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# COURIER

erving the North Country Since 1889

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60¢ (USPS 315-1460)

## Judge says Bethlehem landfill may expand

By REBECCA BROWN  
COURIER STAFF

**NORTH HAVERHILL**—Construction may go on at the disputed 3.3 acres at the North Country Environmental Services landfill in Bethlehem, a Superior Court judge ruled yesterday.

In a 25-page decision obtained by *The Courier* late Tuesday, Judge Edward Fitzgerald found in favor of NCES on several key issues. However, other parts of decision favor the Town of Bethlehem.

"NCES may continue to develop, construct, and operate its landfill within the 10-acre and 41-acre parcels pursuant to the 1976 and 1986 municipal approvals, which pre-date the 1987 and 1992 prohibitory amendments," the decision reads.

However, NCES may not claim a right to use the entire 87-acre parcel originally owned by Harold Brown.

The court also finds no evidence of illegal spot zoning in the 1987 or 1992 amendments to town zoning law prohibiting new private landfills and prohibiting expansion.

The court also declined to award attorney fees and costs to NCES. Neither the residents, in voting for the 1987 and 1992 zoning amendments, nor the selectboard, in suing to enforce the zoning laws, acted in bad faith, the court concluded. A finding of bad faith is requisite for awarding fees and costs to the winning party.

The court also left for another hearing issues involving NCES' claim

that it had been denied due process, that the town had illegally exacted below-market disposal fees, and that its property rights were denied.

The heart of the case appears to be the 1985 special exception granted by the zoning board. In the list of conditions devised some months later in 1986, the board did not explicitly state the area on which the special exception applied. Citing a Vermont State Supreme Court decision, the court found that "the town ZBA was duty bound to state with clarity those conditions which it meant to impose upon for the 41-acre lot." in 1986.)

See photo on page Ten

In the absence of a clear limit on size, the ruling states, "NCES is entitled to develop its land-permitted, subject to the of the New Hampshire Department of Environmental Services and to the setback, and other applicable requirements of the Town zoning ordinance."

Without a doubt, attorneys for both sides, selectmen, NCES management, and the state will parse this ruling for days to come as each side tallies its new position.

Reached late Tuesday, NCES attorney Bryan Gould, who had not seen the decision, commented, "If I understand the order correctly, I'm delighted with the outcome. It sounds like the court reached as many arguments as needed to provide relief, but put to another day the remainders of the argument."

Phil Waystack, attorney for the town, noted that he had neither seen the full decision, nor reviewed it with the board of selectmen. "It appears to be an extensive ruling," he said, "After the selectmen review it, I'm sure they will do what they feel is in the best interest of the town. There are still a lot of unresolved issues."

Neither selectmen nor NCES management had received the decision as of press time and declined to comment.

### Petition calls for negotiation

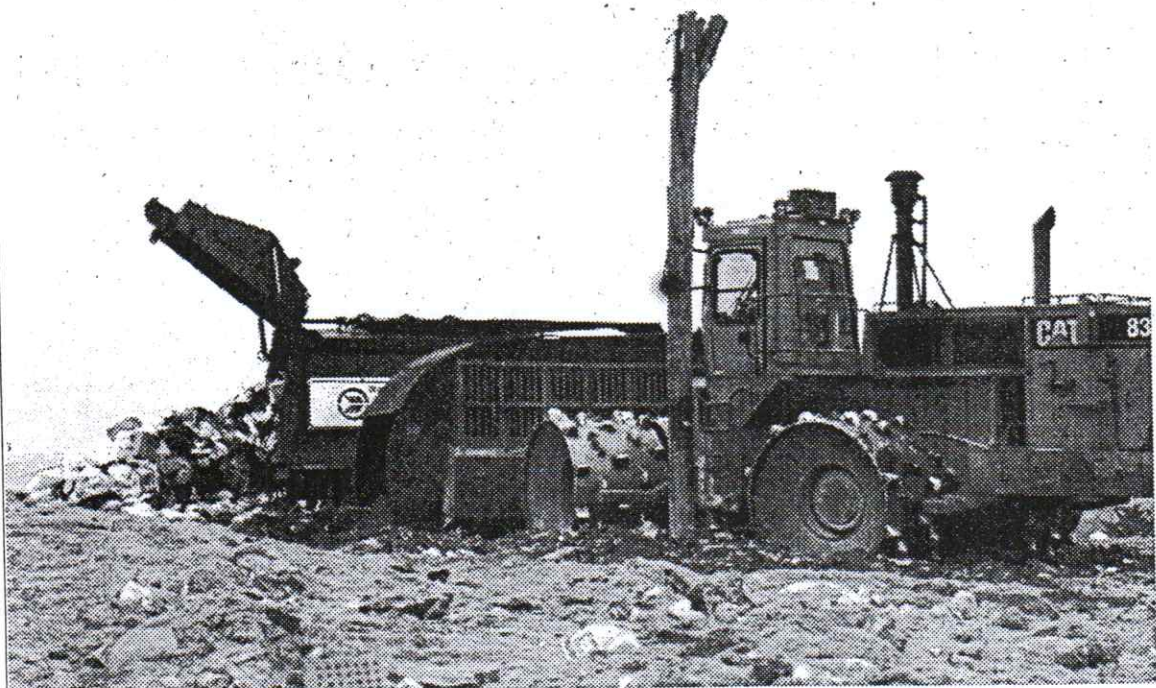
Meanwhile, a petition calling on the selectboard to negotiate with NCES was presented for inclusion on the town warrant.

John Keller, a planning board member who has filed to run for the selectboard, and Selectman John Wedick devised a petition that calls on the board, in the event the town loses in court, to immediately start discussions with NCES aimed at crafting a new host community agreement.

"It means the town should negotiate, rather than appeal," said Keller earlier Tuesday, before the court ruling was known.

A second petition drafted by Wedick and circulated by Keller and others asks the town to take the \$100,000 dedicated to a transfer station at last year's town meeting and return it to the general fund.

### Down to the wire



A garbage truck leaves its contents and a crusher prepares to roll it flat at the North Country Environmental Services landfill on Trudeau Road in Bethlehem. NCES says about six weeks of space remain to be filled with garbage. Last week, a state Department of Environmental Services inspector visited the facility and reported that only six to eight days of space remain. The black smudge on the pole pictured here shows the space left to be filled as of two weeks ago. However, with yesterday's ruling by a Superior Court judge, it appears the facility may have several more years of life.

(Photo by Rebecca Brown)

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TOWN: BETHLEHEM  
 PROJECT: NCES  
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