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Casella Sues NHDES Days After Permit Denial

Attorney For Opposition Group Sees No Legal Merit In Company's Claim

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Apr 8, 2025



A landfill siting bill sponsored by a local state representative that was retained from New Hampshire's 2023 legislative session was recently amended and could be on the governor's desk in early 2024. Here, silent protestors gather outside of the Casella Waste Systems landfill in Bethlehem on Oct. 7. (Photo by Robert Blechl)

Although Casella Waste Systems has 30 days to appeal Thursday's denial of its landfill permit application, court records show the company squandered no time also filing a lawsuit against the New Hampshire Department of Environmental Services.

The litigation, seeking a declaratory judgment that was submitted Tuesday morning at Merrimack Superior Court, contests DES' use of the "dormancy rule" in the denial decision.

Three times in 2024 and for a fourth in January 2025, DES deemed Casella's standard solid waste application incomplete on the grounds that the company repeatedly failed to provide the information the department needs to review the application for Casella's Granite State Landfill LLC.



DES's letters also provided notice of an application dormancy deadline, effective Feb. 28, 2025, if the information was not provided.

Citing state rules, DES stated the denial came after Casella did not submit the information within the required year of DES' initial determination of incompleteness.

But according to the 7-page lawsuit, Casella attorneys Bryan Gould and Richard Lehmann argue that DES' Waste Management Division was acting beyond its legal authority when it invoked the dormancy rule and the department's decision is therefore unlawful.

They said that under the statutes regarding the processing of permit applications, including timelines for decisions and grounds for denial, DES's Waste Management Division regulates siting, construction, operation, and landfill closures and is governed by RSA 149-M, the state's solid waste management statute, which specifies the grounds for an application denial.

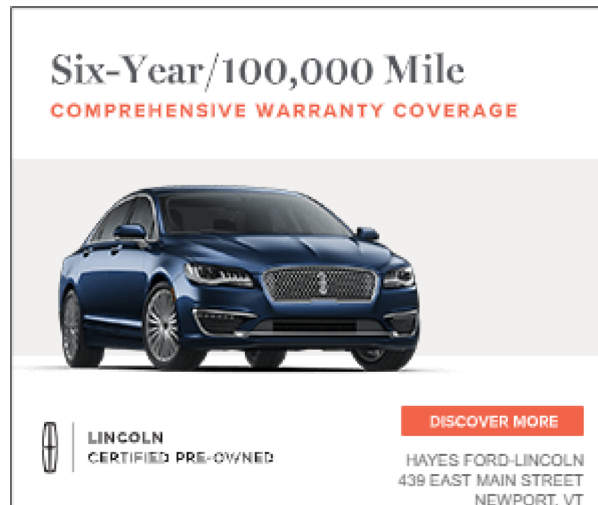
"Dormancy is not one of those grounds," claim the Casella attorneys.

Citing one of DES's two reasons for denying the application, Lehmann and Gould say DES cannot issue an application dormancy denial on the basis that the site report was not updated to comply with amended rules that became effective on Dec. 21, 2024 because Casella cannot be required to update an application to comply with new rules that were not in effect at the time of the initial determination of incompleteness.

The other DES reason for denial regards property agreements and DES stating that from the "substantially redacted" documents submitted by Casella it was unable to determine if the company would legally be able to buy the property for the proposed landfill site, as required by state rules.

To date, according to property records, the company has not purchased the land in Dalton.

DES has cited a lack of information pertaining to property agreements.



According to Casella’s attorneys, all that DES is entitled to request, and all that is necessary to complete the application, is information to determine that Casella has a legal right to purchase the property.

“NHDES is not entitled to the entirety of the agreement between GSL and the landowner, where the redacted terms have no bearing on whether GSL will have the requisite ownership interest,” argues Gould and Lehmann.

They ask the court to declare that DES exceeded its statutory authority in rendering its denial by dormancy.

Others have a different opinion, including the lawyer for a local landfill opposition group.

“I don’t think the legal argument has any merit,” Amy Manzelli, an attorney for BCM Environmental and Land Law, who represents the North Country Alliance for Balanced Change, said Tuesday afternoon. “GSL seems to overlook a couple other key statutes.”

Namely, she said, RSA 149-M: III(a) states, “Applications for permits shall be upon such forms and shall include such information as the department requires by rules adopted under RSA 149-M:7.”

In turn, RSA 149-M:7 states, “The commissioner [of DES] shall have the responsibility and authority to adopt rules, under RSA 541-A, relative to this chapter [RSA 149-M], including rules relative to ... administration of a permit system, including the terms, conditions, and time frames under which the department shall issue, modify, suspend, revoke, terminate, deny, approve, or transfer permits required by this chapter, and means of noticing the public,” said Manzelli.

“So, it seems like the Legislature did clearly authorize DES to make rules about denying based on dormancy,” she said.

Casella, which is represented by the Cleveland Waters and Bass and the Lehmann Major List law firms, seeks a bench trial.

As of Tuesday, the state had not yet responded to the lawsuit and no court dates had been scheduled.

Casella has until May 5 to file an appeal of its denied application to the New Hampshire Waste Management Council.

In the lawsuit, the company’s attorneys informed the court that Casella will also be filing an appeal with the council.



Robert Blechl