

STATE OF NEW HAMPSHIRE  
WASTE MANAGEMENT COUNCIL

Appeal of North Country Alliance for Balanced Change

Docket No. 25-08 WMC

**STATE'S REPLY TO APPELLANT'S OBJECTION TO 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 files this reply to Appellant's July 28, 2025 Objection to State's Motion to Dismiss. In support hereof, the State avers as follows:

For the reasons stated in the State's Motion to Dismiss, Appellant's May 5, 2025 Notice of Appeal ("NOA") should be dismissed for lack of standing and lack of Waste Management Council jurisdiction. Appellant's July 28, 2025 Objection ("Objection") fails to present any argument that Appellant has standing or that the Waste Management Council has jurisdiction to hear Appellant's NOA.

**Lack of Standing**

The Objection's inclusion of affidavits and its narrative expanding upon statements in the NOA that the proposed Dalton landfill would harm it and its members in various ways if the proposed facility was approved by the Department only furthers the State's argument that Appellant does not have standing pursuant to RSA 21-O:14, I-a(a). Within ¶61 of the Objection, Appellant summarizes the discussion of its alleged harm within the Objection's preceding paragraphs, and its basis for standing, as the "current and future harms associated with the construction of the Denied Landfill." Objection, ¶61. This sentence alone illuminates the fundamental flaw in Appellant's purported basis for standing. Because the Department denied the subject proposed landfill, no such "construction" can occur. Without an approved permit and

resulting construction and operation of the subject proposed facility, Appellant and its members' circumstances remain unchanged by the Department's denial and Appellant's alleged harms will not occur. Appellant's reference to case law supporting "future harms" as sufficient to establish standing is therefore misplaced and not applicable where the proposed activity complained of has been denied. In the cases referenced, the alleged "future harms" were a potentiality because of the regulatory body's decision *to approve* of a challenged activity that was alleged to be injurious to the appellant's interests. *Appeal of N.H. Dep't of Envtl. Servs.*, 176 N.H. 379, 382-88 (2023) (Department *approved* the expansion of a landfill and Supreme Court agreed that affiants' allegations of future continued harms (noise, odor, view impacts) resulting from the decision if the facility was "implemented as now written" was more than "mere speculation"); *see also Appeal of N.H. Right to Life*, 166 N.H. 308, 314-15 (2014) (denying RSA 541:3 standing to a group opposed to taxpayer funding of abortion services where the Board of Pharmacy *renewed* drug distribution licenses to Planned Parenthood). Here, Appellant's alleged claim of injury is no longer a potentiality where the Department has denied the proposed Dalton landfill. Contrary to Appellant's assertion in ¶58 that its harms are not far removed from the Department's denial, nothing could be less true. Rather, the Department's denial is exactly what is presently preventing Appellant's alleged harms from potentially occurring. Accordingly, no allegation of the Appellant results in Appellant being an aggrieved person pursuant to RSA 21-O:14, I-a(a). As such, Appellant has no standing and its NOA must be dismissed.

#### Justiciability

Appellant's Objection makes clear that Appellant is challenging the Department's incompleteness determination rather than the April 3, 2025 Denial. *See* ¶77. For the reasons set

forth in the State's Motion to Dismiss, the Waste Management Council does not have jurisdiction to hear such challenges pursuant to RSA 21-O:14, I-a(a).

Appellant's Objection attempts to frame the incompleteness determination and the Denial as "one in the same." Objection, ¶92. Appellant misunderstands the State's Motion to Dismiss on this point. Contrary to Appellant's argument suggesting that the State is cleaving apart denial by dormancy and incompleteness, the concepts are entirely distinct. Application approvals and denials may be appealed by aggrieved persons but completeness determinations may not be. The Hearing Officer need not look any further than the definition of "dormant application" to understand this important distinction. N.H. Admin. R. Env-Sw 102.65 ("[d]ormant application' means 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"). Not every application deemed incomplete is a "dormant application." Indeed, the Department has no authority to deny an application based on incompleteness, unless such incomplete application has become dormant. In other words, only a dormant application – not just an incomplete application – is subject to denial. *See* N.H. Admin. R. Env-Sw 304.06(d) ("An incomplete application *that becomes a dormant application...* shall be denied without further action by the department" (emphasis added)).

Completeness determinations are administrative application processing measures that ensure an Applicant has submitted the content and format required by a particular type of application to enable substantive review. N.H. Admin. R. Env-Sw 314.03. If all content, in the right format, has been received, the Department will deem the application complete and move to a review of the submitted material to determine whether it complies with the substantive requirements of the applicable statutes and solid waste rules. N.H. Admin. R. Env-Sw 304.08(a).

Accordingly, completeness determinations are not “department permitting decisions” as defined by RSA 21-O:14, I(a) and can never be appealed to the Waste Management Council. As set forth in the State’s Motion to Dismiss, Appellant is only challenging the Department’s completeness determination, not the Denial.

Appellant’s references to the appeal by Granite State Landfill, LLC to the Waste Management Council (Docket #25-07 WMC) and the superior court case have no relevance to this appeal. The fact that the Department’s Denial is being challenged elsewhere and within another Waste Management Council docket does not give Appellant standing or confer jurisdiction to the Waste Management Council in relation to Appellant’s NOA here. As stated in the State’s Motion to Dismiss, Appellant may seek intervention in those matters, which Appellant has done with respect to the superior court matter. Additionally, and as stated before, Appellant also has the right to file a notice of appeal regarding any future approval in the event such approval ever occurs. Under present circumstances, however, the facility Appellant is concerned will be built will not be due to the Denial.

Because there is no cognizable claim that Appellant is appealing the Denial rather than the completeness determination, the Waste Management Council does not have jurisdiction pursuant to RSA 21-O:14, I-a(a). For the reasons stated above and within the State’s Motion to Dismiss, Appellant also does not have standing pursuant to RSA 21-O:14, I-a(a).

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,

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ATTORNEY GENERAL

Date: August 1, 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