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Landfill Permit Application Deadlines Extended Again

Local Environmental Group Seeks Intervener Status In Casella's Lawsuit Against State

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Jul 9, 2025

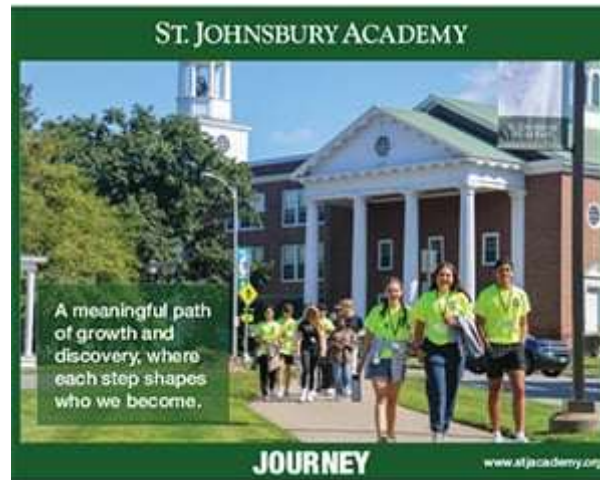


joined more than 100 area residents for a rally at White Mountains Regional High School on Wednesday to urge the state Department of Environmental Services, which held a public hearing in the school, to deny a wetlands permit sought Casella Waste Systems for a landfill in Dalton. (Photo by Robert Blechl)

After more than a year of the state requesting that Casella Waste Systems provide the information required in its landfill permit applications, and the company omitting it and extending its application deadlines, Casella has requested extensions for the fourth time.

A June 21 submission deadline for its wetlands and alteration of terrain permit applications has been pushed back to a Sept. 24 deadline for the alteration of terrain application and Sept. 19 for the standard dredge and fill wetlands application.

Both are for a commercial landfill in Dalton, with access in Bethlehem, that was first proposed in early 2019 and remains opposed by many in the North Country, and with opposition beyond.



As the deadlines undergo another extension, an environmental group representing local residents has recently sought to become an intervener in the lawsuit Casella has filed against the state for the New Hampshire Department of Environmental Services denying, on April 3, the company's standard solid waste permit application.

Application Deadlines Extended

The company's stated reason for a deadline extension of the wetlands application is to provide additional time to respond to DES's request for more information (RFMI) from June 2024.

Among the missing items, DES has requested that Casella demonstrate that it has proposed the least impactful alternative and site, provide more information to back up its claim that alternative sites in Massachusetts and New Hampshire are not suitable, respond to concerns expressed by the Bethlehem and Dalton conservation commissions as well as the Ammonoosuc River Local Advisory Commission, address discrepancies in the information it has provided, delineate wetlands and clarify wetlands impacts, and provide land ownership documentation.

“As discussed on June 4, 2024, the landfill design is intended to be purchased by Casella, however, discussion on June 4, 2024 regarding the future business park located within the project boundary will be subdivided and later operated by Mr. Ingerson, the current owner,” Emma Berger, DES’s inland wetland section supervisor, wrote in the RFMI.

Casella’s stated reason for the alteration of terrain application extension is “due to the unsettled nature of the relevant statutory and regulatory framework. It is prudent and efficient to have resolution before our responses.”

Appeals Before Council

On April 3, after four opportunities for Casella to provide its omitted information, DES denied by dormancy the company’s standard permit application, which the department said remains incomplete and, among other things, contains multiple redactions and does not include copies of documents that demonstrate Casella will have a legal right to use the properties as it proposes and as required by state rules.

A month later, company attorneys filed an appeal to the New Hampshire Waste Management Council.

Among its claims, the appeal argues that DES’s denial was “unlawful and/or unreasonable,” the redactions protect “confidential, proprietary information unnecessary to NHDES’s narrow task of determining whether [Casella] had the right to acquire the property before siting a landfill on it,” and DES “had ample documentation to satisfy the property ownership requirement under the rules.”



The North Country Alliance for Balanced Change also filed an appeal of DES's denial, arguing that the department's decision was unlawful and unreasonable because it did not go far enough and there were additional legal points that DES could have used to deny Casella's application, including Casella not having required written agreements with at least two leachate disposal facilities, no evidence that the project meets the state's public benefit requirement, Bethlehem being excluded as a host community, and failure to obtain local approvals.

NCABC argues it has a "direct, definite interest in the outcome of this proceeding" because its some of its members live near the proposed landfill site and would be impacted.

On June 27, Casella's attorneys filed a motion seeking to dismiss NCABC's appeal on the argument that the group has no legal standing.

As of Wednesday, no hearing date on either appeal had been scheduled.

Lawsuit Against State

Several days after DES's April 3 denial, Casella filed a lawsuit against the state, arguing much of what it would later state in its appeal.

Company attorneys ask the court to declare that DES exceeded its statutory authority by rendering its denial by dormancy.

Lawyers with the New Hampshire attorney general's office have since filed a response, stating that a number of Casella's allegations are not relevant to the New Hampshire statute on declaratory judgment action challenging the authority of an administrative rule. They ask the court to dismiss Casella's lawsuit.

More recently, on June 23, the nonprofit NCABC filed to be an intervener in the lawsuit, arguing that its members and donors own property and live near the site, draw their residential water supply from sources that stand to be contaminated by the landfill, would hear landfill operations, experience an increase in traffic, live downwind and would be exposed to landfill odors, and would suffer decreased property values.

On June 30, Casella filed an objection to NCABC's motion to intervene, claiming that the group does not possess any right or interest that would be affected by the outcome of the litigation and its "alleged injuries are entirely speculative and indirect in the context of this case."

A judge has not yet ruled on the motions.

A case scheduling conference was held on July 1, when attorneys for the parties agreed to give NCABC a July 25 deadline to respond to Casella's objection to its motion to intervene as well as a July 18 deadline for attorneys to submit a briefing schedule with a timeline to file legal briefs and response briefs.