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Bethlehem landfill corporation files appeal

By LYN BIXBY
COURIER STAFF

BETHLEHEM—The corporation that owns the Trudeau Road landfill has appealed a Superior Court ruling that halts expansion of the landfill — imploring the state Supreme Court to act before the end of August because a decision is critical to the state and the company's future.

"Any delay in the resolution of this appeal will have a serious adverse effect on the ability of many New Hampshire residents to dispose of their solid waste at a reasonable cost and will disrupt municipal, regional, and state solid waste management planning," the company, North Country Environmental Services, Inc.,

said in its filing with the Supreme Court. "Delay will also disrupt and cause irreparable harm to NCES's business."

Bethlehem's lawyer, Edmund Boutin of Londonderry, said the town will oppose the company's attempt to get an expedited decision within three months.

"We want to make sure that we give the appeal the thought and consideration it deserves," he said. "I don't mind if the Supreme Court moves it as quickly as possible through the system. I just object to the fact that [NCES] is trying to ram it down their throats."

The case was started by NCES, which sued Bethlehem town officials in September 2001, seeking a declaration that they could not interfere with the landfill because the state's solid waste law, RSA 149-M,

preempted town regulation.

The company's lawyer, Bryan Gould of Concord, wrote in his appeal filed last week that the April decision by Grafton Superior Court Judge Jean K. Burling had effectively shortened the 51-acre landfill's life by a year.

The landfill was supposed to reach capacity in June 2005, but Gould said one of Burling's rulings, which upheld a town ordinance limiting landfill height to 95 feet, reduces the capacity significantly. To compensate somewhat, he said NCES is reducing the amount of waste it accepts and is projecting the landfill will reach capacity between June and August 2004.

Three months ago, state environmental regulators approved an application by NCES to expand the landfill by

11 acres, a move expected to extend its life by about 10 years. But the expansion, known as Stage IV, was stopped by another one of Burling's rulings — that a town ordinance prohibiting expansion of private landfills is not preempted by RSA 149-M.

In the appeal, Gould said Burling had erred in eight separate rulings in her 28-page decision, which was based on evidence and testimony at a four-day trial in December. Several of the errors, he said, related to the preemption issue, which was the crux of the case.

"The superior court's conclusions stem from a faulty understanding of the preemptive effect of RSA 149-M and the nature of municipal authority over private disposal facilities granted by the legislature under that statute," Gould

wrote.

In asking the Supreme Court for an expedited ruling, Gould said that construction of the NCES Stage IV expansion would have to begin this fall to have it ready to receive trash by the time the existing landfill reaches capacity.

He also raised the possibility that NCES could lose customers while the appeal is pending. He said the Trudeau Road landfill accepts waste from businesses and town governments in 60 communities.

"Once customers make alternative plans," Gould wrote, "regaining these customers will be difficult, especially if these customers enter into long-term contracts with other landfills to secure the best pricing. Even if NCES is successful in this appeal, then NCES stands to lose many of

its customers if the court's decision is delayed."

One alternative to the Trudeau Road landfill emerged this spring when state regulators approved dramatically expanded capacity at the Mount Carberry Landfill outside Berlin.

Mount Carberry, which was purchased by the Androscoggin Valley Regional Refuse Disposal District in December for \$10 million, received a new state permit in March, increasing the amount of waste it can receive each year for the next 20 years from 32,500 tons to 120,000 tons.

While the NCES Supreme Court appeal is pending, Gould said the company was reducing the maximum amount of waste it would take at the Trudeau Road landfill from 140,000 tons per year to 120,000 tons.

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