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Federal Lawsuit Proceeds Against Casella Over Bethlehem Landfill

rblechl@caledonian-record.com Staff Writer

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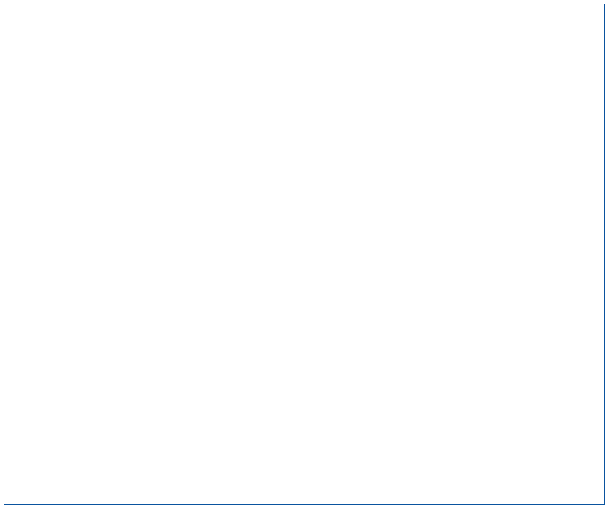


As Casella Waste Systems faces New Hampshire Department of Justice enforcement action if it does not provide a more detailed response on its 154,000-gallon leachate spill at its Bethlehem landfill in May, a federal judge says the lawsuit against the company that alleges violations of the Clean Water Act in Bethlehem is to proceed. (Photo courtesy of the N.H. Department of Environmental Services)

A judge has rejected a series of cross-motions filed by attorneys and allowed the federal lawsuit filed more than three years ago against Casella Waste Systems for alleged violations at its Bethlehem landfill to proceed.

In May 2018, the Conservation Law Foundation (CLF) and Community Actions Works (CAW) filed suit against Casella in the U.S. District Court for the District of New Hampshire, alleging that Casella and North Country Environmental Services, its New Hampshire subsidiary, are illegally discharging pollutants that include 1, 4 dioxane, a suspected carcinogen, and elevated levels of iron and manganese into the Ammonoosuc River through a drainage channel without the required federal permit and in violation of the Clean Water Act.

The principal issue has been whether a surface water channel between the Ammonoosuc River and the landfill, which is several hundred yards from the river, is a “point source” as defined under the Clean Water Act or a “water of the United States.”



CLF and CAW had argued the channel could simultaneously be both a point source and water of the United States.

In an order issued Wednesday, Judge Paul Barbadoro said, “The undisputed evidence shows that unless the drainage channel is a waste treatment system, it is a tributary of the Ammonoosuc River and therefore may be considered a water of the United States and not a point source within the meaning of the Clean Water Act. A genuine issue of material fact exists, however, as to whether the channel was designed to function as a waste treatment system.”

The judge’s order comes after differing attorney interpretations of law under the Clean Water Act.

Casella filed a motion for summary judgment requesting that the court dismiss the lawsuit on the basis that manganese and iron were occurring naturally before the landfill, the drainage channel is a tributary of the river, and the release of pollutants from one water of the United States to another does not constitute under federal law additional pollutants to the waters of the United States as a whole.

(The U.S. Environmental Protection Agency said such transfers are exempt from permitting requirements because the movement of pollutants from one water of the United States to another does not result in additional pollutants to navigable waters).

In 2010, Casella/NCES began to remediate the main seep site at the channel, but new rust-colored sediments soon began to appear.

In their motion for summary judgment, CLF and CAW argued that because its natural features have been modified, the drainage channel is not a tributary and not a water of the United States, but a waste treatment system, and Casella continues to violate the Clean Water Act through the discharges.

Under federal law, Barbadoro said the fact that human intervention has altered multiple features of the drainage channel does not preclude it from being a tributary.

At the same time, he said “the water feeding the channel is contaminated with these pollutants as a result of land-filling activities and it, therefore, meets the definition of landfill wastewater.”

The judge rejected Casella’s argument that the water in the channel can be excluded as contaminated groundwater.

“Because the landfill-related pollutants flow through the drainage channel from a surface expression of groundwater, I agree with plaintiffs that the channel conveys wastewater,” wrote Barbadoro.

As to the question of whether Casella/NCES designed the channel to treat wastewater, he said, “a triable issue exists as to whether defendants ‘designed’ the drainage channel to treat iron and manganese from landfill wastewater prior to discharge to the Ammonoosuc.”

Groundwater beneath and near the landfill flows northeast to the river and the groundwater naturally emerges on the bank above the river in a series seeps, the largest of which is called the main seep, which has created a channel that flows downslope and discharges into the Ammonoosuc at a continual rate of 50 to 100 gallons per minute.

In his order, Barbadoro said elevated levels of iron and manganese, both of which occur naturally and are also constituents of landfill-generated leachate, have been detected consistently in the main seep and drainage channel since groundwater management zone monitoring began in 1995.

“Contamination from the former unlined landfill has increased the levels of these metals in the groundwater that emerges at the main seep,” wrote the judge. “The leachate has consumed oxygen present in the groundwater and altered geochemistry at the site in a way that causes naturally occurring iron and manganese in the soil to be more easily released into the groundwater than would otherwise be the case under normal conditions.”

The federal permit sought for Casella/NCES by CLF and CAW would put a cap on which pollutants can be discharged and mandate steps to limit the discharge of pollutants.

The federal lawsuit proceeds at a time when the state has concluded that Casella’s responses regarding its 154,000-gallon leachate spill at its landfill in Bethlehem in May — a spill that state officials said is the largest leachate spill in New Hampshire — are insufficient and more information is required or the company will face enforcement action by the New Hampshire Department of Justice.

Regionally, Casella is facing mounting opposition for its proposed new landfill beside Forest Lake State Park in Dalton, with opponents urging the state to deny the project a wetlands permit.

The company’s landfill in Bethlehem is projected to close in about 2026.



Robert Blechl