

**PETITION TO ENVIRONMENTAL PROTECTION AGENCY**  
**RE: TITLE V PERMIT**  
**WASTE MANAGEMENT OF NEW HAMPSHIRE, INC**  
**ROCHESTER, NH**  
**Filed February 9, 2024 via [titleVpetitions@epa.gov](mailto:titleVpetitions@epa.gov)**

- **Identify the permit on which the petition is based.**

The petition is based on the Significant Modification to the Title V Operating Permit for Waste Management of New Hampshire, Inc., d/b/a Turnkey Recycling and Environmental Enterprises, 176 Rochester Neck Road, Rochester, New Hampshire (Facility Identification #3301700003, Application #22-0211, Permit # TV-0062). The New Hampshire Department of Environmental Services (DES) issued the modified permit on October 25, 2023. The Environmental Protection Agency's (EPA) 45-day review ended December 11, 2023, and the opportunity for petitioning EPA ends February 9, 2024. See *New Hampshire Proposed Title V Permits/US EPA*, Rows 21-28.

**Identify the petition claims.**

**Claims:** DES has violated the *United States Code Title 42, Section 7661a (b) (6)* by failing to provide an adequate, streamlined, and reasonable Title V review for the Turnkey landfill. DES has also violated the *Clean Air Act § 70.8 (c) (3) (ii)* by failing to “submit any information necessary to review adequately the proposed permit.”

The DES permit decision is arbitrary and unreasonable because it excludes from official consideration the majority of public comments that DES received during the public comment period.

***Title 42, Section 7661a (b) (6)* states there must be:**

Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

In New Hampshire, appealing an administrative decision to the Air Resources Council and subsequent appeal to the New Hampshire Supreme Court are “the exclusive means for obtaining judicial review of Title V permit decisions.” See *Attorney General’s Certification, Clean Air Act Amendments, Title V Operating Permits Program* at page 21.

DES failed to provide an adequate and reasonable process due to a decision to categorize some public comments as germane and some as non-germane. This action determined which comments are part of DES’ official *Findings of Fact and Director’s Decision* and which comments are part of DES’ unofficial *Response to Comments*.

The decision to bifurcate responses is a problematic strategy that undermines the appeal process by making the majority of public comments outside the purview of the *Findings of Fact and Director’s Decision* that DES released on October 25, 2023. The distinction is important because the *Findings of Fact and Director’s Decision* is a “department decision” under NH law and includes the option to appeal. The *Response to Comments* is unsigned and does not provide the appeal option.

The *Findings of Fact and Director’s Decision* and the *Response to Comments* are both based on oral testimony and on a 78-page compilation of *Combined Public Comments* that DES received during the public comment period.

Appellants seek to have ALL public comments addressed within the *Findings of Fact and Director’s Decision*. That would ensure an inclusive opportunity for appeal and judicial review and not eliminate those options for the majority of public comments that DES received.

**DES also violated the *Clean Air Act § 70.8 (c) (3) (ii)* by failing to “submit any information necessary to review adequately the proposed permit.”**

The *Clean Air Act § 70.7(h)(5)* states:

The permitting authority shall keep a record of the commenters and of the issues raised during the public participation process, as well as records of the written comments submitted during that process, so that the Administrator may fulfill his obligation under section 505(b)(2) of the Act to determine whether a citizen petition may be granted, and such records shall be available to the public.

The EPA anticipates this will “provide more complete permit records during the EPA’s 45-day review period for proposed permits, the 60-day petition window, and the EPA’s review of any petition submitted, and thus reduce the likelihood that the Administrator will grant a petition

because of an incomplete permit record.” See *Federal Register Revisions to the Petition Provisions of the Title V Permitting Program* (last sentence under “Summary”).

In the effort to obtain the necessary information to review a proposed Title V permit, the *Clean Air Act § 70.8 (c)(3) (iii)* states, “Failure of the permitting authority to do any of the following also shall constitute grounds for an objection:

(i) Comply with paragraphs (a) or (b) of this section;

**(ii) Submit any information necessary to review adequately the proposed permit**  
[emphasis added]; or

(iii) Process the permit under the procedures approved to meet § 70.7 (h) of this part except for minor permit modifications.”

To our knowledge, DES did not provide a complete record to EPA regarding comments received during the public comment period because DES chose to bifurcate the responses. As noted above, the bifurcation resulted in two sets of documents: the official *Findings of Fact and Director’s Decision* and the unofficial *Response to Comments*

The *Electronic Permit System Summary* indicates DES sent to EPA the proposed *Title V Permit*, the *Permit Application Review Summary*, the *Findings of Fact and Director’s Decision*, and a *Letter to Waste Management of New Hampshire, Inc.* The list does not include the *Combined Public Comments*, *DES’ Response to Comments*, and the link to the *Recorded Public Hearing* on September 6, 2023. The EPA database confirms the EPA did not receive this information. See “View Files” for *Turnkey Recycling & Environmental Enterprises, New Hampshire Proposed Title V Permits/US EPA*, Rows 21-28.

DES claims the *Response to Comments* addresses non-germane comments from the public, but petitioners object to the process and DES’ conclusion. We seek to have ALL comments part of the *Findings of Fact and Director’s Decision*.

- **Identify where the issue in the claim was raised during the public comment period (unless it was impracticable to raise the claim during the public comment period)**

DES has violated the *United States Code Title 42, Section 7661a (b) (6)* by failing to provide an adequate, streamlined, and reasonable Title V review for the Turnkey landfill. DES has also violated the *Clean Air Act § 70.8 (c) (3) (ii)* by failing to “submit any information necessary to review adequately the proposed permit.”

The DES decision to bifurcate responses occurred after the public comment period. Petitioners raised the complaint in the *Notice of Appeal* dated November 27, 2023, specifically noting at page 3 non-compliance with “the requirements under Title 42, Section 7661a.(b) (6) (provide adequate, streamlined, and reasonable procedures in the permitting process).” The *Notice of Appeal* at page 4 requests that DES incorporate into the *Findings of Fact and Director’s Decision* those comments that presently comprise the *Response to Comments*.

The *Notice of Appeal* at pages 2 and 3 also addresses non-compliance with the *Clean Air Act § 70.8 (c) (3) (ii)*. Here Appellants state DES omitted the majority of the public comments in its follow-up with EPA, and that the exclusion “undermines the appeal process.” Appellants also state, “The exclusion undermines the integrity of the permit decision and compromises the opportunity for appeal before the Air Resources Council.” The *Notice of Appeal* includes the *Recorded Public Hearing* and a request that DES notify EPA regarding the appeal. Appellants provided the appeal to Morgan McGrath, EPA, Region I ([mcgrath.morgan@epa.gov](mailto:mcgrath.morgan@epa.gov)) and to Patrick Bird, EPA, Region I ([bird.patrick@epa.gov](mailto:bird.patrick@epa.gov)).

The written comments that petitioners provided during the public comment period are part of the *Combined Public Comments* that we provide today for EPA’s consideration. This document and the comments per the *Recorded Public Hearing* show the depth of understanding and concern regarding the dangers of persistent substances such as lead, mercury, cadmium, and PFAS and their cumulative impacts. The comments also show the same understanding and concern regarding the link between cumulative impacts and environmental justice (EJ).

See for example #27 in the *Response to Comments* and the reference to *Cumulative Health Impacts at the Intersection of Climate Change, Environmental Justice, and Vulnerable Populations/Lifestages: Community-Based Research for Solutions Grants/US EPA*. Number 27 should have been placed with the environmental justice comments on page 4 of the *Findings of Fact and Director’s Decision*.

According to *EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum* at page 11, EPA may independently evaluate cumulative impacts on EJ communities “to help prioritize and decide which among the thousands of Title V operating permits the Agency will scrutinize to ensure that they are consistent with the requirements of” the Clean Air Act.

## **REQUESTED RELIEF**

Petitioners request that EPA rescind its support for the Title V permit due to DES’

non-compliance with the ***United States Code Title 42, Section 7661a (b) (6)*** and non-compliance with the ***Clean Air Act § 70.8 (c) (3) (11)***. Petitioners also request that EPA:

1. Instruct DES to incorporate into the *Findings of Fact and Director's Decision* those comments that presently comprise the *Response to Comments* and the *Combined Public Comments*; and
2. Evaluate cumulative impacts related to the Turnkey landfill.

Sincerely,

/s/ Darlene Ball  
Claremont, NH

/s/ Rep. Tony Caplan  
Henniker, NH

/s/ Diana Carpinone  
Dover, NH

/s/ James Contois  
Claremont, NH

/s/ Jacquelyn Elliott  
Waterboro, ME

/s/ John Hurley  
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/s/ Margaret Hurley  
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/s/ Katie Lajoie  
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/s/ Rebecca MacKenzie  
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/s/ Susan Richman  
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/s/ Nelia Sargent  
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/s/ Mary Schissel  
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