

Judge Sides With Town; Halts Landfill Expansion

By PETER RIVIERE

For 15 years, the town of Bethlehem has been dealing with the outfall (a reddish brown liquid seep) from an unlined landfill into the Ammonoosuc River.

During those years, various legal battles have been waged with little ever resolved over the right of the landfill operators to expand their Trudeau Road facility.

Resolution of that question is drawing closer, with the town winning round one of its legal battles with Casella Waste Systems and its subsidiary North Country Environ-

mental Services. Friday afternoon, Judge Gillian Abramson halted further construction on the company's 3.3-acre landfill expansion.

Grafton Superior Court

She further consolidated NCES' Oct. 13 petition for a declaratory judgment with the hearing for a permanent injunction - and scheduled the combined hearing for the end of November.

"This is very favorable to our client, the Town of Bethlehem," said Jonathan Frizell of the Waystack and King law firm.

In court Friday morning, attorney Brian Gould, for NCES, said installation of the final layer of sand over the double liner and leachate collection system could be completed within days, accelerating by about a month the readiness of the new expansion cell for receiving waste.

Before dumping could occur, though, the state's Waste Management Division would have to grant an "operating permit" to the company, an unlikelihood said Dr. Phil O'Brien, the head of the Waste

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Management Division.

O'Brien told NCES by letter this week that no operating permit would be provided until the declaratory petition is resolved.

Gould argued that the state's position is, in effect, an injunction making the town's request for a temporary but immediate injunction unnecessary.

Abramson, though, found that the town met all the requirements for injunctive relief. She wrote, "Specifically the court finds that there is an immediate threat of irreparable harm for which there is no adequate remedy at law."

She noted there was a challenge to the town's governing zoning ordinance by NCES. "However, until the court rules otherwise the ordinance is presumed valid."

Abramson prohibited "further expansion of its landfill facility, through excavation or any other action, beyond the scope of the footprint of Stage II Phase I."

Phil Waystack, who argued the town's position, said, "I see this as a victory for the people of Bethlehem. They've been taking it on the chin on this for years. They deserve this."

He noted that Abramson's decision accelerates the case by months and probably cancels hunting camp 1998 for a number of North Country parties.

Waystack reminded, "We didn't shut down the landfill. We only stopped the expansion. There is still room for waste in the Stage 1 cell."

Morning Hearing

As the plaintiff, Waystack said he must meet four criteria to qualify for the temporary restraining order: no

alternative remedy in law; present threat of irreparable harm; likelihood of success of the merits; and that the public is not adversely affected.

"I ask you to consider who could have prevented this occurrence. The company has had 5½ years to challenge that zoning board ruling if they believed it was not just," said Waystack.

"The defense's strategy appears to be to ignore the town's position, forge ahead like a schoolyard bully, putting the onus on the town to stop its actions," he said.

Attorney Gould reminded the court that granting a temporary restraining order "is an extraordinary remedy."

He cited numerous court cases that upheld his view that RSA 149-M, the state's solid waste management statutes, pre-empts local control over landfill siting. "You may be able to regulate, but you can't exclude," said Gould.

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