.H. 616, 621 (2017) (same). The point is well-settled: "mere interest in a problem, no matter how longstanding the interest or qualified the person, does not confer standing by itself. *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972).

In addition, standing doctrine requires that the alleged injury be redressable by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *Duncan v. State*, 166 N.H. 630, 642 (2014) (superseded on other grounds by amendment to the State Constitution as discussed in *Carrigan v. New Hampshire Dep't of Health and Human Servs.*, 174 N.H. 362 (2021)). If the court (or council) cannot grant relief that would remedy appellant's injury, then no standing exists.

When a motion to dismiss challenges a party's standing, the burden falls on the party asserting jurisdiction to prove its standing. *Ossipee Auto Parts, Inc. v. Ossipee Planning Bd.*, 134 N.H. 401, 403-04 (1991) (once standing is challenged, plaintiff must demonstrate his right to claim relief); *Joyce v. Town of Weare*, 156 N.H. 526 (2007) (same). Crucially, the claimed injury in fact cannot be based on hypothetical facts or contingent on future events. *Asmussen v. Commissioner, NH Dept. of Safety*, 145 N.H. 578, 587 (2000); *Hannaford Bros. Co. v. Town of Bedford*, 164 N.H. 764 (2013) (claimed injury too speculative to establish standing). There is no standing when a claimed injury depends on something that may or may not happen in the future. *Appeal of Campaign for Ratepayers' Rights*, 142 N.H. 629, 632 (1998) (PSNH ratepayers have no standing to challenge public utilities commission decision that would not result in rate increase until later rate-setting proceeding); *In re. Stonyfield Farm, Inc.*, 159 N.H. 227, 231-32 (2009) (same).

If the party cannot show that it is a "person aggrieved" by the decision, then it lacks standing, the adjudicative body does not have subject matter jurisdiction, and the case must be dismissed. *Libertarian Party of N.H. v. Secretary of State*, 158 N.H. 194, 195-96 (2008) (standing necessary to invoke constitutional authority of judiciary); *Asmussen*, 145 N.H. at 588 (lack of standing defeats subject matter jurisdiction).

B. *North Country Alliance for Balanced Change Lacks Standing*

NCABC's attempt to establish standing fails on every front. NCABC claims it possesses standing on two theories: (1) that as an organization it opposes development in the North Country; and (2) that it has organizational standing based on the alleged standing of some unidentified members. *See generally*, Notice of Appeal. These alleged grounds for standing relate to hypothetical harms from the future construction of the proposed landfill. Notably, NCABC does not allege any injury resulting from the Denial. In fact, NHDES's decision gave NCABC *exactly*

what it claims to want: denial of the Application. NCABC has suffered no cognizable injury whatsoever from the Denial, it has not shown or even alleged that all or most of its members are adversely affected by the Denial, and it identifies no direct, particularized interest of its own that the Denial has harmed. In short, NCABC is not a "person aggrieved" by the decision under any theory, and its appeal must be dismissed.

i. North Country Alliance for Balanced Change Lacks Standing Because it has no Cognizable Injury-in-Fact

The fundamental defect for NCABC's theories of standing is that it cannot identify any actual injury that it has suffered as a result of the Denial. NCABC's Notice of Appeal complains that NHDES's decision was unlawful because it failed to identify every possible reason for denial that NCABC alleges existed. Yet, when attempting to articulate its grounds for standing, NCABC changes course and claims that potential impacts from the landfill's construction harms itself and its members. In other words, the only "harm" NCABC alleges is the harm that would occur if the landfill is built in the future. That hypothetical harm is in no way connected to NHDES's denial of the Application. NCABC is complaining about a decision that prevents its feared injury.

Anticipating this obvious disconnect, NCABC might argue that it is nevertheless harmed because GSL is appealing the Denial and, if GSL's appeal succeeds, GSL will be allowed to continue pursuing the Application. This argument is as fallacious as it is speculative. It relies on a string of future events: first, that the council or Supreme Court might reverse the Denial, and second, that GSL might eventually obtain approval and build the landfill. NCABC assumes that GSL merely continuing the application process is itself a cognizable harm. That is preposterous. A possible future council decision allowing the permit process to continue is not a direct or immediate injury to NCABC at all – it is a *future contingency* that may never occur. Such an attenuated, hypothetical chain of events is far too remote to confer standing. New Hampshire law

is clear that an alleged injury "that occurs in the future, based on some later event," is not sufficient for standing. *Appeal of Campaign for Ratepayers' Rights*, 142 N.H. 629, 632 (1998). *See also In re Stonyfield Farm, Inc.*, 159 N.H. 227, 231-32 (2009).

Even if one indulged NCABC's speculative theory for argument's sake, its claim still fails. The only result of the alleged harm NCABC claims is that GSL continues with the Application process. NCABC cannot credibly claim that it is injured simply because an applicant continues an application process. NCABC's entire theory of injury hinges solely on the proposed landfill *eventually* being built. But the mere possibility of a future project being approved is too attenuated from the present Denial to support standing.[1] Being forced to tolerate the continuation of an application process is not a concrete injury. Ultimately, NCABC's argument for standing fails because no actual harm exists at this juncture.

Furthermore, standing requires an actual or imminent injury, not one that is conjectural or merely hypothetical. *See Injury*, Black's Law Dictionary (12th ed. 2024) ("An actual or imminent invasion of a legally protected interest, in contrast to an invasion that is conjectural or hypothetical."). NCABC can show nothing of the sort. By NCABC's own admission in its Notice of Appeal, it "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." This admission is dispositive. NCABC openly agrees with the very decision it now seeks to appeal. There is no agency action at issue that is adverse to any possible interest of NCABC. One cannot be "aggrieved" by a result one would advocate for and agree with. Without

[1] It should also be noted that the Application was denied on a procedural ground: that it was incomplete. The effect of such a determination does not preclude GSL from resubmitting its application. Thus, even if the harm were not attenuated, NCABC does not have the right to categorically prevent GSL from submitting an application. There is no harm arising from any possible decision of the WMC and NCABC's alleged harm of the construction of the proposed landfill is not redressable.

an adverse decision causing a negative consequence to NCABC, there is no injury and there is no basis for NCABC's appeal. In short, NCABC has suffered no injury-in-fact whatsoever. No injury means no standing.

ii. North Country Alliance for Balanced Change Lacks Organizational Standing[2]

NCABC's effort to invoke organizational standing fares no better. NCABC vaguely claims that some of its unnamed members and its board of directors as these members own property "in the vicinity of the proposed landfill and recreate in the natural resources that would be impacted by the landfill." Even setting aside the speculative nature of those assertions, NCABC fails to meet New Hampshire's standard for organizational standing. To establish organizational standing, an organization must show that all or most of an organization's members are adversely affected by an administrative decision. *See New Hampshire Bankers Ass'n v. Nelson*, 113 N.H. 127 (2011).

NCABC does not even attempt to satisfy that requirement. In fact, NCABC has not identified even a single member who was harmed by the Denial. Instead, it offers only conclusory statements that some unspecified number of members will suffer an equally unspecified injury. NCABC provides no facts alleging where these members' properties are located or how close those properties are to the proposed landfill.[3] Moreover, NCABC never actually articulates what injury its members suffered due to the Denial – there is no allegation that any member's property value decreased, or that any member's use of land has been curtailed, or anything else of the sort. In short, no actual injury to any particular member is alleged at all.

[2] NCABC cites to *Appeal of N.H. Dept' of Envtl. Servs.*, 176 N.H. 379, 389 (2023) in subtle support of its organizational standing claim. *Appeal of N.H. Dep't of Envtl. Servs.* is inapposite to this case as it relied on prior rules which are no longer in effect. The general standard for standing is correct, but the specific ruling on standing is no longer relevant.

[3] Those individuals' choices for recreation are hardly relevant. Simply because one recreates in the North Country, does not give that person a *legal right* to appeal a permitting decision.

iii. North Country Alliance for Balanced Change's General Opposition to North Country Development Does Not Confer Standing

Finally, NCABC cannot establish standing, independent of organizational standing merely by virtue of being an organization that opposes development in the North Country. NCABC argues that "the overlap of the Proposal [Application] with many of NCABC's focus areas and concerns [means that] NCABC has a clear direct, definite interest in the Landfill." This is nothing more than a description of NCABC's general policy objectives, repackaged as an "interest." NCABC's allegations, however, amount to nothing more than a broad ideological stance, which is not enough to make it an aggrieved party. At most, NCABC asserts that it cares about development in the region and has been active on such issues. But New Hampshire law is clear that a *generalized interest* or commitment to a cause does not confer standing. *Caspersen,* 139 N.H. at 640-41. NCABC's sweeping opposition to projects in the "New Hampshire's Great North Woods – Coos and northern Grafton counties" is simply too general and remote from the specific decision at hand to confer standing.

NCABC's own statements illustrate just how abstract its supposed "interest" is. NCABC claims that it is located throughout the Great North Woods region, but in reality, its principal office address is listed in Whitefield, New Hampshire, and its mailing address is a P.O. Box in Littleton. Neither of these locations suggests that NCABC is located generally throughout two entire counties in New Hampshire. At best, the legal entity of NCABC is located in Whitefield and Littleton. Without a direct presence near where the proposed landfill will be located, such as an office next to the landfill, NCABC's generalized claim of a presence in northern New Hampshire establishes standing no better than any other organization or person located in Coos County or Grafton County.

If NCABC's individualized standing claim were accepted – i.e., that an organization can claim a "direct interest" in any development project in a broad region simply because the project encompasses areas within the organization's advocacy focus – there would be virtually no bar to anyone claiming to have an opinion on the proposed landfill from claiming standing to intervene or directly appeal any permitting decision. Standing doctrine does not permit such a result. *See Sierra Club*, 405 U.S. at 739 (one cannot gain standing just by having a longstanding interest or expertise in an issue). A plaintiff (or appellant) must have a particularized stake in the outcome, not merely a passionate policy viewpoint.

To the extent NCABC points to the interests of its *members* scattered across Coos and Grafton counties as giving it an "interest" in the matter, that is simply a reframed organizational standing argument. As shown above, NCABC has not met the organizational standing requirements. NCABC has identified no distinct injury to itself as an entity. Its asserted interest is nothing more than being against "this kind of project in general." That is the definition of a generalized grievance. NCABC has only alleged a generalized interest in the proposed landfill, and not alleged any direct, definite interest to itself arising from NHDES's decision. Absent a concrete and individualized interest impacted by the Denial, NCABC cannot establish standing.

IV. Conclusion

In accordance with the foregoing, NCES respectfully requests that the council dismiss NCABC's appeal.

Respectfully submitted,

GRANITE STATE LANDFILL, LLC

By Its Attorneys,
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CERTIFICATION

I, Jacob M. Rhodes, hereby certify that on June 27, 2025, I filed the foregoing document with the Council by way of electronic mail and regular mail, with copies served upon all persons listed on the service contact list through electronic mail.

/s/Jacob M. Rhodes
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