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FEATURED

Proposed Landfill In Dalton Triggers Lawsuit Against State

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Conservation Law Foundation attorney Tom Irwin, pictured here in Littleton in May 2018 during an announcement of CLF's federal lawsuit against Casella Waste Systems regarding the company's landfill in Bethlehem, is the attorney in a new CLF lawsuit against the state stemming from Casella's proposed landfill in Dalton. (File photo by Robert Blechl)

Since it came to light in 2019, the proposed Casella Waste Systems landfill beside Forest Lake

State Park in Dalton has not only galvanized local opposition but has led to push back at the state level.

Last year, it sparked legislation to prohibit the siting of new landfills within two miles of any state park.

Now, it is the catalyst for a lawsuit against the New Hampshire Department of Environmental Services and its commissioner, Robert Scott.



The new litigation alleges that DES is unprepared to handle Casella's application for a landfill and that the department, since 2003, has been ignoring a law that requires it to engage in ongoing solid waste management planning and factor that planning into decisions on whether to grant permits for new or expanding landfills.

On Thursday in Merrimack Superior Court, the nonprofit Conservation Law Foundation filed the three-count complaint that asks the court to issue a declaratory judgment holding DES in violation of RSA 149-M:29, the New Hampshire statute on the state solid waste planning and reporting, until it publishes an updated solid waste management plan.

CLF is also asking the court to prohibit DES from issuing a permit to Casella or a permit for any other new or expanding landfill until DES has achieved compliance with the statute and its "substantial public benefit" requirement.

"Absent a valid and updated state solid waste plan, DES cannot lawfully or reasonably render a substantial-public-benefit determination and, therefore, cannot lawfully and reasonably issue permits for new or expanded solid waste disposal facilities," CLF attorneys Heidi Trimarco and

Tom Irwin wrote in the complaint.

RSA 149-M:29 states that beginning in Oct. 1, 1998, and for every six years thereafter, DES shall update the state's solid waste management plan and prepare a report on the level of achievement in reaching the 40-percent diversion goal.

That goal is established in RSA 149-M:2, which states that by the year 2000 New Hampshire is to achieve a 40-percent minimum weight diversion of solid waste land-filled or incinerated on a per capita basis and is to develop strategies for reaching it and is to note any changes to the goal.

Despite the statutory mandate to update the solid waste management plan every six years, CLF alleges DES has not done so since 2003.

"DES's failure to comply with its mandatory duty to develop and issue state solid waste plans has deprived the state, DES, and the public of an important solid waste management tool, causing or contributing to ... the state's failure to achieve the state waste reduction goal established more than 20 years ago," wrote Trimarco and Irwin.

By not complying, they argue the state has also failed to shift in any significant way from waste disposal (land-filling and incineration, with land-filling the state's least preferred waste method) to the preferred methods of source reduction, recycling, reuse, and composting pursuant to the solid waste management hierarchy established more than two decades ago.

In addition, DES's permitting of landfill disposal capacity which, since at least 2015, has been consumed at rates of nearly 50 percent by out-of-state waste, they said.

Last week, Casella sent notice to abutters that it is applying for a standard permit for a solid waste landfill in Dalton.

The company's plans are for what would be the first new landfill in New Hampshire in decades, noted CLF representatives.

CLF and local landfill opponents have cited adverse environmental impacts and impacts to human health, groundwater and drinking water through possible leaks of landfill leachate containing toxic chemicals and carcinogens; heavy truck traffic; odors; and negative impacts to the region's quality of life.

DES officials could not be reached for comment by press time Friday on what they think of the merits of the CLF lawsuit and how they will proceed as a party to the litigation.

In a statement, CLF attorney Heidi Trimarco said, "State officials are blatantly ignoring the law and communities are suffering as a result. The state is legally required to have an updated solid waste plan before approving landfill permits, yet it has green-lighted several landfill expansions since the last plan was completed in 2003. Instead of committing to waste reduction and diversion efforts as part of a new solid waste plan, New Hampshire has become a dumping ground for out-of-state waste."

Based on Casella's figures with the state, its roughly 180-acre, privately-owned commercial landfill in Dalton would accommodate more than 14 million tons of waste during a nearly four-decade period.

In making their case to the court, CLF representatives said before DES can decide whether New Hampshire needs a new landfill, the department must comply with the state planning law and produce a current solid-waste management plan to guide its decision-making.

On Friday, a local resident weighed in, Adam Finkel, of Forest Lake Road in Dalton, who was a federal regulatory official for 12 years.

“When the Legislature tells you to do something, you can’t just pretend it’s not required,” he said. “I hope CLF prevails so that DES can think very hard, with help from qualified scientists, about where we want our next New Hampshire landfill to be located, and can steer applications towards sensible sites. It is possible to operate a safe landfill, but not in the awful places current developers seem to be drawn to.”

Other CLF Actions

In recent years in the North Country, CLF has been active on the litigation front.

In 2018, before the Dalton proposal was known, the group filed a lawsuit in federal court alleging that Casella is violating the Clean Water Act at its landfill in Bethlehem, which is projected to close in about 2026.

That case remains ongoing.

In October, CLF filed an appeal with the New Hampshire Waste Management Council to contest DES’s approval for the last phase of landfill expansion in Bethlehem.

MORE INFORMATION





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