

SUPREME COURT OF NEW HAMPSHIRE

Appeal of Regenesis Corp.

156 N.H. 445 (2007) · Decided November 30, 2007

SUMMARY

The New Hampshire Supreme Court affirmed the revocation of Regenesis Corporation’s solid waste permit by the Department of Environmental Services Waste Management Council. The court held that substantial evidence supported findings that Regenesis officials provided false or misleading information during the permitting process and that permit revocation was not an unconstitutional or unsustainable sanction. The court also upheld the interpretation that the statutory felony-disclosure requirement applies to individuals holding the specified positions or interests at the time of the application.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of New Hampshire                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| WRITING FOR THE COURT | Broderick, C.J.; Dalianis, J.; Duggan, J.; Galway, J.; Hicks, J.                                                                                                                                                                                                                                                                                                                                                                                                                         |
| JURISDICTION          | New Hampshire                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| DECIDED               | November 30, 2007                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| PROCEDURAL POSTURE    | Regenesis appealed the New Hampshire Department of Environmental Services Waste Management Council's order affirming a hearing officer's revocation of its solid waste facility permit. The State, Citizens for a Future New Hampshire, and Resident's Environmental Action Committee for Health, Inc. filed cross-appeals.                                                                                                                                                              |
| STANDARD OF REVIEW    | Under RSA 541:13, the petitioner must show that the agency decision was clearly unreasonable or unlawful. Hearing officer findings are prima facie lawful and reasonable and may be set aside only for errors of law or when the court is satisfied by a clear preponderance of the evidence that the order is unjust or unreasonable. Statutory interpretation is reviewed de novo. The agency's remedial sanction is reviewed under the unsustainable exercise of discretion standard. |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of New Hampshire                                                                                                                                                                                                                                                                                                                                                                                                                     |

## PARTIES

Regenesis Corporation v. New Hampshire Department of  
Environmental Services

## TOPICS

judicial review of agency action

administrative law

environmental law

statutory interpretation

standard of review

## PRACTICE AREAS

administrative law

environmental law

solid waste permitting

statutory interpretation

appellate procedure

## QUESTIONS PRESENTED

1. Whether the Waste Management Council properly affirmed revocation of Regenesis's solid waste permit based on false or misleading information submitted during the permitting process.
2. Whether revocation of the permit was an unconstitutionally excessive or disproportionate sanction violating substantive due process or the Takings Clause.
3. Whether findings or rulings allegedly unnecessary to the determination of the violations should be vacated and deprived of precedential or binding effect.
4. Whether RSA 149-M:9's felony-conviction certification requirement applies only to individuals who are current officers, directors, partners, or other enumerated persons at the time of the permit application.
5. Whether the intervenors' additional grounds for revocation required consideration.

## HOLDINGS

1. The hearing officer and council properly found that Regenesis officials provided DES with false or misleading information during the permitting process and that this provided good cause to revoke the solid waste permit.
2. Revocation of the solid waste permit was not an unconstitutionally excessive or disproportionate penalty, and the hearing officer's imposition of the statutorily authorized sanction was not an unsustainable exercise of discretion.
3. The court declined to vacate findings and rulings that Regenesis characterized as unnecessary because Regenesis cited no authority requiring such relief.
4. RSA 149-M:9's felony-conviction provision applies to persons who occupy the enumerated positions or hold the specified interests at the time of the permit application; it does not plainly extend to persons who previously held those positions or interests.

## KEY QUOTATIONS

*“The central issue before the hearing officer was whether Regenesis’ course of conduct during the permitting process was sufficiently false or misleading to justify revoking the company’s solid waste permit.” (453)*

*“The statutory language does not plainly cover those persons who “have held” stock in the past and we will not read such language into the statute.” (456)*

## FACTUAL BACKGROUND

Bio Energy Corporation operated a wood incinerator facility and sought a solid waste permit while DiNapoli was an officer, director, and shareholder. DiNapoli was indicted and convicted of felony witness tampering during the permit proceedings, but the conviction was not disclosed to DES. After Bio Energy's assets and environmental permits were transferred to Bio Energy, LLC and DiNapoli resigned from Bio Energy Corporation, Regenesis applied to receive the solid waste permit and certified that no covered officer, director, partner, manager, or substantial equity or debt holder had a felony conviction within the preceding five years. DES later determined that Regenesis officials had concealed or omitted material information concerning DiNapoli's conviction, continued involvement, and the transfer and dissolution of the entities.

## PROCEDURAL HISTORY

DES issued a notice of proposed license action and later an amended notice seeking revocation of Regenesis's solid waste permit based on allegedly false or misleading statements and omissions during permit proceedings. After a three-day evidentiary hearing, a DES hearing officer revoked the permit. The Waste Management Council affirmed after a non-evidentiary hearing and denied motions for rehearing or clarification. The New Hampshire Supreme Court affirmed the council's order and declined to reach the intervenors' cross-appeal issues.

## DISPOSITION

affirmed

## CASES CITED

- Appeal of Basani, 149 N.H. 259, 261-62
- Plymouth Fire District v. Water Pollution Comm’n, 103 N.H. 169, 173-74
- Appeal of Verizon New England, 153 N.H. 50, 66
- Appeal of Franklin Lodge of Elks, 151 N.H. 565, 567
- Green Meadows Mobile Homes v. City of Concord, 156 N.H. 394, 395