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Casella Admits It Place Trash Beyond Final Waste Closure Grades At Bethlehem Landfill

Company Tells State It Could Contest Any Decision That Would Delay Its Proposed Landfill In Dalton

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The state has found Casella Waste Systems to be in violation of its operating permit by placing waste outside the permitted vertical limits of its landfill in Bethlehem. (File photo)

After contesting a finding by the state that it was violating solid waste rules by placing trash outside the permitted vertical limits at its landfill in Bethlehem, Casella Waste Systems has withdrawn its appeal and admitted to placing waste beyond the permitted final waste closure grades.

The nine-month process that began in February with a notice of finding from the New Hampshire Department of Environmental Services (DES), led to an administrative order and cease and desist notice by DES in April, and prompted an appeal by Casella in August, ended Nov. 23 with a settlement agreement between DES and Casella.

On Nov. 23, Bryan Gould, an attorney for Casella, filed a notice of withdrawal of appeal without prejudice, giving no explanation.

The withdrawal comes after an October drone site survey of the landfill area and one week after a Nov. 16 order by the state Waste Management Council denying a motion by Casella to have Zachary Towle, the hearing officer for what would be a hearing in the appeal, removed.

In a Sept. 28 motion to disqualify Towle, Gould argued that hearing officers, like judges, are bound by impartiality and there is an appearance of bias as Towle has a “duty of loyalty to the clients of the attorney general’s office, including NHDES ...”

In the denial, Towle, of the New Hampshire Attorney General’s Office, said NHAGO attorneys may represent and advise agencies with conflicting interests, and therefore be in conflict with their own colleagues ... [and] there is no evidence provided to support the conclusion that an informed, objective observer would conclude that all NHAGO attorneys are so reluctant to act against agencies and their own colleagues as to raise significant doubt whether justice will occur ...”

The denial order states, “Attorney Towle is not required to disqualify himself ... The burden is on [Casella] to [provide] evidence of the existence of bias, a likelihood of bias, or an appearance of bias ... As affirmed by [Casella], it does not allege any facts that show the existence of actual bias.”

Before the Nov. 23 settlement agreement, DES had ordered North Country Environmental Services (NCES), Casella’s New Hampshire subsidiary, to relocate the waste outside of the permitted limits to within the limits allowed under its landfill operating permit.

In its notice of appeal, NCES had contested the phrase “permitted ... vertical limits” and charged DES with acting unlawfully and unreasonably in its order.

Casella also filed a petition for declaratory judgment in Merrimack Superior Court against DES Commissioner Robert Scott regarding the DES order.

Under the settlement agreement, Casella agrees to withdraw its appeal, end its lawsuit against Scott, and “admits that it has placed waste beyond permitted final waste closure grades at the NCES landfill in Bethlehem” as depicted in an Oct. 5 drone site survey of landfill volume remaining.

On Nov. 1, as part of a provision under the agreement, NCES submitted engineering analyses reviewing and evaluating the current conditions, stability, and waste settlement at the landfill.

DES, after reviewing them, will determine whether the waste beyond the permit limits will be relocated in whole or part.

If DES determines that a waste relocation to within permitted limits might be more harmful to the environment and to human health or safety than leaving it placed outside of any permitted limits, the department can allow the waste to remain upon successful application by NCES for a permit modification.

If DES determines that all or some waste must be relocated, it can take any action it deems necessary, including enforcement under the law, to address violations and order a relocation.

The agreement and any DES decisions made subsequent to it “shall not relieve NCES of liability for civil penalties due to allege placement of waste outside permitted limits from the date waste was first allegedly placed outside of the permitted limits or for any other violations.”

In a Feb. 18 notice of findings, DES said Casella buried trash outside the permitted vertical limits of the northeast area of the landfill by up to 16 feet, in violation of state rules, and failed to notify the department of the violations.

The NCES landfill is projected to close in about 2026.

Proposed Landfill In Dalton

While one legal issue appears to be heading toward a resolution, a possible future one regarding Casella’s proposed landfill beside Forest Lake State Park in Dalton and Casella’s interpretation of solid waste rules was suggested by Casella engineer John Gay in an Oct. 29 response to Jaime Colby, engineer in DES’s solid waste permitting and review section.

On Oct. 14, Colby wrote Gay to state that DES, coming out of an August department meeting with the company, understands that Casella will be providing additional information to complete its standard permit application submitted in February.

DES determines that a solid waste application is complete when the requirements of the application are satisfied under solid waste rule Env-Sw 304.03, she said.

As there are no provisions in the rules for an applicant to submit additional information once the application is determined complete, for the public to review and comment on that information, or for DES to stop the decision-making process to consider such additional information, DES seeks the substantive content necessary to undertake a technical review during the completeness phase of an application's review, wrote Colby.

"As such, to be determined complete, a solid waste application must have the substantive content necessary for NHDES to conduct a technical review," she said.

Following receipt of a complete response, DES will review the supplemental submittals and comment on the revised design, and once the application is deemed complete, will concurrently conduct a technical review and hold a public hearing, and issue a decision on the application after the public comment period has ended, said Colby.

In his response letter to Colby, Gay said that Casella expects to continue submitting information to DES and "appreciates that you interpret Env-Sw 304.3 as requiring that a 'solid waste application must have the substantive content necessary for NHDES to conduct a technical review' for an application to be deemed complete."

"Please understand," wrote Gay, "that we must reserve our right to contest this interpretation if it results in an unreasonable delay in the processing of GSL's application."

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