

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Granite State Landfill, LLC

v.

State of New Hampshire Department of Environmental Services

Docket No. 217-2025-CV-00316

**STATEMENT OF FACTS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Petitioner, Granite State Landfill, LLC, (“GSL”), by and through its attorneys, Cleveland, Waters and Bass, P.A., and hereby submits the within statement of material facts in support of Casella’s motion for partial summary judgment; and the Defendant, Jon Swan, and submits his responses creating disputes of material fact.

1. On October 31, 2023, GSL submitted an application to the State of New Hampshire Department of Environmental Services (“NHDES”) for a standard permit for the development of a municipal solid waste landfill in Dalton, New Hampshire (the “Application”). Affidavit of Melissa Stevens (“Stevens Aff.”), at ¶4, attached hereto as Exhibit 1.

2. On February 28, 2024, NHDES issued a letter advising GSL that it deemed the Application incomplete and requesting additional documentation to complete the Application. Stevens Aff. at ¶5.

3. GSL submitted its response to that letter, including additional documentation, on April 19, 2024, April 22, 2024, and June 17, 2024. Stevens Aff. at ¶6-8.

4. NHDES issued a second letter advising GSL that it deemed the application incomplete on June 24, 2024. Stevens Aff. at ¶9.

5. GSL submitted additional documentation in response, which consisted of an additional submission of 174 pages. Stevens Aff. at ¶10.

6. NHDES issued a third letter deeming the application incomplete on October 22, 2024. Stevens Aff. at ¶11.

7. In response to that third letter, GSL made an additional submission of 98 pages. Stevens Aff. at ¶12.

8. On January 27, 2025, NHDES issued a fourth letter deeming the application incomplete. Stevens Aff. at ¶13.

9. This letter raised several new issues based on changes to NHDES's rules which went into effect while NHDES was assessing the application for completeness. Stevens Aff. at ¶14.

10. In response to the fourth letter, GSL made another submission on February 27, 2025 which compromised over 300 pages. Stevens Aff. at ¶15.

11. NHDES then determined that that GSL was still incomplete and denied it based solely on the claim that it was a dormant application under N.H. Code Admin. R. Env-Sw 304.06(d) and Env-Sw 305.03(b)(6). Stevens Aff. at ¶16.

12. NHDES has never applied these dormancy provisions against an applicant who submitted any response to an incompleteness determination. *See* Exhibits 2-8 (dormancy denials from NHDES).

13. NHDES has only applied these dormancy provisions against applicants who failed to submit any documentation in response to an incompleteness determination from NHDES. *See* Exhibit 2 (dormancy denials from NHDES).

Respectfully submitted,

GRANITE STATE LANDFILL, LLC
By Its Attorneys,
CLEVELAND, WATERS AND BASS, P.A.

Date: September 15, 2025

By: /s/ Jacob M. Rhodes
Jacob M. Rhodes, Esq. (NH Bar #274590)
rhodesj@cwbp.com
Cleveland, Waters and Bass, P.A.
2 Capital Plaza, Fifth Floor
Concord, NH 03301
(603) 224-7761

-and-

Richard J. Lehmann, Esq. (NH Bar #9339)
rick@nhlawyer.com
Lehmann Major List PLLC
6 Garvins Falls Road
Concord, NH 03301
(603) 212-4099

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was forwarded, this day, to all counsel via the Court's electronic file and serve system.

/s/Jacob M. Rhodes
Jacob M. Rhodes, Esq

EXHIBIT 1

T THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Granite State Landfill, LLC

v.

State of New Hampshire Department of Environmental Services

Docket No. 217-2025-CV-00316

AFFIDAVIT OF MELISSA STEVENS

1. My name is Melissa Stevens.
2. I am the Associate General Counsel of Granite State Landfill, LLC (“GSL”).
3. As part of my responsibilities, I have been involved in the application process for GSL’s proposed landfill in Dalton, New Hampshire.
4. On October 31, 2023, GSL submitted to NHDES an application for a standard permit for the development of a municipal solid waste landfill in Dalton, New Hampshire (the “application”).
5. On February 28, 2024, NHDES issued a letter advising GSL that it deemed the Application incomplete and requesting additional documentation to complete the Application.
6. In response to the February 28, 2024, letter, GSL submitted additional documentation on April 19, 2024, April 22, 2024, and June 17, 2024.
7. The April 19, 2024 submission consisted of a cover letter to NHDES which provided substantive responses to each of the 16 comments and sub-comments, and attached 12 exhibits totaling more than 900 pages.

8. As part of the April 19, 2024, submission, GSL was required to conduct additional analyses, provide further supporting calculations, and other supporting documentation as outlined in the cover letter to this submission.

9. NHDES issued a second letter advising that it deemed the application incomplete on June 24, 2024.

10. In response to the second letter, GSL made an additional submission of 174 pages.

11. NHDES issued a third letter deeming the application incomplete on October 22, 2024.

12. In response to the third letter, GSL made an additional submission of 98 pages.

13. On January 27, 2025, NHDES issued a fourth letter deeming the application incomplete.

14. This letter raised several new issues based on changes to NHDES's rules which went into effect while NHDES was assessing the application for completeness.

15. In response to the fourth letter GSL made another submission on February 27, 2025, which comprised over 300 pages.

16. Despite these submissions, and despite lacking any legislative authority, on April 3, 2025, NHDES denied GSL's application on the ground that it was dormant pursuant to N.H. Code Admin. R. Env-Sw 304.06(d) and Env-Sw 305.03(b)(6)

I HEREBY CERTIFY, under oath, that the contents of this affidavit are true and accurate to the best of my current knowledge and recollection.

Date: September 12, 2025

/s/ Melissa Stevens
Melissa Stevens

STATE OF VERMONT
COUNTY OF RUTLAND, ss

On the 12th day of September, 2025, before me, the undersigned officer, appeared Melissa Stevens, known to me (or satisfactorily proven) to be the person whose name appears above, and gave oath that the contents of this affidavit are true and accurate to the best of his current knowledge and recollection, and that he subscribed his name to the foregoing instrument for the purposes contained therein.

/s/ Sylvia D. Jerome
Notary Public/~~Justice of the Peace~~
My Commission expires: January 31, 2027

Sylvia D. Jerome Notary Public –State of Vermont My Commission Expires January 31, 2027 Commission No. 1570014203
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EXHIBIT 2



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



VIA EMAIL ONLY

October 4, 2024

Chip Chelsey
City of Concord
311 N State Street
Concord, NH 03301
Email: cchesley@concordnh.gov

SUBJECT: Concord Municipal Landfill, 77 Old Turnpike Rd, Concord, NH
Permit No. DES-SW-TP-94-016

Denial by Dormancy of Type II Permit Modification Application for Changes to Closure Plan
Type II Permit Modification, received August 8, 2023 and assigned Application No. 2023-65411

Dear Chip Chelsey:

The New Hampshire Department of Environmental Services, Waste Management Division (NHDES) is notifying you that pursuant to the New Hampshire Solid Waste Rules, specifically Env-Sw 304.05(d) and Env-Sw 305.03(b)(6), the below-described incomplete application for a Type II permit modification became a denied application on October 1, 2024 due to dormancy.

The application at the time of dormancy consisted of the following submittals(s):

- CMA Engineers. July 12, 2023. *Application for Type II Modification to Solid Waste Management Facility Permit*. Received August 8, 2023. Assigned WMD Log No. 2023-65411-01.

NHDES notified you by letter, dated October 2, 2023, that the application was incomplete, and requested additional information. The letter also provided notice of the dormancy deadline. NHDES did not receive the additional information from the City of Concord within one year of the letter issuance date. The application therefore became dormant in accordance with Env-Sw 102.54 and was deemed denied (without prejudice) in accordance with Env-Sw 304.05(d) and Env-Sw 305.03(b)(6).

If you have any questions regarding this letter, please contact me.

Sincerely,

Jason Evancic
Solid Waste Management Bureau
Tel: (603) 271-2935
Email: Jason.a.evancic@des.nh.gov

**Waste
Management
Division**

**Waste Management
Division
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ec: Adam Clark, Administration Division Manager, City of Concord, email: aclark@concordnh.gov
Jodie Strickland, P.E., CMA, email: jstrickland@cmaengineers.com
Jaime Colby, P.E., NHDES, email: Jaime.M.Colby@des.nh.gov

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-2925 • Fax: 271-2456 TDD Access: Relay NH 1-800-735-2964



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

VIA EMAIL ONLY

February 20, 2024

Samuel Hewitt, Assistant Public Works Director
Town of Durham
100 Stone Quarry Dr
Durham, NH 03824
Email: shewitt@ci.durham.nh.us

SUBJECT: Durham Solid Waste Management Facility, 8 Newmarket Road, Durham, NH
Permit No. DES_SW-90-008

Denial by Dormancy of Type 1-A Permit Modification

Application for Type 1-A permit modification to increase storage capacity, modify site plan, change authorized wastes, and change facility name, received December 22, 2022 and assigned Application No. 2022-62125-01

Dear Samuel Hewitt:

The New Hampshire Department of Environmental Services, Waste Management Division (NHDES) is notifying you that pursuant to the New Hampshire Solid Waste Rules, specifically Env-Sw 304.05(d) and Env-Sw 305.03(b)(6), the below-described incomplete application for a Type 1-A permit modification became a denied application on February 15, 2024 due to dormancy.

The application at the time of dormancy consisted of the following submittals:

- Town of Durham. *Application for Type 1-A Modification to Solid Waste Management Facility Permit*. Received December 12, 2022. Assigned WMD Log No. 2022-62125-01.

NHDES notified you by letter, dated February 15, 2023, that the application was incomplete, and requested additional information. The letter also provided notice of the dormancy provision. NHDES did not receive the requested additional information from Town of Durham within one year of the letter issuance date. The application therefore became dormant in accordance with Env-Sw 102.54 and was deemed denied in accordance with Env-Sw 304.05(d) and Env-Sw 305.03(b)(6).

If you have any questions regarding this letter, please contact Jaime Colby, P.E., Supervisor of Engineering & Permitting in the Solid Waste Management Bureau. Ms. Colby may be reached at (603) 271-5185 or jaime.m.colby@des.nh.gov.

Sincerely,

Mark Kondelis Jr, Environmental Analyst
Solid Waste Management Bureau
Tel.: (603) 271-2936
Email: Mark.a.kondelisjr@des.nh.gov

cc: Town Clerk, Durham, email: clerk-collector@ci.durham.nh.us
Selectmen, c/o Town Administrator, email: kedwards@ci.durham.nh.us
Jaime Colby, P.E., NHDES, email: Jaime.M.Colby@des.nh.gov

www.des.nh.gov

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The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



VIA EMAIL ONLY

August 23, 2022

Kevin Campbell, HR Manager
Harding Metals, Inc.
PO Box 418
Northwood, NH 03261
Email: kevin@hardingmetals.com

SUBJECT: Harding Metals, Inc., Harding Metals Recycling, 42 Harding Dr, Northwood, NH
Permit No. DES-SW-SP-20-001

Denial by Dormancy of Type V Permit Modification

Application received June 1, 2021 and assigned Application No. 2021-55105

Dear Mr. Campbell:

The New Hampshire Department of Environmental Services, Waste Management Division (NHDES) is notifying you that pursuant to the New Hampshire Solid Waste Rules, specifically Env-Sw 304.05(d) and Env-Sw 305.03(b)(6), the below-described incomplete application for a Type V Permit Modification became a denied application on August 22, 2022 due to dormancy.

The application at the time of dormancy consisted of the following submittals(s):

- Harding Metals, Inc. (June 1, 2021). *Application for Type V Modification to Solid Waste Management Facility Permit*. Received June 1, 2021. Assigned WMD Log No. 2021-55105-01.
- Harding Metals, Inc. (June 21, 2021). Supplemental Submittal to Application for Type V Permit Modification. Received June 21, 2021. Assigned WMD Log No. 2021-55105-02.

NHDES notified you by letter, dated August 20, 2021, that the application was incomplete, and requested additional information. The letter also provided notice of the dormancy deadline. NHDES did not receive the additional information from Harding Metals, Inc. within one year of the letter issuance date. The application therefore became dormant in accordance with Env-Sw 102.54 and was deemed denied in accordance with Env-Sw 304.05(d) and Env-Sw 305.03(b)(6).

If you have any questions regarding this denial, please contact me.

Sincerely,

Laura J. Filiau, M.P.A.
Solid Waste Management Bureau
Tel.: (603) 271-0675
Email: laura.j.filiau@des.nh.gov

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STATE OF NEW HAMPSHIRE

INTRA-DEPARTMENT COMMUNICATION



TO: File

FROM: Jaime M. Colby, P.E., Civil Engineer V, SWMB, NHDES

SUBJECT: **Jones Avenue Landfill**
Jones Avenue, Portsmouth, NH
Permit No. DES-SW-TP-96-021

Record of Automatic Denial by Dormancy – Application for a Type I-B Permit Modification

Activity/Application No. 2017-25505

DATE: October 2, 2018

Pursuant to the New Hampshire Solid Waste Rules, specifically Env-Sw 304.05(d) and Env-Sw 305.03(b)(6), the below described incomplete application for a Type I-B permit modification of Permit No. DES-SW-TP-96-021 became a denied application on July 27, 2018 due to dormancy.

The application at the time of dormancy consisted of the following submittal(s):

- City of Portsmouth. (31 January 2017). *Application for Type I Modification to Solid Waste Management Facility Permit*. Received February 1, 2017. Assigned WMD Log No. 2017-25505-01.

NHDES notified the applicant, by letter dated July 27, 2017, that the application was incomplete and requested additional information. The letter also provided notice of the dormancy deadline. NHDES received no response from the City of Portsmouth within one year of the letter issuance date. The application became dormant in accordance with Env-Sw 102.54 and was deemed denied in accordance with Env-Sw 304.05(d) and Env-Sw 305.03(b)(6).

JMC:jmc



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



VIA EMAIL ONLY

March 21, 2023

Edward Walsh, Transfer Station Manager
Town of Rollinsford
667 Main Street, PO Box 309
Rollinsford, NH 03869
Email: edward.walsh@rollinsford.nh.us

SUBJECT: Rollinsford Transfer Station, 37 Jessie Doe Road, Rollinsford, NH
Permit No. DES-SW-LP-92-507

Denial by Dormancy of Type 1-B Permit Modification

Application for Type 1-B permit modification to update the operating plan; initial submittal received November 15, 2021; and assigned Application No. 2021-56565

Dear Ed Walsh:

The New Hampshire Department of Environmental Services, Waste Management Division (NHDES) is notifying you that pursuant to the New Hampshire Solid Waste Rules, specifically Env-Sw 304.05(d) and Env-Sw 305.03(b)(6), the below-described incomplete application for a Type 1-B permit modification became a denied application on March 17, 2023 due to dormancy.

The application at the time of dormancy consisted of the following submittals(s):

- Edward Walsh. *Application for Type 1-B Modification to Solid Waste Management Facility Permit*. Received November 15, 2021. Assigned WMD Log No. 2021-56565-01.
- Town of Rollinsford. *Application for Type 1-B Modification to Solid Waste Management Facility Permit (Superseding previous application)*. Received January 24, 2022. Assigned WMD Log No. 2021-56565-01.

NHDES notified you by letter, dated March 17, 2022, that the application was incomplete, and requested additional information. The letter also provided notice of the dormancy deadline. NHDES did not receive the additional information from the Town of Rollinsford within one year of the letter issuance date. The application therefore became dormant in accordance with Env-Sw 102.54 and was deemed denied in accordance with Env-Sw 304.05(d) and Env-Sw 305.03(b)(6).

If you have any questions regarding this letter, please contact me.

Sincerely,

Mark Kondelis Jr, Environmental Analyst
Solid Waste Management Bureau
Tel.: (603) 271-2936
Email: mark.a.kondelisjr@des.nh.gov

ec: Paul Cass, Chair, Select Board, Town of Rollinsford, email: paul.cass@rollinsford.nh.us
Dan Cullity, Town Clerk, Rollinsford, email: townclerk@rollinsford.nh.us

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