

# DES Says PFAS In Test Wells In Bethlehem; CLF Intervenes In Lawsuit Against DES

Robert Blechl rblechl@caledonian-record.com Staff Writer Aug 1, 2023



The state has found Casella Waste Systems to be in violation of its operating permit by placing waste outside the permitted vertical limits of its landfill in Bethlehem. (File photo)

As questions continue over Casella Waste Systems' involvement in the writing of a landfill setback bill, recent public documents show officials in New Hampshire inquiring about contaminants showing up in test wells at the landfill in Bethlehem and an environmental group granted intervenor status in Casella's lawsuit against the New Hampshire Department of Environmental Services.

New entries were also filed in the class action labor-related lawsuit filed against the company in federal court in Vermont.

In June, lawmakers in New Hampshire killed Senate Bill 61, which sought site-specific surface water setbacks for new landfills.

Before the vote, a right-to-know request turned up emails between Mike Wimsatt, director of DES's Solid Waste Bureau, Mark Sanborn, assistant DES commissioner, and Bryan Gould, an attorney enlisted by Casella who helped write some of SB 61.

Last week, Casella CEO John Casella, in a letter to the editor, defended his company's involvement.

Letters from local residents objecting to his position followed.

The company's involvement was brought up by several area residents during a public input session with DES on July 19 on landfill siting requirements.

Among those offering input was Adam Finkel, of Dalton, a former health programs director with the U.S. Occupational Health and Safety Administration, who had previously said it's one thing to invite independent experts to help draft language in a bill and another thing to involve a company with a financial interest.

During the July 19 webinar, Finkel said no one has objected to DES communicating with everyone.

"That is your job," he said. "That was my job at the federal level. But there is a huge difference between bringing somebody into an office or picking up the phone and talking with them and — I believe this is evident in the record — asking one side and one side only for permission to write or amend each single word in a piece of legislation. Those were two incredibly different things and it's very disingenuous to say you speak to everyone. We've spoken, Mr. Wimsatt, many times and you've been very generous with your time, but there's a difference between speaking and listening and asking for permission. I've never asked anyone on the industry or environmental side for permission."

"Your characterization that the agency is asking for permission is completely false and misleading and I object to that," said Wimsatt.

"We've both seen the same emails," said Finkel.

In one email, on Feb. 8, Sanborn wrote to Wimsatt, "Should we provide Bryan with any feedback on this? I would think we would like to let him know we do have concerns about being directed on provisions of the ultimate rulemaking we will be conducting but I defer to you on that point."

On Thursday, Finkel sent an email to several New Hampshire legislators informing them of Casella's LTE, suggesting an investigation into the relationship between DES and Casella would be useful at the current time, and saying the emails show that DES asked Casella for permission to change language in SB 61 and was denied.

## NCES In Bethlehem

As Casella pursues a new commercial landfill in Dalton, a recent letter to the company from DES indicates contaminants showing up in newer test wells that DES required at the North Country Environmental Services landfill, which the company is trying to keep open through 2026, when it is expected to reach capacity.

"Based on the detection of per- and polyfluoroalkyl substances (PFAS) above Ambient Groundwater Quality Standards (AGQS) in samples collected from the downgradient B-928 monitoring well couplet since installation, sampled in part as part of the post Initial Response Action (IRA) groundwater monitoring related to the May 2021 leachate release, additional sampling downgradient is required," James O'Rourke, of DES's Waste Management Division, wrote in a June 30 letter.

"The sampling is required to define the downgradient extent of PFAS impacts and confirm the validity of the Groundwater Management Zone (GMZ) associated with the former unlined landfill which was removed in the 1990s," said O'Rourke. "Given the topography on the river side of Muchmore Road, installation of additional monitoring wells in the downgradient area may not be feasible but should be evaluated. However, at this time, the sampling of the seep and spring locations in addition to the Permit monitoring will be required."

## CLF Intervenes In Lawsuit Against DES

In May 2022, following an appeal by the Conservation Law Foundation, which opposes NCES landfill expansion, the New Hampshire Waste Management Council (WMC) found that Casella's Stage VI expansion approved by DES lacks a "substantial public benefit" required under RSA 149-M, New Hampshire's solid waste management statute, because it would be operating for most of its life during a time of landfill capacity excess in New Hampshire.

In September, Casella sued DES Commissioner Robert Scott on the grounds that DES's "recent departure from its decades-long construction of RSA 149-M:11 together with [the WMC's] administrative hearing officer's inconsistent construction of the same statute have clouded the statute's

meaning and created uncertainty about the requirements for obtaining a permit for solid waste disposal facilities in New Hampshire, including facilities owned or proposed by plaintiffs.”

“Both the department’s new construction and the hearing officer’s interpretation of RSA 149-M:11 render it violative of the dormant commerce clause of the United States Constitution,” wrote Casella’s attorneys, who ask the court to declare that 149-M:11 “has the meaning NHDES has given it since adoption of the statute in 1991 and until 2019 or, in the alternative, that RSA 149:M-11 is unconstitutional.”

The lawsuit is scheduled for a two-day bench trial at Merrimack Superior Court in November.

CLF argued it has several members who live close to NCES in Bethlehem and to the new proposed site in Dalton.

In June, over the objections of Casella, Judge John Kissinger granted CLF intervenor status, concluding that CLF “has a direct and apparent interest in this action and is not seeking to raise issues not related to the subject matter of this case.”

“CLF is a regular stakeholder in landfill permit applications,” wrote Kissinger. “It has an interest in the court’s determination of the proper interpretation of RSA 149-M:11 and whether the statute is unconstitutional.”

During a Q2 earnings call for investors on Friday, John Casella, in response to questions, said the Dalton proposal is moving forward from a permitting perspective, with “nothing really to report there ...”

Casella also said he has proposed to reopen the company’s landfill in Hardwick, Mass, where he said there is capacity for 20 years. A reopening would need to be approved by Hardwick voters through a zoning amendment.

## Federal Lawsuit

Federal court documents viewed on Monday show a new filing in the Fair Labor Standards Act class action lawsuit brought against Casella in August 2021.

A third amended collective/class action complaint was filed on July 21, 2023.

According to the complaint, the action is to recover overtime wages, liquidated damages, and other applicable penalties pursuant to the Fair Labor Standards Act and the state laws of Maine, Massachusetts, New York, and Vermont.

The plaintiffs are current or former non-exempt employees who have worked as waste disposal drivers from August 2018 to the final disposition of the matter.

“During the relevant time period, Casella has knowingly and deliberately failed to compensate plaintiffs and the putative class members for all hours worked in excess of 40 each week on a routine and regular basis,” argue the plaintiffs’ attorneys.

According to a July 17 case entry, parties have reached a settlement in principle and hope to finalize their agreement in two to three weeks.