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North Country: Judge Dismisses Group's Landfill-Related Lawsuit Against State

Conservation Law Foundation Asks Court To Reconsider

rblechl@caledonian-record.com Staff Writer

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The Conservation Law Foundation, in asking the superior court to reconsider its dismissal of CLF's landfill-related lawsuit against the state, is citing as an exhibit the May 1 to 3 Casella Waste Systems landfill leachate spill in Bethlehem, part of which is pictured here. (Photo courtesy of NHDES)

A judge has dismissed the lawsuit that an environmental group filed against the state in an effort to stop the state from approving any new or expanded landfill until it updates New Hampshire's solid waste management plan.

The Conservation Law Foundation, a 5,000-member nonprofit that filed suit in February against New Hampshire Department of Environmental Services and its commissioner, Robert Scott, is now asking the court to reconsider its dismissal.

The litigation was sparked by DES's approval in October of another phase of expansion at the Casella Waste Systems landfill in Bethlehem, and Casella's application to DES in February for a new commercial landfill beside Forest Lake State Park in Dalton.

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

The group also argues that DES has failed to sufficiently reduce waste entering landfills despite a law that sets as a goal a 40-percent reduction in waste land-filled by the year 2000.

In its action, CLF said nearly 50 percent of the state's disposal capacity is being saturated with out-of-state waste and disposal at landfills and has negatively impacted New Hampshire's environment and public health from the pollution of ground and surface water through landfill leachate, as well as noise, odors and air pollution.

CLF's three-count complaint filed at Merrimack Superior Court asked 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 also asked 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.

After the lawsuit was filed, intervenors quickly sought to be part of it.

Filing on behalf of DES and arguing that CLF has not demonstrated irreparable harm were Casella, Waste Management of New Hampshire, and the Androscoggin Valley Regional Refuse Disposal District.

The North Country Alliance for Balanced Change filed to be a friend of the court in support of CLF's action.

On April 9, the court held a hearing on the state's and intervenors' motions to dismiss.

In his ruling on May 14, Judge John Kissinger wrote that the issues raised by CLF are not ripe for review before the court.

“The parties do not dispute that the government has not issued an updated solid waste plan since 2003 ... [and] Conservation Law has filed to allege sufficient hardship would result were the court to decline to consider the issues before it,” said the judge. “Any concrete harm alleged resulting from the permitting of new or modified waste disposal facilities, including the facilities in Dalton or

Bethlehem, may be appealed before the [state Solid Waste Management] Council and, ultimately, the state Supreme Court, following an 'administrative decision' whose 'effects [have been] felt in a concrete way.'"

Kissinger said, "A lack of hardship [to CLF] is especially evident from DES's concession that it is statutorily required to update the plan, as well as its representations that it is in the process of doing so."

In its motion for reconsideration filed last week, CLF argues that its lawsuit addresses "a systemic legal flaw in DES's solid waste management planning and permitting process: DES's failure to update the state solid waste plan as mandated by RSA 149-M:29-I and its ongoing reliance on its unlawfully outdated 2003 plan in reviewing waste facility permit applications."

In its move to dismiss, the court rejected several valid arguments, among them that it and not the waste management council is the proper venue, and that allegations of harm are sufficiently concrete to support the CLF's litigation against DES and its requested judgment from the court to prevent DES from acting on new or expanded landfill applications until the state plan is updated, argued CLF attorneys Tom Irwin and Heidi Trimarco.

In their motion, CLF also included several exhibits, among them the state report on the 154,000-gallon leachate spill that occurred May 1 to 3 at the Casella landfill in Bethlehem that state officials said could be the largest such spill in New Hampshire.