

# NEW HAMPSHIRE UNION LEADER

EDITOR'S PICK

## Lawsuit over landfill denial now in the hands of a judge



The North Country Environmental Services landfill in Bethlehem, which Casella Wast... ▲

**By Jonathan Phelps Union Leader Staff**

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A subsidiary of Vermont-based Casella Waste Systems continues to fight the state's denial of a permit to build a new landfill on a controversial site in the North Country town of Dalton despite years of opposition, and even with new legislation bound to be signed into law.

The fight is playing out in Merrimack County Superior Court with Judge John Kissinger being asked by both sides to rule in their favor before the case heads to trial.

Granite State Landfill, a subsidiary of Casella, filed a complaint against the state Department of Environmental Services (DES) last year.

The application filed in October 2023 was denied in being considered “dormant.” Casella says DES denied its application on grounds that exceed the department’s statutory authority. DES, however, says its decision is consistent with state law on rulemaking authority.

On Friday, the two sides hashed out their positions after filing hundreds of pages of documents for Kissinger to consider. He took the matter under advisement after the half-hour hearing.

Earlier this month, the state House of Representatives voted to create a new landfill-siting process that effectively prevents any new dump from getting permitted until at least July 1, 2027. Gov. Kelly Ayotte is expected to sign the bill into law.

The site of the Dalton landfill would be less than half a mile from Forest Lake State Park, which prompted the legislation.

The bill as crafted creates a seven-person Site Evaluation Committee.

Casella’s lawyers, Jacob Rhodes and Richard Lehmann, would not comment after the hearing about how the legislation impacts Casella’s plans.

During the hearing, Rhodes argued the doctrine of ultra vires, a Latin legal phrase that means “beyond the powers.” He said there is no mention of dormancy in the statute and is “entirely created of DES’s rulemaking.” He called the denial an “administrative technicality.”

“The statute broadly authorizes denials for substantive reasons only; it does not authorize denial of the application for an administrative timeframe,” Rhodes said.

Joshua Harrison, an assistant attorney general with the Environmental Protection Bureau, disagreed that DES authority is too broad and creates an issue with separation of power when it came to the permit denial.

He said the dormancy rules fall within state law under the Solid Waste Management Act and would lead to “absurd consequences” if the ability to deny permits was narrowed.

“This interpretation would take away any ability for the Department to deny for any of the many other important administrative requirements or for any of the important detailed and highly technical substantive requirements involved in solid waste facility design, construction, and operation,” the state’s motion reads.

Casella’s lawyer, Rhodes, said a timeline isn’t designed to limit options for applicants in the permitting process.

The filing points to such denials after the applicant failed to provide additional information. In this case, Casella submitted hundreds of pages of additional material within a year of the first application deadline, according to court documents.

“It is just an arbitrary automatic cutoff in a year regardless of what actions have been taken on the application,” Rhodes said. “What it comes down to is that allows DES to continue to find an application incomplete and the applicant keeps submitting information — that happened here — and then avoid a substantive decision.”

The North Country Alliance for Balanced Change was allowed to intervene in the matter.

Amy Manzelli, an attorney for the alliance, said DES’s denial is not a violation of separation of powers as argued by Casella, especially with the agency having subject matter expertise.

She said state law authorizes DES to make rules about denying solid waste permits.

“We concur with everything that the state has brought forward in its paper and argument today,” Manzelli said.

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