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SC Supreme Court hears arguments in York County landfill suit

BY JIE JENNY ZOU

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COLUMBIA — The county's seven-year legal battle with a private waste company over a proposed Rock Hill landfill made its way to state Supreme Court on Tuesday morning, where justices repeatedly raised questions over "authority" and "timing."

Arguments for the county's appeal against North Carolina-based C&D Management hinged on whether the state Department of Health and Environmental Control erred in granting the company a permit to store construction and demolition waste.

C&D Management sued the county in 2007 after efforts to obtain a permit were stymied by an emergency county ordinance declaring new construction landfills as inconsistent with the county's waste management plan.

As part of the permit process, DHEC must assess whether proposed landfills are necessary and consistent with a jurisdiction's waste plan and zoning.

"Is this landfill really needed in the county?" said Amy Armstrong, an attorney with the South Carolina Environmental Law Project, which is representing the county.

Armstrong called the emergency moratorium a "valid exercise of the county's authority" to provide staff with additional time to update the solid waste plan. At the time of the permit application in 2007, the county had last updated its plan in 1994.

She asked the court to reverse a 2009 decision by the Administrative Law Court that ruled in favor of C&D Management.

Thomas Lavender, an attorney representing C&D Management, countered by pointing out the proposed site had received county and city staff approval and was consistent with the county's 1994 plan.

Both the Circuit Court of Appeals and the Administrative Law Court have ruled in favor of C&D Management and DHEC – making this current challenge the county's second appeal.

Mike Griffin, an owner of C&D Management, said the county continues to "throw money" at an issue that has been affirmed by two rulings. "We did nothing wrong," said Griffin. "We pride ourselves in partnering with municipalities."

"This has been a nightmare, an absolute nightmare," Griffin said.

An emergency ordinance

The proposed 130-acre site on Vernsdale Road is located in an industrial area near the former Clariant Chemical Plant and ThermalKEM.

In 2003, C&D Management began working with county staff on a new landfill site, selecting the

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area within the city limits of Rock Hill. A 2004 engineering study stated additional construction landfills were needed to keep pace with the county's rapid development.

Susan Lake, DHEC attorney, noted the city of Rock Hill "strongly supports the project" and worked with C&D Management on rezoning efforts.

But the proposal drew criticism in 2005 after public hearing announcements referred to the site as a "recycling center" and left out the word, "landfill," prompting residential concerns.

In January 2007, the York County Council met behind closed doors to enact an emergency ordinance – violating open record conventions, according to the 2009 ruling.

The next month, C&D Management sued the county, seeking an injunction from the emergency ban. A few weeks later, DHEC issued the permit to C&D after the Circuit Court of Appeals ruled in favor of the company.

"DHEC was puzzled," Lake said of the county's moratorium. "We have never been in this position." She told the justices the agency granted the permit to comply with the court ruling.

Armstrong rebutted that DHEC granted the permit knowing the county was in the final stages of updating a waste plan that determined no need for additional landfills.

"The county passed the emergency ordinance to give it time," she said.

An ongoing matter

Chief Justice Jean Toal questioned the county's timing and authority on the matter.

"Y'all love to have your cake and eat it, too," Toal said, commenting on the county's failure to quickly update its 1994 plan and reiterating that "DHEC proceedings are not the purview of the county."

But Toal also sought further clarification from DHEC and C&D Management attorneys on how a county could fight unwarranted landfills. She said the case seemed to grapple with how to "harmonize the authority of a state agency" with the "concerns of the county."

While the use of emergency ordinances are rare, county legislation restricting landfills isn't, said Attorney John DeLoache of the South Carolina Association of Counties. "While DHEC is required to issue the permits for landfills, it has to be consistent with land use plans at the local level," said DeLoache.

He said emergency ordinances are usually reserved for natural disasters, but landfill-related legal challenges aren't uncommon and usually stem from interpretation of zoning ordinances, which can get complicated.

In 2007, the county's own construction landfill in York had fewer than two years remaining to reach capacity, according to court documents. Months after the start of the civil suit, DHEC approved the county's request to increase its annual disposal rate for its York landfill.

In March, the York County Council purchased 84 acres for \$600,000 as part of a long-term expansion for the same landfill. The acquisition was made after executive session.

The current appeal is one of three pending legal challenges the county has faced since enacting the moratorium. The original 2007 civil action that prompted the current case has been postponed, but is expected to pick up later this year.

In that civil matter, C&D Management seeks \$15 million in damages based on what the facility would have garnered in profits during a 50-year span.

The county also faces a separate civil challenge from Greeneagle, a separate landfill operator that applied for a permit after the moratorium and is now managed by C&D Management. Greeneagle, on behalf of C&D, is seeking \$5 million in damages.

According to county attorney Michael Kendree, total litigation costs for all three pending landfill issues exceed \$88,000. Kendree said it's unclear when the Supreme Court will issue a decision.

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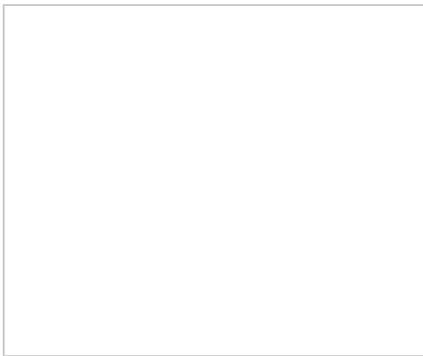


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