

## **Judge sides with East Fryeburg residents in battle with Nestlé - International bottler to appeal ruling on trucking terminal to Supreme Court**

Conway Sun, Aug. 7, 2008  
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FRYEBURG—Citizens' group Western Maine Residents for Rural Living has won another victory against Nestle in the ongoing legal battle over a proposed water-trucking station in East Fryeburg.

Nestle is the parent company of Poland Spring.

A ruling issued late last week by Maine Superior Court Judge Roland Cole affirmed the 2007 planning board decision that found the trucking facility in East Fryeburg violated the intent of the town's Comprehensive Plan.

Cole also denied several other arguments brought by Nestle's attorneys, including assertions that the Comprehensive Plan was "unconstitutionally vague" and claims that the 2007 decision was "arbitrary and capricious."

Although Nestle announced plans to appeal the decision, Cole's ruling continues a string of defeats for the Swiss-based bottler over the proposed facility.

"Our group has time and time again proven this is an inappropriate spot for their operations," said Scott Gamwell, one of the group's leaders. "It's time that they show some respect for the rural communities of Maine and especially East Fryeburg by abandoning this project."

There was no immediate reaction to the decision from Nestle, which has suffered six straight defeats over the project from Fryeburg boards and the courts. Mark Dubois, a natural resource manager and Nestle spokesman, said the company had no comment.

"It's headed for the Law Court. An appeal is coming," he said.

The company's position all along was that the initial planning board ruling in its favor was the correct one. Dubois said the company is looking ahead to a fresh hearing of the case by Maine's highest court, which might not come until 2009.

The trucking facility, which was first introduced in 2005, would load up to 50 tanker trucks per day with water pumped from an existing Denmark, Maine well. Although it was initially approved by the planning board in 2005, it has been tied up in litigation ever since.

The legal issues in play center around whether the facility fit the town's Comprehensive Plan, which requires businesses in land zoned rural residential to be "low impact" with regard to traffic. Both sides disagree over the interpretation of low impact, as well as the criteria that determines which types of business can be located in rural zones.

A 2006 Superior Court decision remanded the matter back to the town to consider whether the project met the criteria for low impact as stated in the Comprehensive Plan.

Citing noise and traffic disruptions, the planning board in November 2007 voted 3-1 that the facility was a high impact use and was therefore in violation of the Comprehensive Plan. The board of appeals affirmed the decision in January 2008.

Cole's ruling affirmed the process and appropriateness of those decisions, and in the process it vacated the 2005 planning board decision that approved the project.

"This is a significant decision because the Superior Court judge has overturned the planning board's initial determination," said Scott Anderson, an attorney representing Western Maine Residents for Rural Living.

Anderson said judges often defer to local boards unless it can be proven an egregious legal error was made. "When they get it clearly wrong, judges step in and say, 'Here is an error, here is what the results should have been.'"

Chip Ahrens, an attorney who has led the legal effort on Nestle's behalf, did not return calls seeking comment.

Cole's order dismissed outright claims from Nestle that the Comprehensive Plan was "unconstitutionally vague." Pointing to provisions concerning traffic volume, he said the plan had "applicable language" to guide the planning board.

Assertions that certain board members acted "arbitrary or capricious" — by considering material outside the record when making a decision during the November 2007 remand — were also denied.

"The record also reflects that throughout the remand consideration ... the focus was brought to the specific question of whether or not the proposed facility was a 'low impact business limited in size and amount of traffic,'" Cole wrote.

For the small group of residents who have spent considerable amounts of their own money during the three-year legal battle, Cole's ruling was a hollow victory.

“There really isn’t any joy in this,” Gamwell said. “For three years it’s been a living hell for all of us in the process.”