

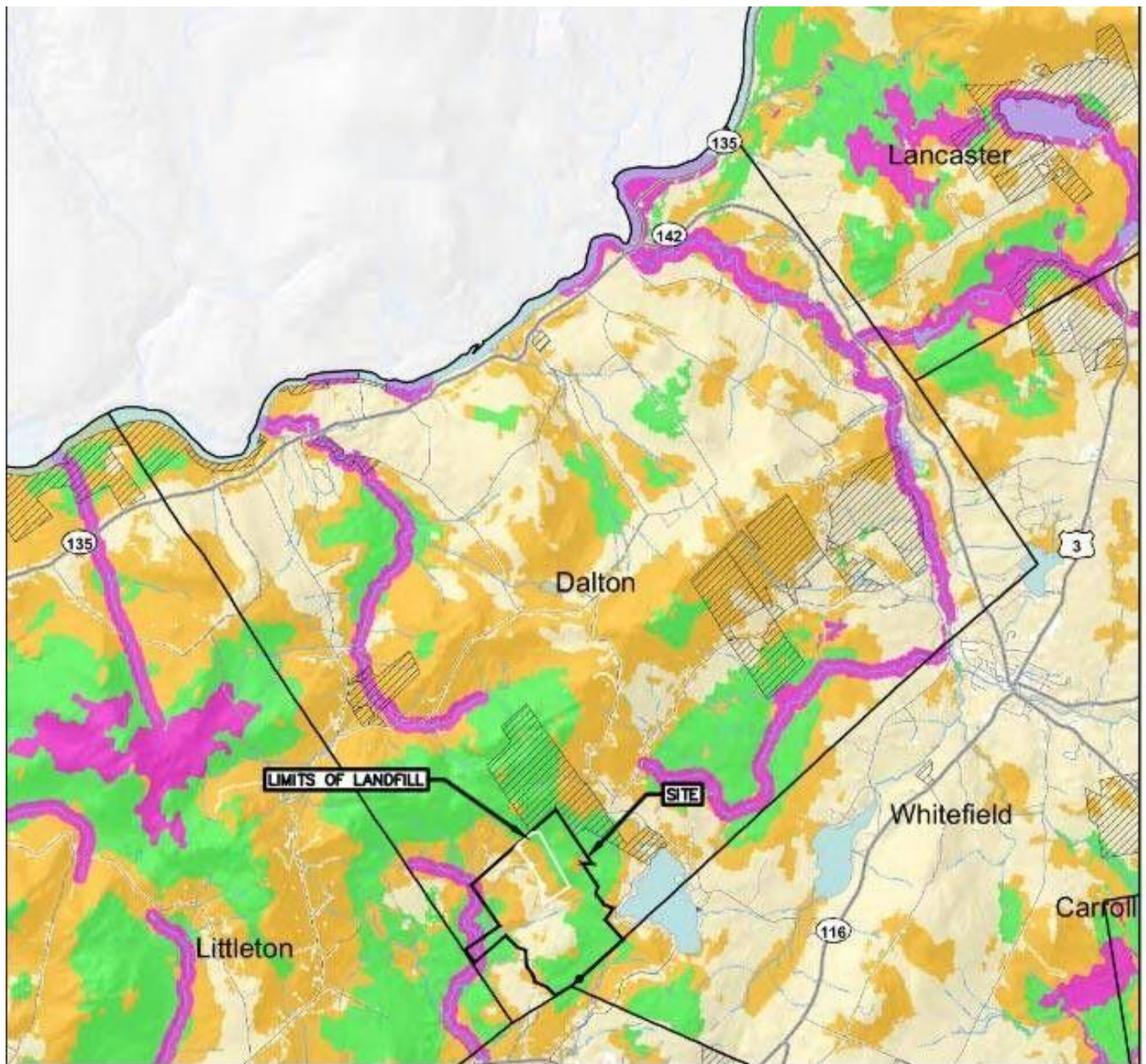
https://www.caledonianrecord.com/news/local/citing-litigation-rules-in-flux-attorney-seeks-suspension-of-casella-permitting/article_6f0e6b3b-bb59-55c5-ab6e-938ecf35c56e.html

FEATURED

Citing Litigation, Rules In Flux, Attorney Seeks Suspension Of Casella Permitting

Following Nov. 1 Committee Report, Local Rep. Sponsors Bill To Limit Out-Of-State Waste

Robert Blechl rblechl@caledonian-record.com Staff Writer
Dec 3, 2023



Citing pending legislation and new solid waste rules under review by the state, an attorney for a North Country environmental group has asked the state to suspend the permitting process for Casella Waste Systems' proposed new landfill in Dalton, a map of which is pictured here. (Contributed image)

Citing pending litigation and New Hampshire's solid waste rules currently in flux, an attorney for a North Country environmental group has asked the state to suspend the permitting process for Casella Waste Systems' proposed 70-acre commercial landfill in Dalton.

The request made on Tuesday to the New Hampshire Department of Environmental Services by Amy Manzelli, an attorney from BCM Environmental Land Law who is representing the North Country Alliance for Balanced Change, follows Casella's recent application filing for a standard permit for a solid waste landfill.

Addressing Mike Wimsatt, director of DES's Waste Management Division, and Jaime Colby, engineer with DES's Solid Waste Permitting and Review Section, Manzelli argues that while DES has 60 days to approve or deny an application under the solid waste rules, the department in this instance should suspend the application because cases now pending before the New Hampshire Supreme Court will interpret the law that DES will need to process applications and DES's solid waste rules are on the verge of a major update "and any new or revised rules concerning public health, safety, and welfare must be applied to the application."

Multiple cases are pending before the high court regarding the public benefit test required under RSA 149-M:11, which requires DES to determine whether a proposed facility provides a "substantial public benefit," including the short- and long-term need of a facility, she said.

In 2022, the New Hampshire Waste Management Council concluded that the last phase of Casella expansion at its facility in Bethlehem did not meet the "substantial public benefit" requirement because it would be operating for most of its life without a capacity need in New Hampshire.

Casella appealed that finding to the Supreme Court.

"The outcomes of these appeals could drastically affect the interpretation of RSA 149-M:11 and, consequently, the application of the public benefit test to solid waste applications," said Manzelli. "As such, the department should suspend GSL's application until the law surrounding the public benefit test is settled."

Otherwise, it would be a waste of DES's time and resources to begin processing an application when a significant part of the process could change, she said.

Casella has also challenged DES's interpretation of RSA 149-M:11 at Merrimack Superior Court, where that case is pending with a bench trial currently scheduled for May.

In addition, following rules last adopted in 2014, DES's administrative rules related to solid waste management are currently in the process of undergoing review, revision, and re-adoption and are due to be re-adopted by July 1, said Manzelli.

"The formal rule-making process has not commenced yet," she said. "Given that many of the new, revised, and readopted rules will likely address public health, safety, and welfare and the landfill will far, far outlive the current rules, the department should suspend the application until the new rules are adopted and it can assess the application under those rules."

While New Hampshire law generally prohibits the retroactive application of laws and the doctrine of vested rights protects developers from subsequently enacted laws, there is an exception when the law promotes public health, safety, and welfare, and “the New Hampshire Constitution was not intended to prevent the legislature from amending laws which regulate contracts in the public interest where such laws have proven inadequate to accomplish their task,” said Manzelli.

On Friday, Casella spokesman Jeff Weld was asked if the company has responded to NCABC’s letter or filed an objection with DES.

“We are confident that NCABC’s request is not supported by New Hampshire law, and that the review of our project applications will move forward,” said Weld. “This is an attempt to distract the public from having real conversations on the need for the project and to delay critical infrastructure development for people in New Hampshire, while gaining media attention for their cause. We look forward to future discussions with the people of New Hampshire and regulatory agencies based on the merits of the proposed Granite State Landfill and recycling facility, and see no reason to waste time and resources on this kind of grandstanding.”

On Friday, state Rep. David Rochefort, R-Littleton, said he will be sponsoring legislation in 2024 to limit the amount of out-of-state waste that comes into New Hampshire, following a Nov. 1 report from the state’s committee to study permits for unlimited service area landfills and out-of-state waste, which he said has been an ongoing concern among a number of his constituents.

What Rochefort said he and the committee learned from representatives of the New Hampshire Attorney General’s office who were invited to a committee meeting is that New Hampshire, as other states have done, can put limits on out-of-state waste if certain criteria are met.

“We got the criteria and we went back to DES,” said Rochefort. “There are three criteria. Mike Wimsatt said two can be met, but the third must go to legal review ... The Interstate Commerce Clause is not a blank act that applies to everything.”

Robert Blechl