

## My Turn: Favored special interest tells NH DES who's boss

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When I was the nation's top bureaucrat writing and enforcing rules to protect U.S. workers from health and safety hazards, I knew exactly whom I worked for — every employee and every employer. They all deserved our full attention, creativity and empathy and I took an oath to listen to them all. Not a promise to always agree, but always to listen and engage.

Now that I'm a resident of Dalton, I'm disappointed that our Department of Environmental Services (NHDES) is letting itself get pushed around by a special (out-of-state) interest and, at its bidding, is rudely shutting out the affected citizens for whom the agency works. I can't emphasize enough that many DES staff have been first-rate — helping us in 2020 map Forest Lake's first-ever recorded algal bloom, diligently policing the rules so my gigantic 4-by-12 foot woodshed wouldn't be a danger to the lake (the proposed landfill would be 150,000 times larger in area than my shed). It is the agency's management team that is letting the state down.

The science and economics of the proposed 18-million-ton "Granite State Landfill" next to Forest Lake can be debated, though it is harder to do so intelligently when one side keeps broadcasting quarter-truths like "the elevation of the site is below that of the lake" (almost completely not so) or "the dump will reduce greenhouse gas emissions" ("reduce," I guess, in the sense of "add 300 needless miles to each of many tens of thousands of truck trips.") But procedural fairness is impossible to fake. At the end of the day, state and federal judges must and will look not only at whether DES has followed the facts, but whether it has followed basic notions of fairness.

I have just come across in the public docket an astounding letter sent to DES on June 30 by the lawyer for Casella Waste Systems, containing this (in my view) outrageous demand: "We think it would taint NHDES's consideration of GSL's application if the agency were to meet with opponents of the project without GSL's participation... If there is a meeting from which GSL is excluded, however, it has no way of knowing the content and is prevented from responding to it. Accordingly, ... if NHDES decides to go ahead with a meeting we ask to be provided with notice and an opportunity to attend."

Even more amazingly, other documents in the online docket make clear that this letter was sent back to DES merely five hours after Casella learned, thanks only to an e-mailed "heads-up" sent directly from DES to Casella, that two citizens' groups and one town's select board had just requested to meet with the agency. These public comments to DES were not posted online for more than a month after DES sent them to Casella.

The first fact anyone concerned with fairness should know is that DES has met in private with Casella at least five times in the past six months alone. No "notice and opportunity to attend" was given to anyone in our state, pro or con. And North Country homeowners (and anyone else) can only learn the tiniest scraps of information about the content of these meetings: the date, names of attendees and a few bullet points with five words or fewer about the discussion. Basically, "we sat around and discussed the landfill."

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And while meeting with one side at its whim, DES has refused, for more than a year, every request to meet with citizens concerned about the project, many of whom have considerable local knowledge or world-class scientific credentials. Having found this exchange of letters from June, we now understand a bit more why our many recent requests have been rebuffed.

But it's much worse than that. Only one party here is, in my opinion, abusing the court system and intimidating the other. Last year, Casella sued two North Country citizens' groups for alleged defamation and a judge quickly dismissed from the case the homeowners' group whom they sued in error (its members had no knowledge of or involvement in any of the statements claimed to be defamatory), but the chilling effect left its mark. DES knows full well that to allow citizens to speak only at public meetings, with representatives of a plaintiff in a "SLAPP" suit listening in and taking notes, is offensive as it amounts to a "speak at your own peril" offer we can't refuse.

I think I understand what Casella has to fear from "allowing" even one private citizens' meeting, against the dozen or more they've enjoyed. Folks who know more about science, economics, law and public policy than they do might counter their self-serving "alternative facts" with truth. But I can't begin to understand what DES has to fear from true dialogue with citizens.

My neighbors and I aren't asking for anywhere near the amount of two-way discussion Casella has had and will have, merely for an amount more than zero. As of now, we think it has already "taint[ed] NHDES's consideration" of the project for DES to have met only with proponents without any dialogue with the concerned, the affected and the knowledgeable.

If DES won't stand up for the most basic requirements of the administrative process, perhaps it will open its doors because it wants to stand up for whatever sense of pride it has in itself and its staff. Being a regulator and a public servant is a very noble calling. It just looks less noble when an agency is being led on a short leash by a for-profit "handler."

*(Adam M. Finkel, Sc.D of Dalton is a professor of Environmental Health Science at the Univ. of Michigan School of Public Health. For 10 years he served as chief regulatory official at the U.S. Occupational Safety and Health Administration under Presidents Clinton and G.W. Bush. See the letter sent to DES by viewing this story at [concordmonitor.com](https://www.concordmonitor.com).)*