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Group Pushes State To Re-Include Full Wetlands Impact Of Landfill

DES Public Info Session For Sept. 29 Moved To Online Only

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Sep 24, 2021

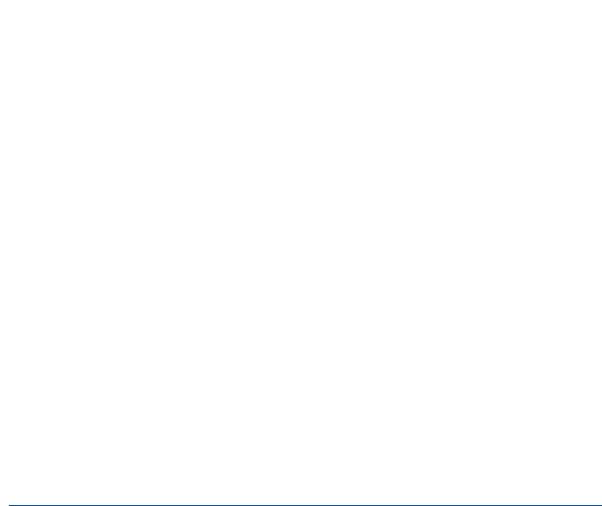


The Conservation Law Foundation, whose attorney, Tom Irwin, is pictured here in Littleton in 2018, was determined last week to have standing in its appeal against the state's decision to allow Stage VI expansion for Casella Waste Systems' landfill in Bethlehem. (File photo by Robert Blechl)

An environmental group that has been active in recent years in litigation against the Casella Waste Systems landfill in Bethlehem and the company's proposed landfill in Dalton is pushing the state to re-include the full wetlands impact for the Dalton project.

As a public informational session hosted by the New Hampshire Department of Environmental Services nears next week on the full scope of the Casella permitting processes, the Conservation Law Foundation is asking the department to clarify why it is suspending its review of Casella's wetlands permit submitted in August 2020 for an "attempt to limit the scope of review to only one portion of the larger landfill development" and is arguing that DES is required under federal and state law to study the cumulative wetlands impacts of a project.

On July 14, a public hearing on Casella's wetlands permit application was hosted by DES in Whitefield, with the public comment period scheduled to end on Sept. 13.



Under state law, DES is required to issue an approval or denial within 45 days following the end of the public comment period.

On Aug. 26, however, the department contacted Casella to request that the company amend its application to include only the first phase and not all three phases of the proposed landfill that would permanently impact a total of 17 acres of wetlands.

On Sept. 1, Rene Pelletier, assistant director of DES's Wetlands Division, told The Caledonian-Record that it is not uncommon for DES to request that applicants amend their applications as allowed under law and an amended Casella application makes it easier to coordinate multiple permit

applications for a comprehensive review, requires the company to include more information in its application, and slows the permitting process, and DES doesn't know if Casella will submit future applications to build phases two and three.

He also said Casella engineer, Joe Gay was made aware before DES's Aug. 26 letter that the department was not going to approve what the company deemed to be all three phases.

Opponents of a landfill at the proposed site in Dalton, however, say the amendment shows that DES is working behind the scenes with Casella to avoid a permit denial, the department had already committed to a decision by the end of October 2021 (instead of an amended decision date in December 2022), and by excluding the full wetlands impact it will make it easier for DES to issue an approval.

Casella's amended wetlands permit application is now expected to be submitted to DES by Dec. 15, 2021.

In its Sept. 10 letter to DES, CLF attorney Peter Blair said in addition to the 17 acres of impacted wetlands, a new landfill near Forest Lake State Park would involve the destruction of five vernal pools and the clear-cutting of more than 160 acres of forested land.

Although CLF intended to submit substantive comments opposing the 2020 wetlands application detailing its concerns, CLF will not be submitting comments on the original application since it appears that DES will not be considering it, said Blair, who requested that DES clarify the procedural process and provide it and other members of the public a reasonable extension of time for submitting public comments.

Objecting to DES's position that it's unknown if Casella will return for phases two and three, Blair said Casella has "articulated a clear intention to develop the project beyond Phase One" and "the 2020 wetland application repeatedly outlines a well-developed plan for the construction and operation of a large landfill developed in three phases."

“The department’s approach of dividing up and segmenting the full project review into smaller individual parts will ignore the true scope, scale, and severity of the proposed action,” said Blair. “Therefore, the department must consider the full scope of impacts from the entire project. This will ensure that the department (1) is not illegally segmenting the project in a manner that renders the review process inconsistent from that of federal agencies, and (2) is considering all cumulative impacts as required by [DES rule] Env-Wt. 302(a)(16).”

Only focusing on the first phase is prohibited under the National Environmental Policy Act and will create a divide between the federal and state permitting process that would be in direct contrast to one of the department’s primary reasons for requesting a new application in the first place, and would not advance DES’s other stated objective of ensuring a holistic review of the impacts on water resources, he said.

Studying the full impact of the Casella proposal “will also protect the department’s credibility in its regulation and permitting of activities affecting wetlands,” said Blair.

“Simply put, a segmented approach that fails to consider the true, foreseeable impacts of the project would create the very real impression that the department is more interested in ‘getting to a yes’ with the applicant than providing important regulatory protections for the state’s wetlands resources,” he said.

It is currently undetermined if CLF will file litigation against DES if the department proceeds with the amended application and new timeline.

In February at Merrimack Superior Court, CLF filed a lawsuit against DES in an effort to stop the state from approving any new or expanded landfill until the state updates its solid waste management plan, which was last updated in 2003, and abides by a law mandating a 40-percent reduction in waste land-filled by the year 2000, a goal that has not been met.

The superior court litigation was triggered by DES's approval in October 2020 of another phase of expansion at Casella's landfill in Bethlehem and the company's application submitted in February for a new commercial landfill in Dalton.

In May, a judge dismissed the lawsuit.

A lawsuit filed in federal court in 2018 by CLF against Casella for alleged violations of the Clean Water Act at the company's Bethlehem landfill remains pending.

Public Informational Session

On Wednesday, DES announced that the in-person informational session that had been scheduled for 6 p.m. Wednesday at White Mountains Regional High School in Whitefield (with a virtual option online) has been moved to online only, because of what department representatives said was unforeseen difficulties with the venue, to eliminate COVID-19 exposure risk, and to allow more time for questions and answers.

The agenda that includes an overview of the different state permits Casella will need under DES's jurisdiction remains the same.

Robert Blechl