

Landfill Expansion Project Halted by MassDEP

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Company Settles MassDEP enforcement case, Reaches Agreement with MassDEP to split \$10 Million Cost to Construct Drinking Water Line and Receives Notice of Intent to Sue from Environmental Groups

A proposal to expand the Southbridge, Massachusetts landfill owned by the Town of Southbridge and operated by a subsidiary of Casella Waste Systems has been halted by MassDEP in the face of concerns about the source of contaminants, primarily 1,4 dioxane, found in area groundwater. Shortly thereafter, MassDEP announced a \$5 million grant towards the cost of extending a drinking water supply line to area residents, contingent upon agreement from Casella to provide matching funds. In addition, MassDEP announced the settlement of an administrative penalty case against Casella alleging past landfill operational violations, and two state environmental groups sent Casella a notice of intent to sue, claiming the company was responsible for surface water and groundwater contamination in the vicinity of the landfill.

1,4 dioxane contamination (and some other contaminants) has been identified in drinking water wells used by residences in an area near the landfill, and Casella has been providing free bottled water to affected residents who were using groundwater wells. Consultants hired by the Town of Southbridge and Casella indicated that they did not believe the landfill was the cause of the groundwater problem, or could not trace the contaminants to the landfill. However, faced with uncertainty about the source (or sources) of the contaminants, MassDEP issued a negative site suitability report, which prevents Casella from proceeding to seek a site assignment from the local board of health. Casella has filed a motion for reconsideration, and that motion is pending as of the publication date of this summary.

In issuing its negative determination on site suitability, MassDEP indicated that it did not have sufficient information on the groundwater to allow it to draw necessary conclusions on impacts to public health or on whether the landfill was a source that would pose a threat to public health. Thus, while MassDEP did not affirmatively conclude that the landfill was the source of area groundwater issues, it determined that it could not allow the project to proceed to site assignment in the face of uncertainty.

It is unusual that MassDEP would issue a negative determination of site suitability for a solid waste project, and we are not aware of any prior case where MassDEP elected to deny approval on the basis of insufficient groundwater data. Here, MassDEP based its decision on evidence of contaminants in monitoring wells surrounding the landfill including elevated 1,4 dioxane in an adjacent irrigation well, conflicting information on groundwater flow direction, and a conclusion that there were insufficient monitoring wells in place to document the extent of contamination. While MassDEP noted that a hydrogeological study by the company and the Town of Southbridge concluded the contaminants in private wells could not be from the landfill, the Agency determined that the study was not conclusive. MassDEP particularly noted that there was only one source of data from deep bedrock, and that was the irrigation well that showed elevated levels of 1,4 dioxane.

Shortly after issuing its negative site suitability report, MassDEP announced that it was using a 2014 legislative funding authorization to grant up to \$5 million in public funds to pay for the installation of public water supply lines to residences near the landfill in the neighboring Town of Charlton, contingent upon the receipt of matching funds from Casella.



Article By [Stephen M. Richmond](#)
[Marc J. Goldstein](#)
[Beveridge & Diamond PC](#)
[Environmental Law Portal](#)

[Environmental, Energy & Resources](#)
[Massachusetts](#)

In its penalty settlement with Casella, the company agreed to pay MassDEP a civil administrative penalty of \$91,831.70 to settle claims of a range of violations arising from landfill operations from 2014 through 2016. The penalty, broken into \$24,331.70 in cash and \$67,500 to fund a supplemental environmental project (SEP), accompanies a lengthy to-do list aimed at addressing the alleged violations.

MassDEP alleged, among other things, that the company failed to properly control stormwater, failed to prevent the discharge of leachate to groundwater, improperly altered wetlands and allowed sediment-laden water to discharge to wetlands, and violated the state waste bans by failing to conduct the minimum required inspections and by accepting prohibited materials.

As part of the Consent Order that resolved the matter, the company did not admit or deny liability but agreed to take a variety of actions in addition to payment of the civil penalty and funding the SEP. These actions include addressing stormwater infrastructure deficiencies, conducting regular stormwater inspections and reporting, preventing leachate from discharging to groundwater, complying with state waste disposal bans, conducting a minimum of 20 comprehensive waste ban inspections per month, and continuing to fund a 24-hour hotline for citizen complaints. In the SEP, the company has committed to fund part of the cost of the Town of Southbridge's efforts to stabilize bank erosion and washout areas impacting a rail trail along the Quinebaug River and helping to obtain necessary state and local permits.

In a separate action, Toxics Action Center and Environment Massachusetts sent a notice of intent to sue to Casella arising from its landfill operation. These groups are threatening to sue the company under the federal Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA). The CWA claims allege that the landfill is the source of pollutants that are channeled to surface waters, including wetlands. The RCRA claims allege that the landfill is releasing hazardous constituents into the environment in a manner that is endangering human health and the environment.

Once a notice of intent is provided, there is typically a period of negotiation among the parties to explore theories of liability and the strengths and weaknesses of the case, and to determine whether various claims can be resolved or settled. If an enforcement agency pursues an enforcement case prior to the filing of a complaint by a citizens group, any violations addressed by the agency cannot be pursued by the citizens group. At this time it is not known whether the environmental groups will seek to pursue their claims by filing a complaint in court.

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