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FEATURED

Proposed Landfill Most Complicated Permitting Process Ever For DES

Five-Hour Info Session Draws Landfill Opponents Concerned About DES Permitting Process

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Sep 30, 2021



On Wednesday, a panel from the New Hampshire Department of Environmental Services held a virtual five-hour public hearing on the permitting processes for the proposed Casella Waste Systems landfill in Dalton.

What would be the first new commercial landfill in New Hampshire in decades, the proposed Casella Waste Systems landfill in Dalton is the most complicated project that has come before the New Hampshire Department of Environmental Services.

Philip Trowbridge, who oversees the wetlands, alteration of terrain and subsurface systems bureaus in DES's Water Division, was one of several DES panelists detailing the complexities and the many permits Casella will need during a five-hour virtual public information session on Wednesday that

drew about 130 participants and three dozen area residents asking questions, among them about deficiencies in the company's wetlands application.

"This is the most complicated permitting decision that's going to face the department," said Trowbridge. "Certainly, we could have identified some of these things earlier. I take the blame for that. But the most important thing is to make the good decision when we can and make sure there will be a well-informed decision on this. That's all we can do."

All speakers voiced opposition to what some have called a "mega-dump" beside Forest Lake State Park and expressed concerns that DES might be favoring applicants and corporations over the general public and the department appears to be colluding with Casella by going out of its way to avoid denying the company's wetlands permit application when it requested in August that Casella amend the application to include only the first phase of the landfill and not the company's planned three phases.

Although DES, after a public hearing in July on the application, was expected to issue an approval or denial by late October 2021, DES now extended the decision deadline on the amended application to December 2022.

Residents asked DES why the department didn't deny the application outright after determining that Casella did not provide enough information and why DES will not consider the cumulative impacts to a total of 17 acres of wetlands, which would be the largest wetlands destruction in the state in a decade.

DES representatives said they are bound by a complex set of New Hampshire statutes and rules when processing applications.

DES received Casella's wetlands application covering all three phases in September 2020 and held a public hearing on July 14, 2021.

Following the hearing, the department was going to make a decision within 60 days while expecting an alteration of terrain permit application to be submitted, but Casella did not come through with that application or with additional information about the site's hydrology, said Trowbridge.

DES encourages an applicant to submit applications for a wetlands permit and alteration of terrain permit simultaneously, but no law requires an applicant to do so, he said.

Because each application provides complementary information, he said rather than making a “consequential decision with incomplete information” DES decided to ask Casella for an amendment to get the information the department needs and to sync up the wetlands application with other applications for an integrated assessment, he said.

“We’ve been discovering some of these gaps along the way and we’ve been seeking to rectify them as we proceed because it’s such an important decision,” said Trowbridge.

He said the New Hampshire Department of Justice will determine if the amended wetlands permit application will be part of the original application or constitute a new application.

The first resident to pose a question was Elmer Lupton, of Whitefield, who asked what DES’s obligation is to the public in contrast to its obligation to an applicant.

Mike Wimsatt, director of DES’s Solid Waste Management Division, said the department administers the state’s laws and rules governing environmental protection for all citizens of the state and has a responsibility to both.

DES programs are largely administered through permits and “as a permitting agency, we have a responsibility to clearly help the applicant,” he said.

“We don’t want to play a game of gotcha with applicants,” said Wimsatt. “We have a responsibility to help applicants give us all the information we need so we can make an appropriate decision under the law, whether that decision is an approval or denial ... I don’t think it’s appropriate for the agency to strategize with opponents on any given project in order to help them ensure a given application is denied ... We are a permitting agency and we don’t have a responsibility to stack the deck one way or the other.”

Permits And Concerned Citizens

In Dalton, Casella seeks a total three-phase 180-acre landfill (137-acre landfill footprint and a first phase of 61 acres) that would accommodate some 14 million tons of waste during several decades (based on its annual rate of fill and landfill size and life), though opponents, citing the company’s landfills elsewhere, say it’s doubtful Casella would stop at 180 acres when it seeks to buy 1,900 acres around the landfill site.

The project would require about a dozen state permits and a permit from the U.S. Army Corps of Engineers.

“Getting those synced up is something we have not had experience with as an agency,” said Trowbridge.

Mary Ann Tilton, assistant administrator for the wetlands bureau, said it is unusual at this point to not have a Corps permit application.

“I do think that this project is unusual in its scale and scope and complexity and so it does raise issues that we should review and consider,” she said. “The goal is to have projects that work so it’s meaningful for the public, for the state, and for the applicant.”

Sarah Doucette, of Whitefield, said area residents who are desperately concerned about the project have no way to be involved in DES’s thinking and receive nothing back from the department after offering input.

Eliot Wessler, of Whitefield, said the integrated review makes sense, but DES hasn’t explained why the department is reducing the wetlands scope from three phases to one when Casella has already said they intend all three phases.

Considering just the first phases in the different DES permit applications “seems to be a sop to Casella to make it easier for you to approve all of the permits,” he said.

Trowbridge said DES is focusing on the first phase for the wetlands because, under law, a permit can only cover wetlands work that will be done within 10 years and phase one will take 15 years to build out.

And as for projecting future landfill capacity and need in New Hampshire, DES can project no more than 20 years under current statute, said Jaime Colby, engineer in DES’s solid waste permitting and review section.

Trowbridge said each phase of wetlands is looked at independently and a first phase application doesn’t make an approval any easier as state rules involve both impacts to wetlands on the site as well as wetlands adjacent and the proposed project is planned to get larger, which would impact adjacent wetlands.

Noting that the DES siting of new or expanding landfills is based on a public benefit analysis, Wayne Morrison, of Whitefield, asked how nearly half the waste coming into New Hampshire from out of state provides a benefit to New Hampshire.

The public benefit requirement is laid out in statute, and out-of-state waste, which is considered commerce, is not a factor, said Colby.

“Our capacity evaluation is based on New Hampshire-generated waste and New Hampshire need,” she said. “The Commerce Clause of the U.S. Constitution does not allow us to interfere with interstate commerce, and in terms of the health and safety implications of out-of-state waste, the trash from households in Massachusetts is not significantly different from households in New Hampshire, so all the waste is still municipal solid waste, regardless of where it comes from.”

“I’m totally disappointed with the answer,” said Morrison, adding that out-waste is a problem for New Hampshire that is being ignored. “You are making a decision here about something that is going to be in play for the next 30, 40 years, and beyond ... You have the power to say we don’t need this.”

In response to questions about DES considering public opposition and concerns about regional impacts, Wimsatt said while DES’s responsibility to applicants to help them submit an application with sufficient information for a review might look unfair to opponents, it isn’t always obvious that DES is considering other input from the public, but it isn’t always appropriate to respond out of concern it could look like DES is pre-judging an application.

“We understand that some people feel excluded and it’s something we struggle with every day on every application,” he said. “This meeting is a way to engage with the public the best we can... It doesn’t mean we’re not listening to your concerns.”

Adam Finkel, of Dalton, a former federal environmental regulator, said DES has met with Casella representatives several times and said that for parity the department should meet with at least one group of experts against the project.

The Casella permitting process is in its beginning stages and that process will be very long, and while laws do not require DES to meet with opponents of a project other than in a public hearing setting, it doesn’t mean DES can’t or won’t, said Wimsatt.

Wessler asked about the alternative analysis Casella is required to complete regarding alternative sites and said DES has much discretion, but its rules seem to be weighted toward the applicant.

Trowbridge said the alternatives analysis rules are new and “pretty non-specific” and were conceived for much smaller projects.

“There isn’t a lot of guidance at this point,” he said.

Risk Factor And After-Thoughts

New Hampshire waste activist John Tuthill said Casella, through a landfill in Dalton, is looking at revenues approaching \$2 billion at a time when many of the statutes and rules DES is obligated to follow for permit applications were enacted by the Legislature in a different time and world.

“Do you believe the laws and rules offer as much to the public as they do for for-profit companies?” he asked.

Wimsatt said the question seeks personal opinions from the panelists and are not relevant.

“We have very specific directives under the statutes and rules that guide our work,” he said. “For this application and others, those rules and laws are the only things that matter.”

At the close of the meeting, Morrison said he leaves feeling that the risk factor for the project is even higher than he thought.

“I say that because this is one of the most complicated, if not the most complicated, project that you’ve ever had to deal with, and my guess is that’s the same for the applicant,” he said. “They have not done something on this scale either.”

Morrison asked that through the public benefit analysis regarding capacity need if DES will have a preference for a lower-risk solution by finding an existing landfill site that could meet capacity need, especially for an applicant like Casella that has recently struggled with issues, among them the 154,000-gallon leachate spill in May at its landfill in Bethlehem that DES previously said appears to be the largest spill in the state.

“The way the process and the program is structured, an applicant comes in and we have very specific responsibilities about how we review it and how we make a decision,” said Wimsatt. “That does not include us suggesting a solution for another facility or another way to skin the cat.”

On Thursday, a number of residents, among them Finkel, said DES's responses to questions were not satisfactory or specific.

"What I've heard from DES troubles me because they appear to be listening only to the applicant, but ignoring the many red flags coming from the applicant's track record and flawed applications," said Finkel.

Robert Blechl