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Attorney asks DES to suspend review of latest Casella landfill application

By: [Hadley Barndollar](#) - November 29, 2023 4:16 pm



According to state law, DES must determine whether a proposed facility provides a “substantial public benefit” based on several criteria. (Amanda Gokee | New Hampshire Bulletin)

This story was updated on Nov. 29 at 5:28 p.m. with a statement from a Casella spokesperson.

An attorney representing opponents of Casella Waste Systems’ proposed landfill in Dalton has requested the Department of Environmental Services suspend its processing of the application.

Amy Manzelli, of Concord-based BCM Environmental & Land Law, penned a letter to DES on Tuesday on behalf of North Country Alliance for Balanced Change, a nonprofit that has been fighting against the proposal to build a new landfill in the North Country, next to Forest Lake State Park. Manzelli argued that because of cases currently before the New Hampshire Supreme Court and DES’ own pending solid waste rules process, the latest application filed by Granite State Landfill LLC (GSL), a subsidiary of Casella Waste Systems, should be put on hold.

After withdrawing its applications last year, Casella [resubmitted an application](#) for a solid waste facility permit in October, a new chapter in the saga that has persisted for about five years and sparked [a statewide conversation about solid waste](#).

In her letter to DES, Manzelli first argued that cases currently pending before the state Supreme Court will interpret a law the department will need to use in processing the application: the public benefit test.

According to state law, DES must determine whether a proposed facility provides a “substantial public benefit” based on several criteria, including the short- and long-term need for the facility. Provisions of the public benefit test are currently subject to legal challenges, including two appeals to a Waste Management Council decision.

“The outcomes of these appeals could drastically affect the interpretation of [RSA 149-M:11](#) and, consequently, the application of the public benefit test to solid waste applications,” Manzelli wrote. “As such, the Department should suspend GSL’s application until the law surrounding the public benefit test is settled. It would be a waste of department time and resources to begin processing an application when a significant portion of that process — the application of the public benefit test — could completely change in the midst of the department’s consideration.”

Second, Manzelli pointed to DES’ own mandatory [solid waste rulemaking process](#) currently in motion. The state’s solid waste management rules expire next year, and the agency has embarked on a public process to revise them, prior to the formal rulemaking process that has yet to begin.

In October, for example, the department released a draft proposal of changes to its landfill requirements, the most significant being a required setback from bodies of water that would be more than double the current footage – [a point of contention the state Legislature was unable to reach a consensus on last session](#).

“Given that many of the new, revised, and readopted rules will likely address public health, safety, and welfare and the landfill will far, far outlive the current rules, the department should suspend the application until the new rules are adopted and it can assess the application under those rules,” Manzelli wrote.

A spokesperson for Casella said they were not provided with a copy of the letter and would reserve comment until reading it. DES did not respond to a request for comment.

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