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Landfill Appeals Filed; Senate Committee Pauses Leachate, Harms Bills

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As fallout continues over Casella Waste Systems' involvement in the writing of a landfill setback bill in New Hampshire, recent documents show contaminants showing up in its NCES landfill in Bethlehem, pictured here, and an environmental group being granted intervenor status in the company's lawsuit against the New Hampshire Department of Environmental Services. (File photo)

The applicant seeking to build a landfill in Dalton has filed an appeal contesting the New Hampshire Department of Environmental Services' April 3 denial of its permit application. A local environmental group also appealed DES's decision this week, arguing that DES didn't go far enough.

Meanwhile, at the statehouse, a Senate committee has put the brakes on two landfill-related bills supported by North Country residents. One senator says people have reached out to him with concerns, though he does not specify the concerns or who he spoke with.

Senator Cites Private Concerns



House Bill 566, which passed the House and is now in the Senate, seeks to require a detailed leachate management plan for new landfills. It drew testimony in support during an April 22 public hearing before the Senate Energy and Natural Resources Committee.

House Bill 707, also under committee review, seeks to require DES to modify rules for new landfills to avoid significant harms to human health and the environment and to consider both when making future rules.

During a committee session on April 29, state Sen. Howard Pearl, R-Loudon, a member of the committee, moved to retain HB 707 in committee instead of moving it to a full Senate vote.

“We have a lot of activity that’s going on with House Bill 2 relating to solid waste management,” he said.

Among HB 2 proposals is a 3-year moratorium on approving new landfills.

The Senate committee voted 4-1 to retain HB 707.

Up next was HB 566.

“There’s been some concerns that I have heard on enacting this the way it is drafted,” said Pearl. “I would like some time to look at it further to have a better understanding of it. I think there’s implications that we just want to be careful of ... I’ve had some conversations since our hearing that seem to be very problematic and I would not want to put something in place that was going to create unintended consequences. I would like the opportunity just to look at this to see if we can resolve them before we moved it forward.”

He did not specify the concerns or identify those he spoke with.

State Sen. David Watters, D-Dover, said the bill sponsor, after speaking with DES, was going to suggest one small technical change.

“I didn’t know that I’ve heard concerns necessarily about it,” said Watters. “I’m not clear what the issues are ... This is one we know there’s been [leachate] spills, there’s been problems, there’s been overflows. So while I think it’s always good to keep working on this, at this point I’d like to vote against re-refer because I think it might be possible for us to get a bill done.”

“DES has had to refer the Bethlehem landfill to the DOJ [Department of Justice],” said state Sen. Cindy Rosenwald, D-Nashua. “It seems like the leachate challenges are getting worse because of more intense rainfall. I’m not seeing opposition to this bill from [DES]. I’ll also be voting no.”

The committee voted 3-2 to retain the bill.

On Thursday afternoon, Pearl was emailed asking if he'd be willing to tell who he spoke with and what their concerns are. A response was not received by press time.

Adam Finkel, a former federal environmental regulator from Dalton, said there has been a trend at statehouse public hearings in which opponents of landfill bills no longer provide testimony because they don't need to.

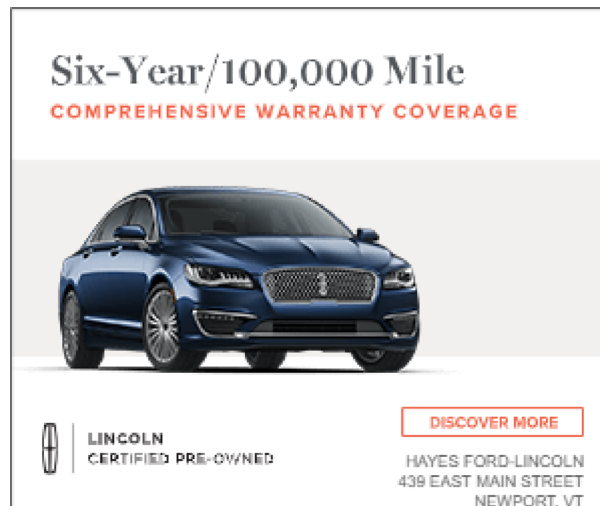
"This is another example of someone saying I've heard concerns, but won't say from who or what the concerns are or why they're valid," said Finkel. "This isn't how government is supposed to work."

Finkel also said it's another example of bills passing the House only to be "derailed" in the Senate.

New Leachate Exceedances In Bethlehem

On April 23, a day after the committee's hearing on HB 566, DES reported that Casella Waste Systems' NCES landfill in Bethlehem exceeded the leachate limit, also called trash juice, which is regularly collected, transported, and treated off-site.

According to a memo from DES's Austin Mills, Casella's Lindsey Menard notified DES that a primary liner leachate pump went out of operation at a pump station, owing to damage during ongoing leachate system cleaning operations.



Mills was told that the leachate level read 100-plus inches, or more than 8 feet, when the operation was restored.

The state's limit is no more than 12 inches on a landfill liner.

According to the report, Menard notified DES a day after Casella discovered the equipment failure.

Mills said he reminded Menard that landfill operators are required to notify DES as soon as practicable and "we were over 24 hours since they were first aware of an issue."

In the days prior to the incident, other leachate exceedances of several feet were reported, according to DES.

According to state records, Casella has incurred hundreds of leachate and other violations at its Bethlehem landfill in recent years.

Appeals

On Monday, Casella filed an appeal of what it calls DES's "extraordinary and draconian decision ... to deny an application as 'dormant' despite the applicant's active and extensive submissions to NHDES seeking to respond to the agency's assertions that it lacked information to find the application complete."

In their petition to the New Hampshire Waste Management Council, company attorneys claim Casella is being singled out for its Dalton landfill proposal, which it seeks to pursue as its Bethlehem landfill closes.

DES representatives say state rules require that a landfill operator include documentation demonstrating that it will have a legal right to use the properties as proposed, which, after multiple requests, Casella did not provide.

In addition, information in the application does not include a site report that demonstrates the location of the landfill complies with all siting requirements or that the site is in a suitable location, they said.

Also on Monday, the North Country Alliance for Balanced Change, a longtime opponent of a landfill in Dalton, appealed DES's decision to the council.

"While the Department reached the correct result, its decision was nonetheless unlawful and unreasonable because it failed to identify all the bases upon which the application was incomplete," wrote Amy Manzelli, environmental attorney for ABC.

DES only cites two main reasons for denial, but ABC contends that the application is incomplete "on numerous other fronts" and DES is required to identify all the reasons the application is incomplete, she said.

One is that, beyond providing documentation that an applicant has a legal right to use a property, the applicant must demonstrate complete ownership of the entire facility and that all easements and rights-of-way meet requirements and are identified in plans, a requirement Casella did not meet, said Manzelli.

Secondly, Casella failed to identify full ownership of Douglas Drive, which would be the site's sole ingress and egress, she said.

Thirdly, the company did not provide evidence it has the required written agreements with at least two leachate treatment/disposal facilities as required by law, she said.

“While the applicant provided a list of proposed facilities to accept leachate, it did not produce written agreements with any of these facilities,” said Manzelli.

Fourthly, Casella did not demonstrate sufficient reliability, expertise, integrity, and competence to operate a landfill, she said.

“The applicant both made misrepresentations in this regard in the application, severely lacks sufficient reliability, expertise, integrity, and competence due to its extensive environmental noncompliance and many violations of environmental laws, and never provided the requirement statement of why, given its chronic violations of environmental laws, DES should grant a permit anyways,” said Manzelli. “The onus was on the applicant to provide accurate and complete information about its eligibility, and it failed to do so in the application.”

She said Casella is also violating its 2012 settlement agreement with Bethlehem, in which it agreed not to site another landfill in Bethlehem other than at NCES. The Dalton proposal also includes land partly in Bethlehem, which also puts the company out of compliance with DES regarding settlement agreements.

Among other application deficiencies, the proposed landfill did not meet the state’s public benefit requirement on its own merits (Casella is linking Dalton to a proposed new recycling facility at an unspecified location in New Hampshire), does not have a risk assessment for leachate contamination of water resources, wrongfully excluded Bethlehem as a host community, failed to obtain local approvals in Dalton and Bethlehem, and failed to comply with new DES rules, argues Manzelli.