VERMONT SUPERIOR COURT
Environmental Division
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Burlington, VT 05401
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Docket No. 23-ENV-00006

New England Waste Services of Vermont, Inc. NPDES Permit Appeal – Permit 3-1406

DECISION ON MOTIONS

Title: Motion for Representation of DUMP, LLC by a Member (Motion: 1)
Filer: Ed Stanak
Filed Date: February 8, 2023

Applicant Reply Opposition to Motion filed on February 22, 2023, by Attorneys Matthew B. Byrne and Timothy M. Eustace.

DUMP, LLC Response to Opposition filed on March 17, 2023, by Ed Stanak

Applicant Sur-reply filed March 22, 2023, by Attorneys Matthew B. Byrne and Timothy M. Eustace.

The motion is GRANTED IN PART.

Title: Motion for Party Status (Motion: 2)
Filer: Ed Stanak
Filed Date: February 8, 2023

Applicant Reply Opposition to Motion filed on February 22, 2023, by Attorneys Matthew B. Byrne and Timothy M. Eustace.

DUMP, LLC Response to Opposition filed on March 17, 2023, by Ed Stanak.

Applicant Sur-reply filed March 22, 2023, by Attorneys Matthew B. Byrne and Timothy M. Eustace.

The motion is DENIED.

In this matter, DUMP, LLC (DUMP) appeals Pretreatment Discharge Permit No. 3-1406 issued by the Vermont Agency of Natural Resources (ANR) to New England Waste Services of Vermont, Inc. (Applicant), which allows Applicant to haul and discharge leachate from its Coventry, Vermont landfill facility (the Facility) at the City of Montpelier Wastewater Treatment Facility (Montpelier WWTF).

Presently before the Court is DUMP's Motion for Representation of DUMP, LLC by a Member of the Organization and Motion for Party Status. Applicant opposes both motions and, in so doing, argues that DUMP lacks standing to appeal in this matter. ANR has appeared in this matter but has not submitted any filings relevant to the pending motions. For the reasons set forth herein, DUMP's motion for non-attorney representation is **GRANTED IN PART** for the limited purpose of the motion for party status. DUMP's motion for party status is **DENIED** and this appeal is, therefore, **DISMISSED**.

Factual Background

To guide this Court in ruling upon the pending motions, we provide this factual background. This background does not make any factual findings with relevance outside of this Entry Order on the pending motions. See Blake v. Nationwide Ins. Co., 2006 VT 48, ¶ 21, 180 Vt. 14 (citing Fritzeen v. Trudell Consulting Eng'rs, Inc., 170 Vt. 632, 633 (2000) (mem.)).

Applicant is the owner of the Facility in Coventry, Vermont at which it operates a landfill. In 2016, Applicant filed an application to renew its Pretreatment Discharge Permit #3-1406, then set to expire at the end of 2016. Applicant's permit allowed it, in relevant part, to discharge leachate from the Facility at wastewater treatment facilities (WWTFs) in Barre, Burlington, Essex Junction, Montpelier and Newport, Vermont. While this application was administratively continued during ANR's renewal review, Applicant sought and received additional permits for the Facility. Relevant here, Act 250 Permit #7R0841-13 conditioned the Facility such that "[Applicant] may not dispose of leachate at the Newport WWTF, nor dispose of landfill leachate on-site or elsewhere within the watershed of Lake Memphremagog, without [an] Act 250 permit amendment." See Applicant Ex. 1.

ANR held hearings on Applicant's Pretreatment Discharge Application renewal in October 2021, with a public comment period extended to expire on November 24, 2021. On December 21, 2022, ANR reissued Pretreatment Discharge Permit #3-1406, effective January 1, 2023 (the Pretreatment Permit). The Pretreatment Permit allows Applicant to discharge leachate from the Facility at the Montpelier WWTF and no other WWTF. The Pretreatment Permit addresses no other discharges and the bulk of the Pretreatment Permit specifically focuses on discharges at in Montpelier and impacts thereof. See Pretreatment Permit.

The Pretreatment Permit includes Special Condition 5. Pretreatment Permit Special Condition 5 addressed a continuation of Applicant's "Conceptual Leachate Treatment Scoping Study for New England Wastewater Services of Vermont (NEWSVT) Landfill," dated October 19, 2019 (the Scoping Study). See Pretreatment Permit at 7. The Scoping Study evaluated two off-site and two on-site leachate treatment and pretreatment technologies. Special Condition 5 states that:

> [Applicant] shall advance this work by conducting a pilot study of a leachate treatment or pretreatment technology to determine the design conditions of a system for full-scale implementation. The Secretary will use the results of the pilot study to establish a Technology Based Effluent Limit and/or treatment standard for PFAS in landfill leachate.

Id. (hereinafter the Pilot Study).

While Special Condition 5 does state that Applicant must complete the Pilot Study, and contemplates that construction of treatment or pretreatment infrastructure may be required to complete the Pilot Study, it does not authorize any infrastructure to be constructed at the Facility in connection with the Pilot Study. Instead, the only activity that Applicant is directed to take at this time in connection with Special Condition 5 is the development of a plan of how it will conduct the Pilot Study. Id. at 8 ("Permitee shall submit a Leachate Treatment Pilot Study Plan (Plan) to select and pilot leachate treatment or pretreatment technologies to remove PFAS and provide concurrent removal of other pollutants from the NEWSVT leachate."). Special Condition 5 then goes on to identify what Applicant must include in its plan for the Pilot Study. Id. at 8, Special Condition 5(a)(i)—(vi). Once Applicant has completed the plan outlining how it intends to carry out the Pilot Study, the plan "shall be treated as an application to amend the permit, and therefore, shall be subject to all public notice, hearing, and comment provisions in place at the time the plan is submitted that are applicable to permit amendments." Id. at 9.

In sum, the Pretreatment Permit is a permit authorizing Applicant to discharge leachate from the Facility in Montpelier. Recognizing that other treatments may be required, it directs Applicant to present to ANR a design of a pilot study of those other treatments. Applicant's intended design of the pilot study will be subject to additional permitting, including all public

notice, comment, and hearing provisions.[1] Applicant is not authorized to undertake any activity, temporary or permanent, at the Facility at this time to further the Pilot Study. Effectively, Special Condition 5 sets forth the application requirements for the Pilot Study.

DUMP, which is an acronym for "Don't Undermine Memphremagog's Purity," is a Vermont member-managed limited liability company. See Applicant Ex. 2 (DUMP, LLC Articles of Organization). Henry Coe is DUMP's member-manager and agent. Id. DUMP was formed in 2018 and it's stated purpose "is to raise public awareness or [sic] the environmental, public health, and economic issues of solid waste disposal in Vermont's Northeast Kingdom." Applicant Ex. 1 at 3. DUMP's members, or "friends," include Vermonters and Canadians. At least a portion of DUMP's members live, or own property within, the Lake Memphremagog watershed.

DUMP maintains an Advisory Committee. The Advisory Committee administers DUMP's decision-making process and funds. See DUMP Ex. D (Aff. of Henry Coe). As of March 15, 2023, DUMP maintained $8,540.00 in funds. See DUMP Ex. E (Aff. of S. Christopher Jacobs). At a January 18, 2023 meeting, the Advisory Committee voted to appeal the Pretreatment Permit to this Court and authorized member Ed Stanak to represent the group before the Court. See DUMP Ex. D; see also DUMP Ex. C (Minutes of January 18, 2023 meeting).

With this factual background in mind, we turn to the specific questions before the Court.

Statement of Questions

In the Environmental Division, the Statement of Questions "functions as a cross between a complaint filed before the Civil Division and a statement of issues filed before the Vermont Supreme Court." In re Conlon CU Permit, No. 2-1-12 Vtec, slip op. at 1 (Vt. Super. Ct. Envtl. Div. Aug. 30, 2012) (Durkin, J.) (citations omitted). As such, it is the issues presented in the Statement of Questions that defines and limits the scope of the appeal, id., that DUMP is required to have standing over. DUMP's Statement of Questions asks:

> 1. Whether or not the Department of Environmental Conservation (DEC) of the Agency of Natural Resources (ANR) erred in the issuance of

[1] Applicant has represented that other permits will be required relevant to the Pilot Study. Applicant has stated it has received a solid waste certification amendment for the construction, operation, and management of a leachate management building and temporary contingency leachate management pad area at the Facility on or about February 13, 2023 and has a pending Act 250 permit amendment application for the proposed leachate treatment building which would house the pilot treatment system project. The solid waste certification is not before the Court in this action, nor is the Act 250 permit amendment application.

> Pretreatment Discharge Permit 3-1406 by failing to specify applicable pretreatment standards for the removal of PFAS from landfill leachate and a particular method of treatment, in disregard of the provisions of 10 VSA §1250(5) and 10 VSA §1263(c)?
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> 2. Whether or not the DEC of the ANR exceeded the scope of its authority in determining that it could require NEWSVT, Inc. to design and construct a pretreatment system for the removal of PFAS from landfill leachate without having first duly promulgated applicable standards consistent with the rule making requirements of 3 VSA Chapter 25 Subchapter 3 along with the requisite opportunity for public input?
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> 3. Should the DEC of the ANR be afforded substantial deference in its interpretation and administration of applicable statutory and regulatory provisions in its issuance of Pretreatment Permit 3-1406 given the inclusion of "Special Condition 5" in the permit, an impermissible condition subsequent relied upon by the DEC in lieu of requiring sufficient evidentiary proof prior to issuance of a permit?
>
> 4. Whether or not the totality of the actions and omissions by the DEC of the ANR in the issuance of Pretreatment Permit 3-1406 is inconsistent with its obligations to properly administer the Clean Water Act pursuant to the provisions of 33 USC §1251 et seq and 40 CFR Part 403?

Statement of Questions (filed Feb. 8, 2023).

The Questions are somewhat unartfully drafted because some of the Questions present multiple possible interpretations. Because the Court is reviewing these Questions to determine whether DUMP has standing to bring this appeal, the Court affords DUMP the benefit of interpreting the Questions broadly. As such, we read Questions 1 and 4 as challenging the actions authorized by the Pretreatment Discharge Permit—i.e., the hauling of leachate from the Facility to discharge in Montpelier. Additionally, we broadly interpret Question 1 to challeng the Special Condition 5 requirement that Applicant design a plan for the Pilot Study to determine the effectiveness of removing PFAS, the results of which will be used to establish the applicable treatment standards and methods for PFAS in landfill leachate. See Permit Condition 5(a)(iii). Questions 2 and 3 similarly indirectly challenge Special Condition 5 by challenging ANR's authority to impose Special Condition 5.

Discussion

I. Motion for Member Representation

DUMP requests that this Court allow it to be represented by a non-attorney member of the organization, Ed Stanak. Applicant opposes the motion.

Vermont courts have discretion to allow an organization to appear before it through a non-attorney representative when the proposed representative establishes that:

> (1) the organization cannot afford to hire counsel, nor can it secure counsel on a pro bono basis, (2) the proposed lay representative is authorized to represent the organization, (3) the proposed lay representative demonstrates adequate legal knowledge and skills to represent the organization without unduly burdening the opposing party or the court, and (4) the representative shares a common interest in the organization.

Vt. Agency of Nat. Res. v. Upper Valley Regional Landfill Corp., 159 Vt. 454, 458 (1992). The general prohibition against non-attorney representation is based in the fact that attorneys, unlike non-attorneys, are "subject to the fiduciary duties that govern [attorney-client] relationships and the rules of professional responsibility that generally apply to lawyers and judges." In re Connor, 2006 VT 131, ¶ 10, 181 Vt. 555; see also Upper Valley, 159 Vt. at 456 ("[Non-attorneys] do not have the ethical responsibilities of attorneys and are not subject to the disciplinary control of the courts.").

The Court concludes that Mr. Stanak may represent DUMP for the limited purpose of filing the pending appeal and DUMP's motion for party status.

First, DUMP has provided an affidavit showing that it has limited funds that would not allow it to hire representation in this appeal and that it has been unable to secure pro bono counsel. Thus, we conclude that DUMP has satisfied the first prong of the Upper Valley analysis.

Second, while the record lacks DUMP's Operating Agreement, we have meeting minutes and affidavits of Henry Coe, DUMP's member-manager, stating that the Advisory Committee is responsible for administering the organization, including voting to file the pending appeal, and voting to appoint Mr. Stanak as a member-representative. Given the limited scope of this Court's approval, we conclude that Mr. Stanak has been authorized to serve as member-representative of DUMP.

Third, we conclude that Mr. Stanak has sufficient legal knowledge to file the pending motions. Mr. Stanak has some legal education, having taken a paralegal training course and having participated in a portion of Vermont's Law Office Study Program. The Court has reviewed DUMP's filings and they demonstrate that Mr. Stanak understands the applicable standards in determining standing. While the Court would have concerns about Mr. Stanak's broader representation of DUMP outside the pending motions, given the complicated nature of the permitting regimes at issue, the likelihood of substantial expert testimony, discovery, and other processes, the Court concludes that he is sufficiently capable of representing DUMP for the limited purposes of the pending motion.[2]

Fourth, for the limited purposes of the pending motions, we conclude that Mr. Stanak shares a common interest in the organization. We note that Mr. Stanak is not a resident of the Lake Memphremagog area or the Northeast Kingdom, generally, which DUMP's purpose stands to protect, nor does he represent that he owns property in the area. Instead, Mr. Stanak is a resident of Barre, Vermont, a great distance from the Facility and the lake. It is undisputed, however, that Mr. Stanak is involved in DUMP and was involved in the organization's participation before ANR. Additionally, Mr. Stanak is well-versed in DUMP's concerns about the Facility and alleged injury, as is necessary for the limited purpose of the organization's Motion for Party Status. Therefore, we conclude that Mr. Stanak has satisfied the fourth prong of the Upper Valley analysis.

Thus, for the limited purpose of filing the pending appeal and filing the pending motions, we conclude that Mr. Stanak may represent DUMP and we **GRANT IN PART** the motion. This conclusion, however, is limited to these pending motions and not binding on any future appeals DUMP may bring relative to Applicant and the Facility.[3]

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[2] We are further guided to this conclusion based on the Court's conclusions in DUMP's motion for party status. While the Court ultimately denies the motion, the denial is based on representations and assertions by DUMP members setting forth their concerns about the Facility and the scope of the Pretreatment Permit itself. Providing this information requires little legal analysis and is generally factual analysis of the organization's stated concerns.

[3] We note, without reaching any conclusion, that the Court would have concerns about Mr. Stanak's representation of DUMP in a broader capacity. As discussed herein, Mr. Stanak is not an attorney, nor has he demonstrated that he has a sufficient professional or personal knowledge of the permitting regimes at issue in this appeal, and he has no personal particularized interest in the Facility as he is not a resident or property owner in the

II. Motion for Party Status

DUMP asserts that it is a person aggrieved pursuant to 10 V.S.A. §§ 8502, 8504 such that it may appeal the Pretreatment Permit to this Court and moves for party status before this Court.[4] Applicant opposes the motion.

A party's standing is a question of subject matter jurisdiction. Brod v. Agency of Nat. Res., 2007 VT 87, ¶ 8, 182 Vt. 234. Therefore, the Court reviews the motion under the standard of review afforded by Vermont Rules of Civil Procedure ("V.R.C.P.") Rule 12(b)(1). In re Main St. Place LLC, Nos. 120-7-10 Vtec, 191-11-10 Vtec, et. al., slip op. at 2 (Vt. Super. Ct. Envtl. Div. Jun. 19, 2012) (Durkin, J.). That is, the Court accepts as true all uncontroverted factual allegations and construes them in a light most favorable to the nonmoving party. Rheaume v. Pallito, 2011 VT 72, ¶ 2, 190 Vt. 245.

Pursuant to 10 V.S.A. § 8502(7), a "person aggrieved" means a person, or company, "who alleges an injury to a particularized interest protected by the provisions of law listed in section 8503 of this title, attributable to an act or decision by . . . the Secretary [of ANR] . . . that can be redressed by the Environmental Division . . . ."

The standing requirement originates with the United States Constitution Article III, which states that courts only have jurisdiction over actual cases or controversies, and Vermont has adopted this case or controversy requirement. Paige v. State, 2018 VT 136, 209 Vt 379 (citing In re Constitutionality of House Bill 88, 115 Vt. 524, 529 (1949) ("The judicial power, as conferred by the Constitution of this State upon this Court, is the same as that given to the Federal Supreme Court by the United States Constitution; that is, the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction.")). A key component of the "case and controversy requirement" is that the standing doctrine ensures that a party show "the threat of actual injury to a protected legal interest . . . ." Town of Cavendish v.

Lake Memphremagog area. While he may share a general common interest in the lake's overall health, based on the facts presented, he has not demonstrated a personal particularized interest in the Facility and the lake.

[4] DUMP does not point to what provision of law requires it to move for party status before this Court. Even so, the parties filings show that, while there is no dispute that DUMP participated before ANR relative to the permit, there is a clear dispute as to DUMP's standing to appear before the Court. A party's standing to appear is jurisdictional and, therefore, we address the merits of DUMP's standing.

Vt. Pub. Power Supply Auth., 141 Vt. 144, 147 (1982). To show standing, plaintiffs have the burden of demonstrating "(1) injury in fact, (2) causation, and (3) redressability." Parker v. Town of Milton, 169 Vt. 74, 77 (1998); see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992) (describing the three elements in detail). Most relevant here, plaintiffs must show a "particular injury" rather than "merely speculating about the impact of some generalized grievance." Parker, 169 Vt. at 77; see Town of Cavendish, 141 Vt. at 147 (same); see also 10 V.S.A. § 8502(7) (requiring that a person aggrieved must show a "particularized injury").

"Stated another way, a [party] must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct, which is likely to be redressed by the requested relief." Parker, 169 Vt. at 78. An injury may not be "conjectural or hypothetical rather than actual or imminent." Turner v. Shumlin, 2017 VT 2, ¶ 9, 204 Vt. 78 (citing Nat'l Org. for Marriage, Inc. v. Walsh, 714 F.3d 682, 688–89 (2d Cir. 2013); Skaskiw v. Vt. Agency of Agric., 2014 VT 133, ¶ 31, 198 Vt. 187 ("Claims are ripe when there is a sufficiently concrete case or controversy, as opposed to one that is abstract or hypothetical." (quotation omitted)); N.Y. Civil Liberties Union v. Grandeau, 528 F.3d 122, 130 n.8 (2d Cir. 2008) ("Standing and ripeness are closely related doctrines that overlap most notably in the shared requirement that the plaintiff's injury be imminent rather than conjectural or hypothetical." (quotation omitted))).

Organizations, like individuals, must have standing to appear in a matter. Parker, 169 Vt. at 78 (citing Hunt v. Washington State Apple Advr. Comm., 432 U.S. 333, 343 (1877) (stating that an organization has standing to bring suit on behalf of its members when (1) its members have standing individually; (2) the interests it asserts are germane to the organization's purpose; and (3) the claim and relief requested do not require the participation of individual members in the action)). "An organization must show a concrete injury; an abstract interest in the outcome of an adjudication is insufficient." Id. (citing Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 40 (1976)).

a. Standing to Challenge the Activities Authorized by the Pretreatment Permit

For the reasons set forth herein, the Court concludes that DUMP lacks standing to appeal activities authorized in the Pretreatment Permit. The only activity that the Pretreatment Permit authorizes Applicant to undertake relative to leachate at the Facility is hauling it from the Facility

and discharging it at the Montpelier WWTF. See Pretreatment Permit at 1 ("[Applicant] is authorized . . . to haul and discharge leachate from its facilities to the City of Montpelier [WWTF], located at Dog River Road, Montpelier, VT 05602, in accordance with the terms and conditions of this permit."). DUMP's members are not Montpelier residents and are not raising concerns related to impacts from the discharges in Montpelier.[5] Thus, DUMP lacks standing to address the main substance of the Pretreatment Permit. Accordingly, the Court DISMISSES Question 1, to the extent that it seeks to challenge the Pretreatment Permit in this regard, and Question 4 from DUMP's Statement of Questions for lack of subject matter jurisdiction.

b. Standing to Challenge Special Condition 5

Regarding Special Condition 5, DUMP's Questions 2 and 3 appear to challenge both (1) whether the agency exceeded the scope of its authority by requiring NEWSVT to design a pilot study evaluating the treatment of emerging contaminants, and (2) whether Special Condition 5 inadequately specifies the applicable pretreatment standards for the removal of PFAS from landfill leachate and a particular method of treatment in that condition.

The Court concludes that DUMP lacks standing to challenge whether ANR had the authority to impose Special Condition 5 because DUMP has failed to demonstrate a cognizable injury-in-fact that is fairly traceable to ANR's imposition of the condition. At best, DUMP alleges hypothetical injuries that might result from the subsequent implementation and interpretation of the plan through the Pilot Study or in some future permitting activity. This is supported by affidavits provided by DUMP members addressing their individual interests and injuries. See Aff. of Effie Brown ("[T]he pilot project will lead to construction and use of permanent pretreatment and treatment facilities at the landfill and further pollution impacts"); Aff. of Henry Coe ("[T]he pilot project will be used to allow the private owner of the landfill to construct and operate pretreatment and treatment facilities at the 129 acre currently permitted landfill, whose and effects will be an existential threat to his family members residing the Memphremagog watershed"); Aff. of Teresa Gerade ("[T]he pilot project will be used to build and operate a pretreatment and/or wastewater facility at the landfill, noting among other things, that electromechanical instruments fail. Such an outcome will be a threat to her ability to enjoy her

[5] This is expressed in DUMP's acronym – "Don't Undermine Memphremagog's Purity."

retirement where she has chosen to spend it, in Newport, Vermont"); Aff. of Polly Swetland Jones ("[S]pecific impacts on her interest that will result from the pilot project including the risk of toxic spills and accidents, lack of certainty of PFAS removal technology, eventual direct discharge to the Black River and more"); Aff. of Pamela Ladds ("[P]ilot project will lead to construction and use of pretreatment and treatment facilities at the landfill and will represent several threats to her interest such as the treated leachate will be tested for the presence of only a few of many toxins present in the flow along with eventual discharge to the Black River").

To better illustrate this conclusion, we again outline what Special Condition 5 states and authorizes. The Pretreatment Permit does not authorize the construction of any infrastructure at the Facility nor take any action relative to leachate at the Facility beyond hauling it off-site. Instead, the Pretreatment Permit requires Applicant to create a plan to complete the Pilot Study of pretreatment or treatment infrastructure. It then lays out what Applicant must include within the plan for ANR's review in order to complete the Pilot Study. See Pretreatment Plan, Special Condition 5(a)(i)–(vi). Thus, while Special Condition 5 requires Applicant to conduct the Pilot Study, it does not authorize Applicant to move forward with the substance or implementation of the study. It directs Applicant to create a plan to complete the study only. The Pilot Study plan ultimately will be a separate amendment application, subject to public notice, comment, and hearing. See Pretreatment Permit, Special Condition 5(a)(vii). Effectively, Special Condition 5, currently, is a directive to apply for a permit for the Pilot Study and setting forth the application requirements for such a permit.

DUMP's alleged injuries are not fairly traceable to Special Condition 5 which presently requires Applicant to design a plan. The specifics of this plan are presently unknown. Instead, DUMP's alleged injuries relate to hypothetical future in which Applicant implements that plan and the scope of that plan may result in the threat of actual injury to DUMP's protected legal interest. Effectively, DUMP has not demonstrated that they are injured by ANR requiring Applicant to develop a plan to conduct the Pilot Study, but rather DUMP expresses concern with what may occur in the future at the Facility based on the subsequent results from additional application and permit review for a Pilot Study . To be clear, the Pilot Study requires a separate permitting action, with separate public notice, hearing, and comment.

As such, DUMP lacks standing to challenge the Special Condition 5 because their alleged injury, relative to the Pilot Study or subsequent activity at the Facility beyond the Pilot Study, are not yet ripe and, therefore, DUMP has not presented a present threat of actual injury in the Pretreatment Permit. DUMP raises future concerns about the design elements, standards, methods, and any subsequent not-yet proposed treatment or pretreatment infrastructure at the Facility. Pursuant to Special Condition 5(a)(vii), Applicant will need to receive additional permitting to implement the plan. The scope of Applicant's proposal for the Pilot Study will be the subject of the plan, which DUMP may be able to provide comment on and attend any public hearings held on the plan. It is that subsequent permitting that may give rise to the actual case and controversy wherein DUMP's members' concerns and alleged injuries would be reviewed. At the present time, there is no action proposed at the Facility and the Court could not redress the alleged injury in this matter. Grandeau, 528 F.3d at 130 n.8 ("Standing and ripeness are closely related doctrines that overlap most notably in the shared requirement that the plaintiff's injury be imminent rather than conjectural or hypothetical." (quotation omitted)).

In sum, at present, Special Condition 5 is a requirement that Applicant submit an application for the Pilot Study, laying out the application requirements thereof. DUMP does not have standing to challenge this narrow requirement, nor does it raise any alleged injury stemming from the plan beyond the fact that it may, in the future, result in a development or uses at the Facility that may impact DUMP and its members. Such injury is hypothetical at this time.

Thus, DUMP lacks standing to appeal the Special Condition 5, as it fails to demonstrate an injury in fact that is fairly traceable to ANR requiring Applicant to develop a plan. Further, any issue DUMP and its members raise in their affidavits concerning the implementation of the Pilot Study or future activities at the Facility are not yet ripe. Thus, DUMP lacks standing to challenge the requirement in Special Condition 5, either in substance or to the extent DUMP seeks to challenge ANR's authority to impose Special Condition 5 generally. Accordingly, the Court DISMISSES Questions 2 and 3 and the remaining portion of Question 1 not previously dismissed

with Question 4 in Section II.a herein from DUMP's Statement of Questions for lack of subject matter jurisdiction.[6]

Accordingly, DUMP's motion for party status is **DENIED**. Having concluded that DUMP lacks standing to raise the Questions presented in this appeal of the Pretreatment Permit, we **DISMISS** this appeal.

Conclusion

For the foregoing reasons, we **GRANT IN PART** DUMP's motion for member representation on the limited basis that Mr. Stanak is authorized to file the appeal and the motions presently before the Court. We further **DENY** DUMP's motion for party status, as the alleged injury is prospective and hypothetical at this time. Having reached the conclusion that DUMP lacks standing to appeal the Pretreatment Permit, we **DISMISS** this appeal.

This concludes the matter before the Court. A Judgment Order accompanies this Order. Electronically signed this 3rd day of April 2023 pursuant to V.R.E.F. 9(D)

Thomas G. Walsh, Judge
Vermont Superior Court, Environmental Division

[6] Having reached this conclusion, we need not reach whether DUMP may maintain organizational standing generally, as it fails the first prong of the organizational standing analysis. Parker, 169 Vt. at 78.