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Attorney, Citing 2011 Settlement, Says Proposed Landfill Not Legally Allowable

State Has Ongoing Leachate Concerns At NCES

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As an environmental attorney argues that a zoning ordinance and settlement agreement in Bethlehem prohibit a proposed commercial landfill in Dalton, recent public documents include disclosure of a quarter-inch hole discovered in April in the primary liner at NCES in Bethlehem, the location of which is pictured here. (Photo contributed by NHDES)

As Casella presents Dalton with a proposed host community agreement, an attorney for an opposition group, citing the 2011 settlement agreement between the company and Bethlehem, argues that the proposed new landfill is not legally allowable and the state must, therefore, deny it.

Meanwhile, a new law that takes effect in September includes such facilities in the definition of a development of regional impact.

For abutting communities, the law requires a regional public hearing.

Zoning Ordinance, Settlement Agreement

On Aug. 5, Amy Manzelli, an environmental attorney for the North Country Alliance for Balanced Change, wrote Mike Wimsatt, director of the waste management division of the New Hampshire Department of Environmental Services, to request that DES deny Casella's application for a standard permit.

The location of the proposed Granite State Landfill on Douglas Drive, a segment of which is in Bethlehem and which would include numerous supporting structures, presents several issues that justify denial, and Casella "has not received, and has refused to seek" what Manzelli said are required local approvals from both Dalton and Bethlehem.

Manzelli said that while Dalton does not have a zoning ordinance, Bethlehem does, and Casella needs zoning approval.

"In fact, GSL cannot obtain local approval from Bethlehem because both Bethlehem's zoning ordinance and settlement agreements with Casella preclude the landfill," she said.

In Dalton, she argues that the company has not sought local approval per RSA 674:41, the statute on building permits that gives planning boards authority over the construction of new buildings, and has not demonstrated the state-required complete ownership of Douglas Drive, which is part of the proposed landfill facility.

In Bethlehem, visual inspection of Casella's plans alone is enough to see that Douglas Drive, including the Bethlehem segment, is part of the landfill facility, and it's especially true considering all the work that the company proposes for the Bethlehem length of Douglas Drive, she said.

“However, even if Applicant updates its Application and approaches Bethlehem for zoning approval, Applicant cannot obtain zoning approval from Bethlehem,” said Manzelli. “For one, Bethlehem’s zoning ordinance does not permit any new private landfills in the town.”

A provision in the ordinance prohibits commercial solid waste disposal facilities or expansion of existing facilities outside of District V, the sole designated landfill district that is located on the other side of Bethlehem, where Casella operates its NCES landfill.

She said that even if Casella sought zoning relief in the form of a variance to build a landfill outside of District V, such relief would not be possible because it would violate settlement agreements between Bethlehem and Casella.

Two subsections apply, said Manzelli — Section 5(b), which states that “NCES shall not acquire any real property within the Town’s boundaries for the purpose of developing or operating a landfill on such property” and Section 5(c), which states “NCES shall not seek or acquire any federal, state, or local permits to develop or operate a landfill within the Town’s boundaries and outside of District V.”

Another subsection, Section 5(a), might also be applicable, as it provides that “NCES shall not expand the landfill or develop or operate any other landfill capacity within the Town’s boundaries and outside of District V,” she said.

“Therefore, GSL will never be able to show the necessary compliance with local approvals,” said Manzelli. “Ultimately, while Applicant has claimed that it does not need any local approvals for the Proposal, this is simply not the case ... It is impossible for Applicant to secure local approval from Bethlehem because (1) Bethlehem’s zoning ordinance prohibits landfill facilities in the proposed area and (2) Casella’s settlement agreements with Bethlehem preclude GSL (or any other Casella affiliate/subsidiary) from pursuing a landfill within Bethlehem. For these reasons, the Department should exercise its discretion to deny the Application.”

She also argues that Bethlehem “has not been treated as a host municipality for purposes of the state permitting process even though part of the Proposal is within Bethlehem and Bethlehem and its residents will be exposed to the negative consequences, namely heavy truck traffic.”

On Friday, Casella spokesman Jeff Weld was asked, specific to Douglas Drive, if Casella will be seeking local zoning approval from Bethlehem, if it will seek local approval in Dalton specific to RSA 674:41, and if the company believes that the 2011 settlement agreement prohibits further landfill development and operation outside of Bethlehem’s District V.

“We will continue to work through the required local, state, and federal permit applications for the Granite State Landfill with the appropriate regulatory agencies,” he said.

“Our focus is meeting the requirements along the appropriate timeline to ensure that the Granite State Landfill can begin construction and operation to avoid prolonged disruption to the more than 60,000 customers in New Hampshire who rely on the critical disposal capacity that will no longer be available when the NCES Landfill in Bethlehem ceases operation,” said Weld. “We have secured the first of eight required permits for that project and are encouraged by the response we have received regarding our proposed host community agreement for the town of Dalton.”

Regional Impact

In July, Gov. Chris Sununu signed into law House Bill 1221, which now includes solid waste landfills in the definition of a development of regional impact, for review by local land use boards.

As such, notice shall be made to all communities located within any watershed where such a landfill is proposed or, if outside the watershed, located within 10 miles of the boundaries of the proposed landfill.

On July 26, former Dalton Planning Board alternate member Adam Finkel wrote to the Dalton Planning Board about its new obligations and its requirement under law to notify the North Country Council and every impacted community and to set a date for a regional public hearing.

The new law takes effect Sept. 17, or 60 days after its July 19 signing.

Continuing Violations At NCES

A July 19 story in the New Hampshire Bulletin cites numerous NCES permit violations (some repeat violations) over the course of years, from trash placed outside of permitted areas, litter visible around the site, releases of liquid pollution, and failure to file mandatory reports.

In the story, Weld was quoted as saying a “significant investigation” will be undertaken to find the root causes.

NHDES Concerns

On July 15, Casella responded with a 39-page report to DES's letter of deficiency and departmental concerns regarding leachate management, storage, flow, disposal, and stormwater diversion at NCES.

According to the report by CMA Engineers, during an inspection for construction-related damage in April a quarter-inch hole in the primary liner was observed that, over a free-flowing drainage geocomposite with several inches of head over it, can generate 3,000 gallons of water a day.

The company said the hole was upslope and outside of the area where leachate accumulates. A patch was made.

On July 31, Wimsatt issued his narrative of a June telephone conversation with Casella engineer Joe Gay and Sam Nicolai, Casella's vice-president of engineering and compliance, regarding DES's ongoing concerns about leachate and department data that suggest five months of non-compliance regarding leachate flow and storage.

Data suggests there is excess flow and that several incidents were reportable, but were not reported by Casella, wrote Wimsatt.

"I stressed that these systems were not designed to be operated this way and Sam agreed," he wrote.

Wimsatt reiterated a "verbal emergency authorization to begin leachate shipping 24/7."

He followed up the next day with Nicolai, who had looked into the matter and equipment.

"Sam further explained that NCES believed this equipment had been impacted by construction and knew it was a problem, but had not fixed it," wrote Wimsatt. "He stated that he was very disappointed in how they responded to this issue, and apologized."

The phone call was three years after a 154,000-gallon leachate spill at NCES.

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