

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Casella Waste Systems, Inc.

v.

Docket #217-2023-CV-285

Jon Swan

**COMBINED STATEMENT OF FACTS IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT AND OBJECTION TO MOTION
FOR PARTIAL SUMMARY JUDGMENT**

NOW COMES the Plaintiff, Casella Waste Systems, Inc. (“Casella”), 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. The parties entered into a Settlement Agreement on May 11, 2023, that contained a confidentiality provision.

Answer: Admitted in part, denied in part. Denied as to the meaning and effect of the confidentiality provision, the alleged breach of which is a jury question.

2. The following day, May 12, 2023, counsel for the parties had an email exchange concerning their understanding of the way that agreement would be interpreted.

Attorney Eggleton suggested the following to address Mr. Swan’s need “to be able to say something to people” about the resolution of the case “that allows him to move on from it.” See, Exhibit 1.

Answer: Admitted in part, denied in part. Admitted that counsel exchanged an email. Denied as to the meaning, effect and relevancy of the quoted language from the email exchange, which are factual questions to be determined by a jury.

3. Attorney Eggleton suggested that Mr. Swan would say the following: “The lawsuit is now concluded–no further comment.” *Id.*

Answer: Admitted in part, denied in part. Admitted that the language of the quoted email was accurately transcribed. Denied as to the meaning, effect and relevancy of the language, which are factual questions to be determined by a jury.

4. Attorney Gould responded to this proposal by writing, “Rather than give in to the lawyer’s impulse to fiddle, I’m fine with your formulation as long as he sticks to it exactly.” *Id.*

Admitted in part, denied in part. Admitted that the language of the quoted email was accurately transcribed. Denied as to the meaning, effect and relevancy of the language, which are factual questions to be determined by a jury.

5. Attorney Eggleton indicated his assent to this by writing, “Lovely-thanks!” *Id.*

Admitted in part, denied in part. Admitted that the language of the quoted email was accurately transcribed. Denied as to the meaning, effect and relevancy of the language, which are factual questions to be determined by a jury.

6. Defendant Swan admits, by way of his answers to requests for admission, attached hereto as Exhibit 18, that he made the following posts attached hereto as Exhibits 3-17.¹

Answer: Admitted in part, denied in part. Admitted that the electronic posts generally were made by Mr. Swan. Denied as to the meaning attributed to them by the Plaintiff, which is fundamentally a jury question. Further denied to the extent that the posts in question were merely restating other public communications and conclusions by third parties or even Casella itself, a safe harbor under the confidentiality provisions of the Settlement Agreement. Further denied to the extent the posts actually incorporated publications of others.

- a. Exhibit 3, *see*, Exhibit 18 at ¶2.

Answer: Exhibit 3, Swan Answers at ¶2 (Internet post linking to Caledonian Record Article “Casella Drops Defamation Lawsuit Against Dalton Landfill Opponent”). Swan denies that he authored the text of this internet post, because it is the headline of the newspaper story linked to the post, authored, presumably, by the Caledonian Record. *See* Swan Answers to Requests for Admission (Plaintiff’s SOMF Exhibit 18) at ¶2, SOMF, Exhibit 3 (newspaper article in question)(“Casella Drops Defamation Lawsuit Against Dalton Landfill Opponent.”); Affidavit of Jon Swan, attached hereto (“Swan Aff. at ____”). Mr. Swan further denies that the post in question reveals “the

¹ To avoid unnecessary repetition and duplicative paragraphs, the substantive comments in each of the exhibits is reproduced and discussed in detail in the motion for summary judgment.

existence or terms of the settlement agreement,” which the Court has already determined is a fact question to be resolved by a jury. Swan Aff. at ¶1.

b. Exhibit 4, *see*, Exhibit 18 at ¶3.

Answer: Exhibit 4, Swan Answers at ¶3. As noted expressly in Mr. Swan’s Answers, but ignored by the Plaintiff, Mr. Swan denies that he authored the N.H. DES Letter of November 1, 2017 to John Gay shown in this post. He admits that he published the July 18, 2023 post but asserts that he was merely repeating information available in the public record, published and authored by third party sources—including, in this case, specifically linking to the document he references, which discusses testing results from groundwater monitoring wells at NCES, the Plaintiff’s Bethlehem landfill, that detected PFAS. PFAS is a contaminant that has been prohibited and restricted by the New Hampshire legislature and restricted by N.H. DES. *See* RSA 149-M:64; 2024 N.H. Laws c. 349; Swan Aff. at ¶2. Mr. Swan asserts that the statements in the post are (a) simply restating information published by a third party, or (b) unambiguously an expression of opinion about the factual statements or facts in those sources. Swan Aff. at ¶2.

c. Exhibit 5, *see*, Exhibit 18 at ¶5.

Answer: Exhibit 5, Swan Answers at ¶5. As noted expressly in Mr. Swan’s Answers, but ignored by the Plaintiff, Mr. Swan denies that he authored the N.H. DES Letter of October 21, 2019 to John Gay shown in this post. *See* Swan Aff. at ¶3, Exhibit B. He admits that he published the July 18, 2023 post but asserts that he was merely

repeating information available in the public record, published and authored by third party sources—including, in this case, specifically linking to the document he references, which discusses testing results from groundwater monitoring wells at NCES, the Plaintiff’s Bethlehem landfill, that detected PFAS PFOA, PFHxS, and PFNA. As the DES itself explains in the letter Mr. Swan attached to his post, these chemicals are contaminants that have been restricted by N.H. DES since 2019. Exhibit 5; *see*, also, RSA 149-M:64; 2024 N.H. Laws c. 349 (prohibiting and restricting PFAS and related chemicals and allowing extended statutes of limitations for private causes of action relating to these chemicals); *see* Swan Aff. Exhibit A. Mr. Swan asserts that the statements in the post are (a) simply restating information published by a third party, or (b) unambiguously an expression of opinion about the factual statements or facts in those sources, and any implication that they are a breach of the Settlement Agreement is denied as these are jury questions. Swan Aff. at ¶3.

d. Exhibit 6, *see*, Exhibit 18 at ¶7.

Answer: Exhibit 6, Swan Answers at ¶7. Mr. Swan asserts that the statements in the post are (a) simply restating information published by a third party and referenced in dozens of Mr. Swan’s posts over the years, or (b) unambiguously an expression of opinion about the factual statements or facts in those sources. Swan Answers at Documents SWAN-00023-35; *see* Swan Aff. at ¶4. Exhibit 6 is an August 9, 2023 post on the Twin Mountain Facebook Group. *Id.*; Exhibit 6. In that very post, Mr. Swan makes reference to his past and future “landfill-related” posts. Exhibit 6. He made dozens of posts concerning the Dalton, N.H. proposed landfill and what he viewed as its dangers

over the years, and frequently posted about NCES, the Plaintiff's Bethlehem landfill, as a cautionary tale. Swan Aff. Exhibit N (Swan Answers, Document Production SWAN 00023-35). By way of further example, on May 15, 2021, Mr. Swan posted about a 154,000 gallon leachate spill at NCES, Casella's Bethlehem landfill. *See* Swan Aff., Exhibit G (citing an article from the Caledonian Record). On July 24, 2023, Mr. Swan posted, in the same community and news group where Exhibit 6 was posted, concerning N.H. DES requiring more data to be collected to evaluate the impact of detected 1,4-dioxane and PFAS on the Ammonoosuc River watershed. Swan Aff., Exhibit H (citing NHDES reports on groundwater monitoring in the Ammonoosuc River watershed). In addition, N.H. DES has observed the presence of 1,4-Dioxane and PFAS in groundwater at NCES. Swan Aff., Exhibit B (N.H. DES letter of October 21, 2019), Exhibits C-E. The Plaintiff has admitted that the NCES landfill is in the Ammonoosuc watershed. Swan Aff. Exhibit F1 at ¶33, F2 at ¶33. Mr. Swan denies the Plaintiff's ascribed meaning and effect of the alleged postings and asserts that their meaning and effect was compliant with the Settlement Agreement.

e. Exhibit 7, *see*, Exhibit 18 at ¶9.

Exhibit 7, Swan Answers at ¶9. Mr. Swan asserts that the statements in the post are (a) simply restating information published by a third party and referenced in dozens of Mr. Swan's posts over the years, or (b) unambiguously an expression of opinion about the factual statements or facts in those sources. N.H. DES, relying on Casella's own testing, has publicly and incontrovertibly concluded that groundwater at the NCES landfill site contains restricted and prohibited contaminants including 1,4 dioxane and

PFAS. Swan Aff., Exhibit B (October 21, 2019 Letter from DES); Exhibits C-F. Mr. Swan asserts that the statement at Exhibit 7 is a repetition of publicly available statements made by third parties, including the N.H. DES and the Plaintiff itself through its agents in public filings, as well as being open and obvious opinion.

f. Exhibit 8, *see*, Exhibit 18 at ¶11.

Answer: Exhibit 8, Swan Answers at ¶11. Mr. Swan asserts that the statements in the post are (a) simply restating information published by a third party and referenced in dozens of Mr. Swan's posts over the years, or (b) unambiguously an expression of opinion about the factual statements or facts in those sources. N.H. DES, relying on Casella's own testing and reporting, has publicly and incontrovertibly concluded that groundwater at the NCES landfill site contains restricted and prohibited contaminants including 1,4 dioxane and PFAS. Swan Aff. ¶6, Exhibits B-F. Mr. Swan asserts that the statement at Exhibit 8 is a repetition of publicly available statements made by third parties, including the N.H. DES and the Plaintiff itself through its agents in public filings, which are expressly referenced in the post itself.

g. Exhibits 9-10, *see*, Exhibit 18 at ¶13.

Answer: Exhibit 9-10, Swan Answers at ¶13. Mr. Swan asserts that the statements in the post are (a) simply restating information published by a third party and referenced in dozens of Mr. Swan's posts over the years, or (b) unambiguously an expression of opinion about the factual statements or facts in those sources. N.H. DES, relying on Casella's own testing, has publicly and incontrovertibly concluded that groundwater at the NCES landfill site contains restricted and prohibited contaminants

including 1,4 dioxane and PFAS. Swan Aff., Exhibits I, B-F. Mr. Swan asserts that the statement at Exhibit 9-10 is a repetition of publicly available statements made by third parties, including the N.H. DES and the Plaintiff itself through its agents in public filings. In addition, the statements at Exhibits 9 and 10 are restatements of earlier expressions of opinion he made concerning his analysis of these public filings, which the Plaintiff has omitted from the record denying the finder of fact the opportunity to consider the statements in their totality. Swan Aff. at ¶7, Exhibit I (Swan Answers, Documents Nos. SWAN 00008-09 (analysis of cited DES filings), 11 (Sanborn Head reports on now-NCES landfill stating former landfill contamination on site had been eliminated with construction of new landfill (later to become NCES's landfill)), 13 (stating that based on his research into DES files, it was Mr. Swan's belief that NCES landfill contamination detectable in groundwater today is the result of breaches in the liner that area allowing NCES leachate to escape); *see*, also, Swan Aff. at Exhibit J (September 9, 2023 opinion post that leaks are occurring), Exhibit K (entitled, "Opinion: Failure at the NCES Landfill" in which Mr. Swan conducts the same analysis of public and private data identifying PFAS and other contaminants on and from the NCES site). Taken alone and in context of Mr. Swan's ongoing communications, the alleged statements in Exhibits 9 and 10 are unambiguous opinion and repetition of third party statements. Swan Aff. at ¶7.

h. Exhibit 11, *see*, Exhibit 18 at ¶15.

Answer: Exhibit 11, Swan Answers at ¶15. Mr. Swan asserts that the statements in the post are (a) simply restating information published by a third party and referenced

in dozens of Mr. Swan's posts over the years, or (b) unambiguously an expression of opinion about the factual statements or facts in those sources. N.H. DES, relying on Casella's own testing, has publicly and incontrovertibly concluded that groundwater at the NCES landfill site contains restricted and prohibited contaminants including 1,4 dioxane and PFAS. Swan Aff., Exhibits I, B-F. Mr. Swan asserts that the statement at Exhibit 9-10 is a repetition of publicly available statements made by third parties, including the N.H. DES and the Plaintiff itself through its agents in public filings. In addition, the statements at Exhibit 11 are restatements of earlier expressions of opinion he made concerning his analysis of these public filings, which the Plaintiff has omitted from the record denying the finder of fact the opportunity to consider the statements in their totality. Swan Aff. at ¶7, Exhibit I (Swan Answers, Documents Nos. SWAN 00008-09 (analysis of cited DES filings), 11 (Sanborn Head reports on now-NCES landfill stating former landfill contamination on site had been eliminated with construction of new landfill (later to become NCES's landfill)), 13 (stating that based on his research into DES files, it was Mr. Swan's belief that NCES landfill contamination detectable in groundwater today is the result of breaches in the liner that area allowing NCES leachate to escape); *see*, also, Swan Aff. at Exhibit J (September 9, 2023 opinion post that leaks are occurring), Exhibit K (entitled, "Opinion: Failure at the NCES Landfill" in which Mr. Swan conducts the same analysis of public and private data identifying PFAS and other contaminants on and from the NCES site). Taken alone and in context of Mr. Swan's ongoing communications, the alleged statements in Exhibit 11 are unambiguous opinion and repetition of third party statements. Swan Aff. at ¶8.

i. Exhibit 12, *see*, Exhibit 18 at ¶17.

Answer: Exhibit 12, Swan Answers at ¶17. Mr. Swan asserts that the statements in the post are (a) simply restating information published by a third party and referenced in dozens of Mr. Swan's posts over the years, or (b) unambiguously an expression of opinion about the factual statements or facts in those sources. N.H. DES, relying on Casella's own testing, has publicly and incontrovertibly concluded that groundwater at the NCES landfill site contains restricted and prohibited contaminants including 1,4 dioxane and PFAS. Swan Aff., B-F. Mr. Swan asserts that the statement at Exhibit 9-10 is a repetition of publicly available statements made by third parties, including the N.H. DES and the Plaintiff itself through its agents in public filings. *Id.*; Swan Aff. Exhibit L. In addition, the statements at Exhibit 12 are restatements of earlier expressions of opinion he made concerning his analysis of these public filings, which the Plaintiff has omitted from the record denying the finder of fact the opportunity to consider the statements in their totality. Swan Aff. at ¶7, Exhibit I (Swan Answers, Documents Nos. SWAN 00008-09 (analysis of cited DES filings), 11 (Sanborn Head reports on now-NCES landfill stating former landfill contamination on site had been eliminated with construction of new landfill (later to become NCES's landfill)), 13 (stating that based on his research into DES files, it was Mr. Swan's belief that NCES landfill contamination detectable in groundwater today is the result of breaches in the liner that area allowing NCES leachate to escape); *see*, also, Swan Aff. at Exhibit J (September 9, 2023 opinion post that leaks are occurring), Exhibit K (entitled, "Opinion: Failure at the NCES Landfill" in which Mr. Swan conducts the same analysis

of public and private data identifying PFAS and other contaminants on and from the NCES site). Taken alone and in context of Mr. Swan's ongoing communications, the alleged statements in Exhibit 12 are unambiguous opinion and repetition of third party statements. Swan Aff. at ¶8.

j. Exhibit 13, *see*, Exhibit 18 at ¶19.

Answer: Exhibit 13, Swan Answers at ¶18. Mr. Swan asserts that the statements in the post are (a) simply restating information published by a third party and referenced in dozens of Mr. Swan's posts over the years, or (b) unambiguously an expression of opinion about the factual statements or facts in those sources. N.H. DES, relying on Casella's own testing, has publicly and incontrovertibly concluded that groundwater at the NCES landfill site contains restricted and prohibited contaminants including 1,4 dioxane and PFAS. Swan Aff., B-F. Mr. Swan asserts that the statements at Exhibit 13 is a repetition of publicly available statements made by third parties, including the N.H. DES and the Plaintiff itself through its agents in public filings. *Id.*; Swan Aff. Exhibit L (Robinette letter summarizing lengthy public record of admissions by Plaintiff and DES conclusions). Taken alone and in context of Mr. Swan's ongoing communications, the alleged statements in Exhibit 13 are unambiguous opinion and repetition of third party statements. Swan Aff. at ¶8, Exhibit K, Exhibit 12.

k. Exhibit 14, *see*, Exhibit 18 at ¶22.

Answer. Exhibit 14, Swan Answers at ¶22. Mr. Swan references and incorporates the above responses, asserting that the factual admission that dioxane 1,4 and PFAS, among other contaminants, have been detected in the groundwater

monitoring wells at NCES is a matter of public record, stated in dozens of communications by N.H. DES and the Plaintiff itself. *See* Swan Aff. at ¶11. Mr. Swan is thus merely repeating publicly available third party statements in Exhibit 14. *Id.*, Exhibits B-F. Furthermore, the Plaintiff’s Exhibit 14 references and contains a link to the more developed and extensive blog post in which he discussed his opinion that surface water runoff from the NCES site, suggesting that the reader “read more.” In that post, *see* Swan Aff. Exhibit M, Mr. Swan discusses the testing results for surface water runoff obtained as it flowed into the public waters of the Ammonoosuc River, the testing that was performed, links to the testing document, and his concluding statement, “All this is, of course, my opinion based on my research and experience.” Mr. Swan thus denies that Exhibit 14 lacks the requisite expression of opinion about an assertion of fact imputing conduct to the Plaintiff.

1. Exhibit 15, *see*, Exhibit 18 at ¶24.

Answer: Exhibit 15, Swan Answers at ¶24. Mr. Swan references and incorporates the above responses, asserting that the factual admission that dioxane 1,4 and PFAS, among other contaminants, have been detected in the groundwater monitoring wells at NCES is a matter of public record, stated in dozens of communications by N.H. DES and the Plaintiff itself. Swan Aff. at ¶¶11, 12 and Exhibits B-F. Mr. Swan is thus merely repeating publicly available third-party statements in Exhibit 15. Furthermore, the Plaintiff’s Exhibit 15 is preceded by Exhibit 14, his prior post in which he references and includes a link to the more developed and extensive blog post in which he discussed his opinion that surface water runoff from the

NCES site, suggesting that the reader “read more.” In that post, *see* Swan Aff. Exhibit M, Mr. Swan discusses the testing results for surface water runoff obtained as it flowed into the public waters of the Ammonoosuc River, the testing that was performed, links to the testing document, and his concluding statement, “All this is, of course, my opinion based on my research and experience.” That data was subsequently used, in part, in the posts depicted at Exhibit 15. Mr. Swan thus denies that Exhibit 15, taken in its totality in connection with Mr. Swan’s other posts concerning testing he conducted of surface water runoff from the NCES facility, lacks the requisite expression of opinion about an assertion of fact imputing conduct to the Plaintiff.

m. Exhibit 16, *see*, Exhibit 18 at ¶26.

Answer: Exhibit 16, Swan Answers at ¶26. Mr. Swan references and incorporates the above responses, asserting that the factual admission that dioxane 1,4 and PFAS, among other contaminants, have been detected in the groundwater monitoring wells at NCES is a matter of public record, stated in dozens of communications by N.H. DES and the Plaintiff itself. *See* Swan Aff at ¶13, Exhibits B-F, L. Mr. Swan is thus merely repeating publicly available third-party statements in Exhibit 16. Furthermore, the Plaintiff’s Exhibit 16 is preceded by Exhibit 14, his prior post in which he references and includes a link to the more developed and extensive blog post in which he discussed his opinion that surface water runoff from the NCES site, suggesting that the reader “read more.” In that post, *see* Swan Aff. Exhibit M, Mr. Swan discusses the testing results for surface water runoff obtained as it flowed into the public waters of the Ammonoosuc River, the testing that was performed, links to the

testing document, and his concluding statement, “All this is, of course, my opinion based on my research and experience.” That data was subsequently used, in part, in the posts depicted at Exhibit 16. Mr. Swan thus denies that Exhibit 16, taken in its totality in connection with Mr. Swan’s other posts concerning testing he conducted of surface water runoff from the NCES facility, lacks the requisite expression of opinion about an assertion of fact imputing conduct to the Plaintiff.

n. Exhibit 17, *see* Exhibit 18 at ¶28.

Answer: Exhibit 17, Swan Answers at ¶28. Mr. Swan references and incorporates the above responses, asserting that the factual admission that dioxane 1,4 and PFAS, among other contaminants, have been detected in the groundwater monitoring wells at NCES is a matter of public record, stated in dozens of communications by N.H. DES and the Plaintiff itself. Mr. Swan is thus merely repeating publicly available third-party statements in Exhibit 17. Furthermore, the Plaintiff’s Exhibit 17 is preceded by Exhibit 14, his prior post in which he references and includes a link to the more developed and extensive blog post in which he discussed his opinion that surface water runoff from the NCES site, suggesting that the reader “read more.” In that post, *see* Swan Aff. Exhibit M, Mr. Swan discusses the testing results for surface water runoff obtained as it flowed into the public waters of the Ammonoosuc River, the testing that was performed, links to the testing document, and his concluding statement, “All this is, of course, my opinion based on my research and experience.” See, also, Swan Aff. at Exhibits I-K. Mr. Swan thus denies that Exhibit 17, taken in its totality in connection with Mr. Swan’s other posts concerning testing he conducted of

surface water runoff from the NCES facility, and opinion analysis of third party public statements, lacks the requisite expression of opinion about an assertion of fact imputing conduct to the Plaintiff.

7. The Plaintiff disclosed the terms and existence of the Parties' Settlement Agreement when it revealed the existence of the confidentiality provision to at least one third party, Dave Leonard, *see* Swan Aff. at Exhibit O, and publicly filed an unsealed Complaint including terms from the Settlement Agreement. Swan Aff. at ¶15; *see* (original) Complaint.

8. Mr. Swan understood the parties' Settlement Agreement to provide liquidated damages of a maximum amount of \$5000 per legal action, not per violation. Swan Aff. at ¶16.

Respectfully submitted,

CASELLA WASTE SYSTEMS, INC.
By Its Attorneys,
CLEVELAND, WATERS AND BASS, P.A.

Date: May 5, 2025

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Respectfully submitted,

JON SWAN

By his Attorneys:

ORR & RENO, P.A.

Dated: June 11, 2025

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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/ Jeremy D. Eggleton

Jeremy D. Eggleton