

February 28, 2025

Via Email

New Hampshire Department of Environmental Services

Michael Wimsatt
Director, Waste Management Division
michael.wimsatt@des.nh.gov

Jaime Colby
Supervisor, Engineering and Permitting Section
Jaime.M.Colby@des.nh.gov

**Re: NHDES File Number: 2023-66600 Solid Waste Standard Permit
Application; Subject Properties: Dalton Tax Map 406, Lots 2.1, 2.3, 2.4,
2.5, 3, and 3A and Bethlehem Tax Map 406, Lots 1 and 2
("Application")**

Dear Director Wimsatt and Ms. Colby,

I write in continued representation of North Country Alliance for Balanced Change ("NCABC"). On October 31, 2023, Granite State Landfill, LLC, a subsidiary of Casella Waste Systems, Inc., ("GSL" or "Applicant") submitted a new application for a Standard Permit for Solid Waste Landfill ("Application") to the Solid Waste Management Bureau ("Bureau") of the New Hampshire Department of Environmental Services ("Department") for its proposed landfill on the private road of Douglas Drive in Dalton and Bethlehem, New Hampshire ("Landfill" or "Proposal").

On February 5, 2025, I sent a letter to the Department outlining deficiencies in the Application that render it incomplete. On February 27, 2025, GSL submitted a "Response to NHDES Incomplete Application" ("Response"), attempting to provide additional information to the Department to cure any outstanding deficiencies before the February 28, 2025 deadline to submit a complete application. We have reviewed the Response and conclude that many of the items I identified in my February 5, 2025 letter remain missing from the Application, as detailed in the remainder of this letter. Therefore, we respectfully request that the Department make a final determination that the Application is incomplete.

Please make this letter part of your record in this matter.

Application Still Incomplete and Unapprovable on the Following Bases

Based on our review of the Response, the following items identified in my February 5, 2025 letter are still missing from the Application.

1. **Landowner Requirement; Easements and Rights-of-Way:** According to the Applicant, the landowner agreement, including plans and describing easements and rights-of-way, has been submitted to the Department under separate cover as confidential business information. Response, Cover Letter at 1. For one, a landowner agreement does not qualify as confidential business information and should be available for public inspection. To the extent that the agreement provided by the Applicant confidentially under separate cover satisfies Env-Sw 314.09, the Applicant must still demonstrate *complete ownership* of the entire facility pursuant to Env-Sw 804.06. *See* #2. The Applicant must also demonstrate that all easements and rights-of-way meet applicable requirements and clearly identify all easements and rights-of-way in its plans. *See* Env-Sw 1003.02, 1003.03; *see also* #8 below.
2. **Ownership of Douglas Drive:** Related to #1, the Applicant has failed to demonstrate full ownership of Douglas Drive—which will serve as the site’s sole ingress and egress—pursuant to Env-Sw 1003.03(a) and Env-Sw 804.06. It is important to note that, for landfills such as the Proposal, *ownership* is required. Access, such as an easement or right-of-way, which may be sufficient for other types of solid waste facilities, does not meet the ownership requirement for landfills. Env-Sw 804.06 (“A new landfill shall be sited only on property which is owned by the permittee.” [old rule]) (“A landfill or landfill expansion shall be sited only on property which is owned by the permittee.” [new rule]).
3. **Agreements with Leachate Disposal Facilities:** Pursuant to Env-Sw 806.05(b)(3) [old rule] / 806.05(c)(2) [new rule], the Applicant is required to have written agreements with at least two (2) leachate treatment/disposal facilities to manage the leachate generated from the Landfill during its active life. While the Applicant has provided a list of *proposed* facilities to accept leachate, it has not produced written agreements with any of these facilities. The Response does not include such written agreements and merely provides that “[a]pproved locations for leachate disposal are listed in Section 4.1.3 of the Operating Plan.” Response, Ex. 5 at 49. Therefore, this requirement remains unresolved. This issue was discussed extensively in our [letter](#) to you dated September 20, 2024.
4. **Reliability, Expertise, Integrity, & Competence:** According to RSA 149-M:9, IX(a) and Env-Sw 303.13–303.15, the Applicant must demonstrate sufficient reliability, expertise, integrity, and competence to operate the Landfill. As explained in our letters dated [January 3, 2024](#) and [December 18, 2024](#), the Applicant both made misrepresentations in this regard in the Application and severely lacks sufficient reliability, expertise, integrity, and competence due to its extensive environmental noncompliance and many violations of environmental laws. The onus is on the Applicant to prove its eligibility, and it has failed to do so. The Response does not contain information to cure this deficiency.

- **Settlement Agreement with Bethlehem:** Env-Sw 303.14(b)(8) specifically provides that, as part of its compliance certification, the Applicant must certify that it is “in compliance with all terms and conditions under every ... settlement agreement relating to programs implemented by the department.” The Applicant’s parent company, Casella, entered into settlement agreements with the Town of Bethlehem in relation to the NCES Landfill. Part of the agreements was that Casella (nor any of its subsidiaries) would attempt to site another landfill in Bethlehem. The Proposal is partially in Bethlehem, so the Applicant is violating the settlement agreements. The settlement agreement is related to the solid waste program implemented by the Department (and makes numerous references to the Department and related approvals/permitting), so the Applicant misrepresented again by certifying that it was in compliance with Env-Sw 303.14(b)(8). The Response does not address the settlement agreements with Bethlehem.
5. **Public Benefit Analysis:** The Applicant must prove that the Proposal meets the public benefit requirement of RSA 149-M:11. As explained in our [letter](#) to you dated January 17, 2024, this means that the Landfill itself—not affiliated facilities and entities—must meet the public benefit requirement on its own merits. Therefore, the Department should strike and not consider portions of the Application concerning the Applicant’s affiliated facilities and entities, namely a proposed new, separate recycling facility in an unknown location. When these outside considerations are stripped from the Application, the Applicant’s public benefit analysis is left wanting and does not provide a sufficient basis for the Department to determine that the Landfill would provide a substantial public benefit and thereby satisfy RSA 149-M:11. The Response does not contain any expansion of the Applicant’s public benefit analysis, so the Applicant still has not met the public benefit requirement.
6. **Risk Assessment for Leachate Contamination of Water Resources:** As detailed in our [letter](#) to you dated February 12, 2024 and accompanying [report](#) by Calnex Environmental Consulting, the Application lacks information to characterize the risk assessment for leachate contamination to water resources, especially groundwater. Without this data—which is critically important given the Landfill would generate leachate for decades near Forest Lake, the Ammonoosuc River, and other water resources—the Department cannot know the fate and transport of leaking leachate.
7. **Bethlehem Wrongfully Excluded as Host Municipality:** Host municipalities are afforded special treatment under the solid waste scheme. *See e.g.*, Env-Sw 314.08 [old rule]; Env-Sw 304.08(c)(2) [new rule]. As explained in our [letter](#) to you dated August 5, 2024, Bethlehem has not been treated as a host municipality for purposes

of the state permitting process even though part of the Proposal is within Bethlehem and Bethlehem and its residents will be exposed to the negative consequences of the Landfill. According to the Response, the Applicant did provide notice to Bethlehem under Env-Sw 303.07(c)(3) as a municipality with abutters, but it still has not treated Bethlehem as a host municipality under Env-Sw 303.07(b)(1). Response, Cover Letter at 2.

8. **Hunter Farm Road:** As set forth in our [letter](#) to you dated September 24, 2024, Hunter Farm Road is a public way that spans the proposed site and has never been discontinued. The Application makes no provision for the fact that a public way runs through the proposed site. Notably, no work may be done in a highway right-of-way without permission from municipal officials. *See* RSA 236:9; *see also* RSA 41:11. The public also maintains rights to pass over and use Hunter Farm Road as a public way. The legal existence of Hunter Farm Road creates limitations on construction on and around it.
9. **Peak vs. Residual Shear Strength:** In comments to the U.S. Army Corps of Engineers dated May 2, 2024 (the Department was copied via a [letter](#) we sent to the U.S. Army Corps of Engineers dated July 3, 2024), Dr. Anirban De, the current Interim Dean of the School of Engineering and a professor of civil and environmental engineering at Manhattan College, highlighted the Applicant's erroneous use of peak shear strength rather than residual (post-peak) strength when dealing with liners on sloped surfaces.
10. **Financial Assurance Plan:** As the Department explained in its October 22, 2024 letter of incompleteness, the financial assurance plan included as part of the Application contains inconsistencies that must be resolved before the Application can be considered complete. *See* Env-Sw 314.12, 1403. Though the Response does provide information about bonding and having the bond held in a Standby Trust, the Response does not seem to relate back to and resolve the inconsistencies the Department requested the Applicant to resolve throughout the entire Application.
11. **Failure to Obtain Local Approvals:** As mentioned above, part of the Proposal is located within Bethlehem. Because Bethlehem has a zoning ordinance and site plan review regulations, the Applicant is subject to those municipal legal requirements. This remains true even if the Department applies the New Rules, which have removed Old Env-Sw 314.07. Further, in fact, the Application can *never* meet these municipal requirements because of Bethlehem's zoning ordinance and settlement agreements with Casella. We detailed this extensively in our [letter](#) to you dated August 5, 2024. The Applicant would also need to obtain municipal approvals pursuant to RSA 674:41 from both Bethlehem and Dalton for constructing facilities

on a private road, which the Applicant has refused to do. The Response does not indicate that the Applicant has obtained or sought any such local approvals.

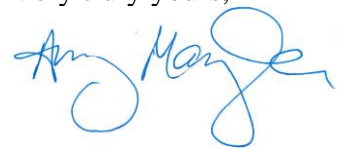
As a final important note, the Applicant itself admitted in the Response that the Application remains incomplete. In response to the Department's request that the Applicant provide additional information as to whether the Proposal complies with the updated version of Chapter Env-Sw 800, the Applicant explains that "there are references throughout the text of the documents that refer the reader to various attachments in the application. *Many of these attachments have not been updated to comply with the new Rules* and are expected to be prepared and as discussed with NHDES staff, will be submitted to NHDES-WMD as part of the technical review process." Response, Cover Letter at 3–4 (emphasis added). The fact that these attachments have not been updated to comply with the new rules reveals that the Application—on its face—is incomplete.

Conclusion

On behalf of NCABC, I respectfully request that the Department note that the Application is deficient on several fronts—even in light of the Response—which renders it incomplete and unapprovable. The Department lacks sufficient information under the law to determine the Application is complete.

Today, February 28, 2025, was the last day for the Applicant to render the Application complete (i.e., one year after the date of the first incomplete application letter) and it did not do so. In accordance with the law, the Department must now deny the Application.

Very truly yours,



Amy Manzelli, Esq.
Licensed in New Hampshire
(603) 225-2585
manzelli@nhlandlaw.com

Enclosures

cc: Clients
abrousseau@townoflittleton.org
admin@bethlehemnh.org
administrativeassistant@whitefieldnh.org
amy.lamb@dncr.nh.gov
emma.berger@des.nh.gov

James.W.Orourke@des.nh.gov
allen.brooks@doj.nh.gov
michael.marchand@wildlife.nh.gov
mmoren@nccouncil.org
nccinc@nccouncil.org
info@dot.nh.gov
District1@dot.nh.gov
Michael.T.ODonnell@dot.nh.gov
onthefarm21@gmail.com
planningboard@townofdaltont.com
rene.j.pelletier@des.nh.gov
riversprogram@des.nh.gov
sabrina.stanwood@dncr.nh.gov
selectmen@townofcarroll.org
selectmen@townofdaltont.com
selectmen@townoflittleton.org
town.clerk@townofdaltont.com
townclerk@whitefieldnh.org
tracie.j.sales@des.nh.gov