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Council Reaffirms Casella Landfill Expansion Lacks 'Substantial Public Benefit'

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The state is investigating a landfill leachate spill of up to 154,000 gallons at the Casella Waste Systems landfill, in Bethlehem, the entrance to which is pictured here. (Photo by Robert Blechl)

The New Hampshire Waste Management Council has reaffirmed its decision concluding that the Stage VI expansion of Casella Waste Systems' North Country Environmental Services (NCES) landfill in Bethlehem lacks a "substantial public benefit" as required under state statute.

On Thursday, the WMC denied Casella's motions for reconsideration and a rehearing, the company's motion to supplement the record for a rehearing, and its motion that the council st proceedings pending a lawsuit filed by Casella in September at superior court against the

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commissioner of the New Hampshire Department of Environmental Services.”

In the council’s denial order, WMC hearing officer Zachary Towle wrote, “NCES’s conclusion that the council’s determination of law is somehow precluded by the ability of the courts to address the same legal question is wrong. The flaw in NCES’s conclusion is further highlighted by the fact that any legal determination made by the council is subject to the review of the New Hampshire Supreme Court.”

In October 2020 DES issued an expansion permit for the landfill that would extend its life from 2021 through 2026. At that time, the state did not project a landfill capacity shortfall in New Hampshire until after 2025.

In November 2020, the Conservation Law Foundation filed an appeal against DES’s granting of the permit, arguing that New Hampshire does not need Casella’s expanded capacity and that the Stage VI expansion would be operating for most of its life during a time of capacity excess in the state.

In May 2022, following a hearing in February, the WMC rejected seven of eight claims made by CLF, but did agree with CLF and concluded that DES acted unlawfully when the department found that the Stage VI expansion provided a “substantial public benefit” under RSA 149-M:11, III, the state’s solid waste management statute when the facility was projected to operate during periods without capacity need/shortfall.

“NCES’s claim that it was somehow prejudiced by the council’s appeal process due to its status as the permittee was unconvincing,” Towle wrote in the order rejecting NCES’s motion to stay council proceedings. “NCES participated fully in the appeal process and elected to argue that NHDES acted unlawfully in its issuance of the permit. The council’s power is limited to determining whether NHDES acted lawfully and reasonably. CLF argued NHDES acted unlawfully while NHDES argued it acted lawfully. While it was apparent that NCES would have benefited from a finding that NHDES acted lawfully, NCES admitted that it believes NHDES acted unlawfully in issuing the permit. (NCES arguing NHDES applied an incorrect interpretation of RSA 149-M:11, III when issuing the permit).”

In its motion for a rehearing, Towle said NCES further asserted that RSA 149-M:11 is facially discriminatory against out-of-state waste importers and, although DES allegedly did not enforce most of the discriminatory provisions, its actions were still injurious to waste importers in some capacity.

“It is readily apparent that NCES could have raised the arguments regarding the interpretation of RSA 149-M:11 articulated in its motion for a rehearing earlier in the appeal process but chose not to,” he said. “NCES elected to pursue what it considered a beneficial outcome instead of seeking to address allegedly unlawful activity conducted by NHDES.

The council remanded its single finding of lack of substantial public benefit to DES Commissioner Robert Scott for review.

It was undetermined Monday if DES will ultimately pull Casella’s Stage VI operating permit for its Bethlehem facility and if the WMC denial orders will result in an appeal to the New Hampshire Supreme Court.

The nearest landfill is the Mt. Carberry landfill near Berlin, a municipally owned facility that is run by the Androscoggin Valley Regional Refuse Disposal District. In April, DES approved an expansion that would give Mt. Carberry capacity into 2041.

In a statement following the newest WMC orders, CLF representatives said the council “has again agreed with CLF that the permit to expand Casella’s Bethlehem landfill is invalid.”

“We’ll say it again: there is simply no need for this landfill,” said CLF staff attorney Heidi Trimarco. “The Waste Management Council has made it clear yet again that the state cannot permit new landfills that aren’t needed to satisfy New Hampshire’s disposal needs. It’s time for Casella to give up this fight and be a partner in reducing waste through recycling and composting.”

Approximately half of the waste disposed of in New Hampshire landfills comes from out of state and New Hampshire should do more to reduce the materials sent to landfills, said CLF representatives.

“Building unneeded landfills simply allows more out-of-state waste to be trucked into New Hampshire for the benefit of private waste companies and to the detriment of local communities,” they said.

On Sept. 20, prior to the WMC’s Nov. 3 orders, Casella, through its subsidiaries NCES and Granite State Landfill LLC, sued Scott at Merrimack Superior Court.

In a petition for summary judgment, Casella argues that DES’s “recent departure from its decades-long construction of RSA 149-M:11 together with an administrative hearing officer’s inconsistent construction of the same statute have clouded the statute’s meaning and created uncertainty

the requirements for obtaining a permit for solid waste disposal facilities in New Hampshire, including facilities owned or proposed by plaintiffs. Both the department's new construction and the hearing officer's interpretation of RSA 149-M:11 render it violative of the dormant commerce clause of the United States Constitution."

The company requests that the court declare 149-M:11 to have "the meaning NHDES has given it since adoption of the statute in 1991 and until 2019 or, in the alternative, that RSA 149:M-11 is unconstitutional."

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