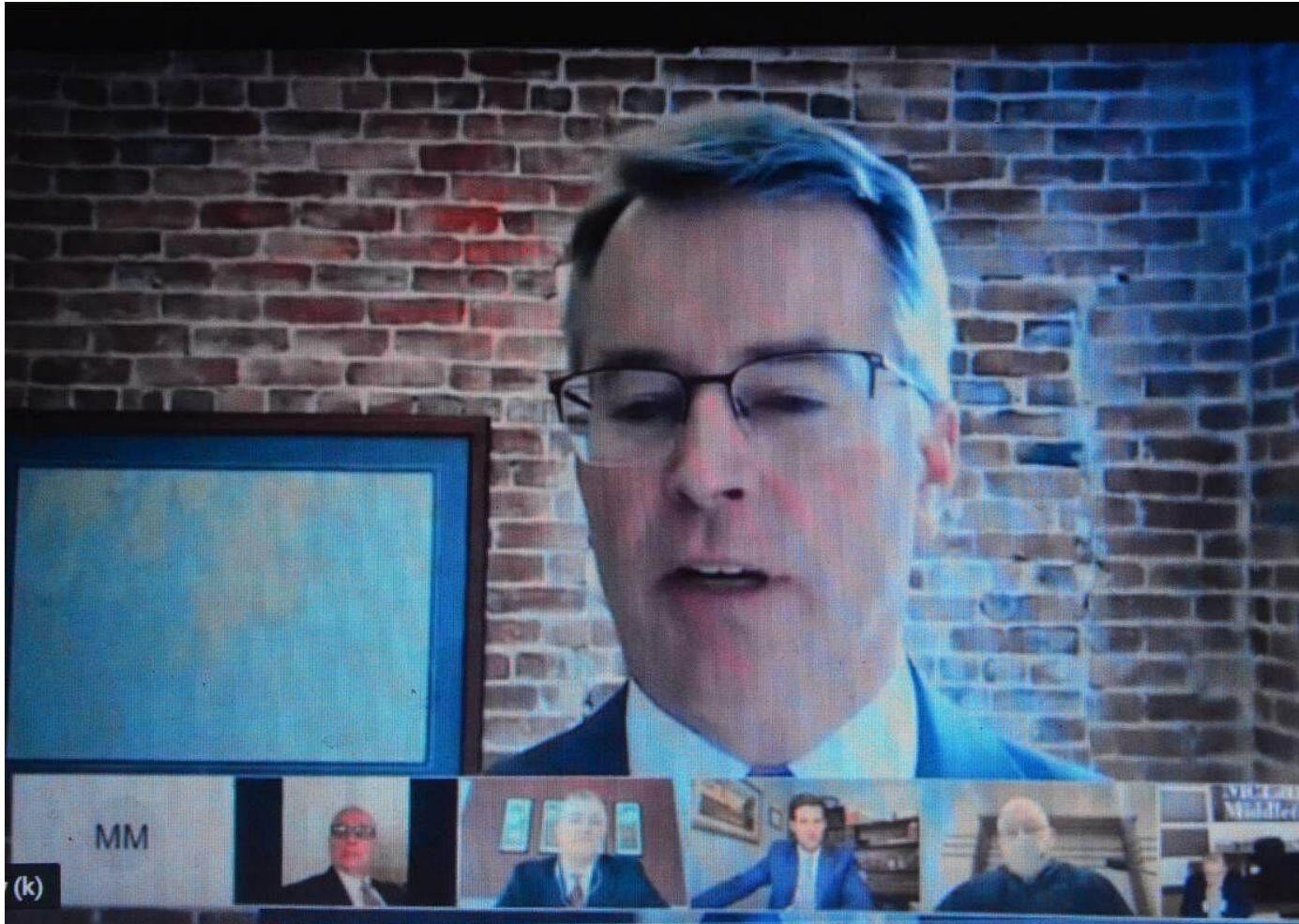




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New Hampshire: Intervenors Request To Pile Into Landfill Lawsuit Against State

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Tom Irwin, attorney for the Conservation Law Foundation, speaks during a virtual court hearing this week on CLF's lawsuit the state regarding solid waste management planning and landfill permitting, a case sparked by the proposed Casella W Systems landfill in Dalton.

A new court case sparked by a local battle has quickly drawn competing interests and requests

for participation from across New Hampshire.

Within days of the filing of a lawsuit against the state regarding its solid waste management planning and permitting for landfills, a number of parties have filed requests to intervene and join the case, among them Casella Waste Systems and a local group opposed to a Casella landfill in Dalton

Casella was granted intervenor status and the others requesting the status to date include the Androscoggin Valley Regional Refuse Disposal District (AVRRDD), a Berlin-area municipal waste district; Waste Management of New Hampshire (WMNH), which owns the largest landfill in the state; and North Country Alliance For Balanced Change, one of several local groups fighting the Dalton project.

Objecting to NCABC's motion to intervene is Casella, which has challenged the group's legal standing in the case.

The lawsuit triggered by Casella's proposal for Dalton was brought by the nonprofit Conservation Law Foundation against the New Hampshire Department of Environmental Services.

Filed Feb. 11 at Merrimack Superior Court, CLF alleges DES is not prepared to make a decision on Casella's application for a landfill and that the department, for nearly two decades, has been violating a law that requires it to engage in continual solid waste management planning, update the plan every six years, and include the planning in decisions on whether to grant permits for new or expanding landfills.

Arguing that DES has not updated the plan since 2003, CLF's request for preliminary injunction asks the court to hold DES in violation of the statute on solid waste management planning and reporting and to prohibit DES from issuing a permit for any new or expanding landfill until DES updates the plan and achieves compliance with the statute and its "substantial public benefit" requirement for landfills.

On Tuesday, in what had been intended as a hearing on the merits of CLF's request for an injunction, Judge John Kissinger said he will first have to act on the multiple motions to intervene.

"Given the number of pending intervention requests, some of them which are objected to, I don't see any practical way I can go forward with the merits of this preliminary injection request this afternoon," he said. "I need to address who can properly speak before the court before I can take up the merits of that."

The merits hearing is now scheduled for March 23.

"I take a pretty broad view of intervention and I'm likely to grant most people's requests to intervene," said Kissinger. "This case is largely a question of whether or not the state can continue permitting without the plan being in effect. That is the issue that I plan to take up. I know the state has conceded it has not updated the plan. The question that flows from that is does CLF have the standing to bring the claim."

Motions

The past two weeks have brought a flurry of motions and objections to motions.

Filing on Feb. 19 an amicus curiae, or “friend of the court,” brief, the nonprofit NCABC, represented by BCM Environmental and Land Law, of Concord, states that it supports CLF’s position because the failure of DES to comply with the solid waste management statute directly impacts the Casella’s permitting process underway for Dalton.

Land-filling practices and technology evolve over time as do alternatives to land-filling, such as source reduction, recycling and reuse, and composting, and had DES complied with updating the plan, a modern plan would have kept up with best practices, wrote Amy Manzelli, attorney for CLF.

Absent an injunction against DES, land-filling would be the state’s de facto solid waste management plan, she said.

“As it stands now, it is not possible for NHDES to accurately determine whether any new or expanded landfill would meet the public benefit requirements because the state solid waste management plan, being 18 years old, cannot contain any up-to-date information about the preferences for source reduction, recycling, etc.,” she argued. “With up to 38 years of new land-filling capacity, it is difficult to see how DES .. would have the incentive to pursue the preferred methodologies such as source reduction, recycling, etc. Instead, the decades of land-filling capacity would perpetuate kicking the proverbial can down the road ...”

Manzelli said, “This failure of NHDES to prepare an updated state solid waste plan and to follow its permitting process and apply standards from that updated plan is unlawful, and would have a dramatic and irrevocable impact on NCABC and other residents in the North Country for decades to come.”

Also on Feb. 19, NCABC filed a limited motion to intervene supported by CLF.

NCABC argues that some of its members live near the footprint of the proposed landfill and would be directly affected by noise from truck traffic, adverse traffic and safety impacts, odor, litter, nuisance animals, destruction of wetlands and other water resources, “the marring of a scenic and profitable tourism destination in and around Forest Lake State Park,” and other detrimental impacts.

On Monday, Casella filed an objection to NCABC’s request to intervene, arguing the group does not have standing to challenge DES’s permitting decisions, cannot show a direct injury suffered,

and its injuries stated are speculative since it's not yet determined if DES will grant the landfill permit.

Casella also filed a motion to dismiss CLF's lawsuit alleging "its claims are unripe and CLF lacks standing" and CLF has not demonstrated a direct harm and its stated harms are based "on speculative future harm."

DES has filed an objection to CLF's complaint and asks the court to deny the CLF request to prohibit DES from reviewing and issuing landfill operating permits.

In their motions to intervene, both AVRRDD and WMNH argue they would be directly and adversely impacted if the CLF lawsuit is successful.

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