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Waste Council Rejects Major Arguments In Casella Landfill Appeal

Dalton Voters On Thursday Reject Temporary Zoning

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More than 100 area residents turned out to White Mountains Regional High School on Wednesday to urge the state Department of Environmental Services, which held a public hearing in the school, to deny a wetlands permit for Casella Waste Systems, which seeks to build a landfill in Dalton. (Photo by Robert Blechl)

Two months after a superior court rejected Casella Waste Systems' lawsuit against the state — which the company filed to keep alive its embattled commercial landfill proposal in Dalton — the New Hampshire Waste Management Council (WMC) on Thursday rejected the major arguments in Casella's appeal to the council.

On April 3, 2025, the New Hampshire Department of Environmental Services (DES) denied by dormancy Casella's application for what the company has called the Granite State Landfill LLC (GSL).

Three times between 2024 and early 2025, DES determined that the company's solid waste permit application was incomplete, after Casella repeatedly failed to provide the information that DES needs to review the application and after DES issued several notices of incompleteness informing the company of what it needed for review and that there would be an ultimate deadline if it wasn't provided.



DES was trying to determine if Casella had a legal right to use the property, for which it has an option to purchase, as the company proposed.

In its denial, DES argued that the language of New Hampshire's solid waste management rules are clear, including about permit applications and timelines.

Within days of the 2025 denial, Casella sued DES and filed its appeal with the council, both of which largely included the same arguments, among them that DES exceeded its authority.

In a 10-page order issued Thursday, Mary Maloney, the WMC hearing officer, granted DES's partial motion to dismiss six of Casella's appeal claims: claims one through three and claims six, 11, and 12.

She took the claims one by one.

In its first claim, Casella argued that DES's dormancy rules exceed its statutory authority and the denial was therefore unlawful.

Citing the lawsuit in superior court and the court's exclusive jurisdiction, Maloney dismissed the claim for lack of jurisdiction.

In its second claim, Casella attorneys alleged that DES, in applying the dormancy rules, departed from established "administrative gloss," a rule of statutory construction applied to an ambiguous case to interpret the clause consistently.

The WMC also rejected that.

"Because GSL has not argued, let alone supported allegations of ambiguity or vagueness in the Dormancy Rules, then its allegation that the Department did not act in conformity with its past interpretation of the rules lacks a sufficient basis in law or fact," said Maloney.

In the third claim, Casella argued that the dormancy period should have restarted upon each subsequent incompleteness letter.

"A reading of the plain language of the rules provides no basis to interpret this language as re-setting the twelve (12) month clock in between the Department's responsive letters," said Maloney. "The rules clearly state that the clock begins to run from the Department's 'initial determination' of incompleteness and when it 'first' notifies the applicant that the application is incomplete ... Had the Department intended for the clock to reset with subsequent notices, it would have included that language in the rules."

DES's letters in February and June 2024 and in January 2025 show repeated requests for information previously identified as missing, she said.

“In the April 3, 2025 Denial by Dormancy letter, the Department referred back to those letters and its repeated requests, noting that it explained that [Casella’s] legal agreements were heavily redacted, preventing the Department’s review, and referenced other legal agreements, which were not provided,” said Maloney. “Based upon the documents in the record, GSL had not satisfactorily responded to the Department’s initial requests for this information. Therefore, GSL has not submitted sufficient factual allegations to support ‘restarting the clock.’”



In claim six, although Casella raised a constitutional claim in DES’s notice of appeal, it recast the claim as a notice and fair process claim.

The council also rejected that.

“The information sought in the additional requests was explained in the correspondence,” said Maloney. “Some of these requests were repeated throughout the correspondence along with an explanation as to why the documents GSL submitted were inadequate. The correspondence also identified the rules under which the documents and information were sought. GSL’s responses to the Department’s letters, which are also part of the record, raise no issues as to lack of notice, lack of clarity or vagueness. Moreover, GSL has not identified any portions of the Department’s additional correspondence and requests that it did not understand.”

In claim 11, Casella argued that DES violated its constitutional duty to assist citizens with the laws it administers by failing to specify what it required.

Casella raised a constitutional claim under the New Hampshire Constitution, but it then recast the claim “broadly on the Department’s obligation to administer its permitting process in good faith and to provide reasonable assistance” to the applicant, said Maloney.

But DES correspondence identified the required documents with specificity, explaining the legal basis for each, and at no point did Casella identify DES’s requests as vague or ambiguous, or that it did not know how to respond or had questions about what DES sought, she said.

Under claim 12, Casella argued that DES violated its right to equal protection of the law by selectively interpreting and enforcing its rules against GSL, but not doing so against similar parties.

In effect, Casella is making a “selective enforcement claim,” but that claim falls short because Casella did not provide evidence that DES’s application of the permitting rules “amounted to conscious, intentional discrimination” or that DES treated similar applicants in a different manner, said Maloney.

At the moment, Casella’s six other claims pend before the council, among them two pertaining to proof of land ownership and three regarding administrative rule siting requirements.

In the July 23 decision rejecting Casella’s lawsuit at Merrimack Superior Court, Judge John Kissinger sided with the state and said, “Based on the plain language of these rules, the Court concludes that the rules fit squarely within the plain language of the enabling statute.”

“The statute requires the Department to adopt rules for the administration of solid waste facility permits, including ‘terms, conditions, and time frames’ for their issuance, approval, and, importantly here, denial,” said Kissinger. “The Dormancy Rules at issue do just that, setting the terms and timeframe for permit application approval. That is, an applicant must submit the relevant required information to the Department within one year from the time the Department initially deems an application incomplete.”

On Aug. 31, Kissinger denied Casella’s request for reconsideration. Under state law, the company has a 30-day window to file an appeal with the New Hampshire Supreme Court.

Dalton Voters Reject Temporary Zoning

On Thursday, following a public hearing on Sept. 19, Dalton residents, in a 56-101 special town meeting vote, rejected a proposal for emergency temporary zoning.

Supporters said a zoning ordinance would protect the town and allow for some zoning when it comes to industrial or other uses that would impact neighboring properties and the community.

It was the second such proposal for emergency temporary zoning, the first of which passed in a special vote in 2019, after which a town vote for permanent zoning was rejected in 2022.

A proposed permanent zoning ordinance could be submitted for the March 2027 town meeting vote.



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