

IN THE MATTER OF

STATE OF MAINE, BUREAU OF	)	
GENERAL SERVICES, JUNIPER RIDGE	)	
LANDFILL EXPANSION	)	
City of Old Town, Town of Alton,	)	
Penobscot County, Maine	)	EDWARD S. SPENCER
#S-020700-WD-BI-N	)	FINAL BRIEF
#L-024251-TG-C-N	)	
APPLICATION FOR MAINE	)	
HAZARDOUS WASTE, SEPTAGE AND	)	FOR BOARD OF ENVIRONMENTAL
SOLID WASTE MANAGEMENT ACT,	)	PROTECTION PUBLIC HEARING
and NATURAL RESOURCES	)	FILED NOVEMBER 23, 2016
PROTECTION ACT PERMITS and	)	
WATER QUALITY CERTIFICATION	)	

FINAL BRIEF

This is my attempt to summarize in a comprehensive fashion the information presented in written and oral form during the Public Hearing process and at the Hearing itself. It was very helpful to read the transcript in its entirety. I will identify my major concerns moving forward, share some questions that I did not get to ask, identify what seem to be areas where more information is needed, and correct several misstatements I made. Overall, I feel it was a fair and transparent procedure. We could have benefited from having more time to concentrate on some aspects of the Expansion Application and the discussions at the Hearing, but I do realize that these may well be discussed at length in the deliberative session(s) to come. There is one area where I feel we opponents were put into an uneven disadvantage and I will discuss that first.

COST-BENEFITS ANALYSIS

During the pre-Hearing meetings we were told that any discussion of cost-benefits analysis in regard to the expansion was either irrelevant to the statutory criteria or had been resolved in the Public Benefit Determination(PBD) approval process. Dr. Coghlan attempted to offer an analysis of the value of wetlands and his testimony was redacted. I had researched property values around landfills and could not present that information.

We were also told that when it came time for the Public to offer written or oral testimony, that people needed to restrict comments to what were deemed “relevant criteria”. By and large, I think opponents complied with that restriction. However, when it came time for the proponents of Expansion to speak at the actual Hearing, they all voiced similar themes that basically argued that Casella was a good company and that if JRL was not expanded it would be a hardship economically. The net effect of this was that the proponents’ Public Testimony largely served as a cost-benefits analysis and included very little in the way of comments that were deemed to be on “relevant criteria”, while the opponents for the most part offered comments restricted to matters under review.

Some might say that I could have objected to their testimony, which would have probably disrupted the civil atmosphere to that point. I do not mean to criticize Chairman Parker for not restricting their speech, because my feeling is that anyone who takes the time to offer comment should be able to speak their mind during their allotted time. However, I mention this because some may be moved by the words of the Casella employees and dependent business employees to approve an expansion based in part on an argument that we opponents were excluded from taking part in.

CONCERNS ABOUT TECHNICAL PROBLEMS WITH LANDFILL EXPANSION

I was stunned to hear Mike Booth say (transcript Page 63) that 12 acres of the proposed expansion would be built below groundwater level! To quote Mr. Booth: “Also included on this, a couple other features I want to point out is this red area here is where the base of the landfill is located under the water table on the site.” It is very surprising that this would be allowed in the technical rules DEP has for siting landfills. Mike Booth also said that the water would be pumped out during the construction process and that it would actually be helpful to have upward water pressure on the landfill. This defies

common sense and should require thorough analysis from both an engineering and a wetlands disruption perspective.

Building any large structure in a wet area runs contrary to common sense and is usually to be avoided. There are concerns about the stability of the ground after the water is removed for construction and then allowed to return to its original level. This would result in uneven forces being exerted on the liners and drainage systems as part of the area is being forced downward by gravity and immense waste weight while another area of the base is being pushed upwards or sideways unevenly by water pressure. There is already uncertainty about groundwater divides along the existing landfill, and building below groundwater level will only add to the confusion.

Mr. Sevee also mentioned pumping groundwater as a means to control escaped leachate (transcript Page 41): "...and we've pumped the groundwater out of those wells and we look to see what happens to the groundwater levels surrounding where we're pumping the water out of the aquifer, and typically what you would expect is that the groundwater would move toward this pumping well, and we have shown through these pumping test that we can affect groundwater levels out as far as 2000 feet away from where the well is being pumped." This would happen while pumping an area dry enough to do very sensitive and meticulous base preparation. It would seem that this could have negative impacts on surrounding wetlands which are plentiful within a half-mile radius. We are asking for serious trouble in the future trying to keep toxins out of the surrounding waters if we allow this to happen.

Both Sevee and Booth made references to the site selection process prior to the Old Town Mill siting its landfill where JRL is now located. Mr. Booth said (transcript Page 51): "...the Juniper Ridge Landfill site was based on a very extensive siting study that was done back in the early nineties which actually identified 58 sites around the Old Town area which had the suitable soils for a landfill sited based on the requirements of the rules. From the 58 sites, the further screening of those sites narrowed those sites down to 18 sites. The sites that were eliminated were eliminated because of either wetland and surface waters surrounding use."

This raises several issues when considering an expansion. I have wondered how much of a factor the cost of developing and operating a landfill was in the mill's selection process during the early nineties. It is interesting and contrary to logic that after looking at 58 sites, they chose the one that was closest, and the one that was in Old Town where the mill would have the most influence to site a landfill. The other part that strikes me is how Mr. Booth said: "The sites that were eliminated were eliminated because of either wetland and surface waters surrounding use." We need to remember that the mill-owned landfill was permitted for a small fraction of the volume and area that would be involved in an expanded JRL. From memory, the mill's permit was for 330,000 cubic yards, which they were not close to filling at the time the state took ownership. JRL's capacity was expanded to its current limit of 10 million cubic yards shortly after the state took ownership by increasing the allowable vertical growth. The paper mill would likely never have need to look for any additional expansion area beyond the current waste boundaries. We need to realize that if the mill landfill had needed to be built on a site with high groundwater levels (such as the 12 acres in the proposed Expansion) they likely would have rejected the site.

In Chapter 401,1(C) Performance Standards and Siting Criteria, it says "Disturbance of soil material must not affect ability to monitor water quality at the facility site." Reading the annual reports for JRL, there are many instances where a well will test higher for a substance than it did before, and often this is dismissed as "caused by construction". I find this dismissal of test results without further investigation

troubling and perhaps a violation of Chapter 401 rules. It is also concerning that it sounds as if the only thing that will convince Casella's experts that there is a liner leak would be if they detect test results with a "leachate footprint". Leachate being formed in different parts of the landfill is not homogenous, it must vary to an extent due to the variability of the wastes in that section and how that reacts with rain water or other liquids present.

The issue of odors emanating from JRL was covered at length, with a discussion of the odor complaint procedure. It is now clear that for a complaint to be considered "confirmed" it is necessary for the operators to visit the location of the complaint and find the odor to be offensive. There are problems with this procedure: The person who files the complaint has to wait for an available person to come to their property or other location; In that time period waiting for them to arrive, whatever caused the offensive smell may have dissipated or been covered; and that the arbiter is an employee of Casella and may suffer from olfactory fatigue and/or be disinclined to add to the list of "confirmed" complaints. I suggest that DEP and Casella follow my advice and enlist the help of law enforcement officials to ascertain nuisance odors.

LACK OF COMPREHENSIVE LEACHATE TREATMENT

1310-N(1) The Department shall issue a license for a waste facility whenever it finds that:

Facility will not pollute any water of the State, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance;

The key work here is "any" water of the State, which includes the Penobscot River. The "treatment" of the leachate begins at the landfill where someone must make sure that the PH of the leachate is within a certain broad range (between 5.5 or 6 and 9, I believe). Then it is taken to the lagoon uphill from the Mill in Old Town off of Penny Road. There is an aerator working at that point to reduce the biological oxygen demand (BOD). It appears that this is the extent of any treatment of the leachate before it is released into the Penobscot, aside from being comingled with several smaller waste streams coming into that facility. From what we can tell, there is no removal of heavy metals such as lead or other threats to health such as arsenic and VOCs. So the word "treatment" in regard to leachate should be used carefully.

Aside from any threat that the leachate poses to the Penobscot River, there may be a threat to health and certainly could be a nuisance to the residential area and trailer park in close proximity to the wastewater lagoon. Leachate has a peculiarly strong and offensive odor as well as containing toxins. Leachate odors were never a concern in this area of Old Town before due to the strong mill odors, which no longer exist.

HISTORY OF JRL REGULATIONS AND RESTRICTIONS

It is important to understand the evolution in regulations and restrictions at the State-owned Juniper Ridge Landfill. We had a paper mill crisis in Old Town in 2003, and a solution was designed whereby the State would take ownership of the mill's landfill. Under mill ownership from the early 90's until state ownership in early 2004, wastes into the landfill were restricted to non-hazardous mill wastes only. The

Lincoln mill was allowed to bring some small amounts of boiler ash, and then some small amounts of ash from the burn pile at the Old Town transfer station were also allowed.

When the State became owner, wastes were restricted to in-state wastes only, and there was not a clear definition in statute of Maine Waste. Common sense interpretations applied: if it came from the other side of the Maine border, it had to go to a commercial landfill in either Hampden (Pine Tree Landfill, owned by Casella) or in Norridgewock (Crossroads Landfill, owned by Waste Management Inc.). The out of state (OOS) waste issue was controversial at the start of state ownership, which was the beginning of Juniper Ridge Landfill (JRL). Although Casella and Georgia-Pacific had worked on a plan with the State whereby Maine would own but Casella would operate JRL, after the Resolve was passed in early June 2003 the State realized they had to put out a Request for Proposals (RFP) to select an Operator. Casella was the sole bidder and was chosen as Operator. A detailed timeline of the first year of JRL is included in the record for this Hearing, provided by Mr. Paul Schroeder of Orono, who used primarily documents obtained via FOIA.

When the first Public meetings were held in early 2004, both Casella and State officials kept repeating a mantra: There will be no out of State waste in here! However, they were not telling the whole truth to the Public, which is why there is still rancor and confusion. As part of the RFP, the Operator had to provide the Old Town mill with fuel for their new (to them) biomass boiler. This fuel, which was to be very inexpensive compared to wood chips derived from Maine's forests, was to come from Construction and Demolition Debris(CDD) that had been sorted with the "clean wood" set aside for the Old Town mill. The State Planning Office(SPO) gave permission to Casella to import into Maine enough CDD to provide the fuel source, and the residues of this processing were allowed to be disposed at JRL. Casella had permission to bring OOS CDD into Maine from the SPO (who was the titular owner of JRL before BGS), and yet the Public was still told there would be no out of state waste.

By late in 2006, the Old Town Mill was in crisis again after Georgia Pacific stopped its operations. A group of investors was put together through the governor's office and agreed to purchase and operate the mill. What nobody knew was that as part of the agreements enabling the new mill ownership, the Fuel Supply Agreement(FSA) had been changed so that CDD could be imported from outside Maine to provide fuel for ANY boiler in Maine, not just the Old Town mill's boiler. Unfortunately, this was done without informing the DEP, State legislature, City of Old Town, town of Alton, or the Landfill Advisory Committee(LFAC). So in the course of three years, wastes into JRL changed from mill wastes only, to some CDD residue associated exclusively with the Old Town mill, to CDD wastes for fuel for ANY Maine boiler. We only found out in 2008 that the FSA had changed and the CDD floodgates were open, and this was by citizen efforts.

In 2007, the current definition of Maine Waste became statute, without the knowledge of local officials or citizens. Also in this approximate time period, the rules on Processing Facilities were developed, so that any residue of a Processing Facility located in Maine became Maine Waste. As I stated at the Hearing, I do believe that residue from incinerators has been considered as Maine waste for decades now. Along the way there were other changes related to JRL coming from the legislature, perhaps most importantly that the fuel standards for CDD-derived fuel became stricter.

A relevant historical event occurred in March 2007 when the Old Town mill began burning the "clean wood chips" provided by Casella and derived from CDD. 16 out of 31 fuel samples tested were in violation of DEP standards, and burning them resulted in the generation of Hazardous Waste in the form

of boiler ash, which was taken to JRL in violation of their license. I mentioned most of this history briefly in response to a question from Ms. Chase at the Hearing, and Casella and Mr. Barden also included references to the history of JRL in their application and testimony. The main thing to realize is that there have been a lot of changes to regulations, including the inclusion of our Waste Hierarchy as a criteria for landfill licensing.

WASTE HIERARCHY AND CASELLA AT JRL:

On Page 489 of the transcript, in a response a question from DEP's Dave Burns concerning OBW amounts, Ms. King said: "...we're fairly comfortable that we'll maintain enough flexibility underneath that cap to serve the needs of the State of Maine." There is a conflict between What is Good for Casella and What is Good for Maine in regard to JRL. Casella is a publicly traded corporation with a fiduciary responsibility to its shareholders. They get paid for handling wastes and waste-derived materials. Simply put, more waste equals more income. The State adopted laws in 1989 banning any new commercial landfills, primarily in response to pressure from waste haulers outside of Maine who saw profit in bringing waste here. The State wants to protect our air and water, and shield our citizens from nuisances and environmental threats. Permitted landfill space is a precious commodity and the State's interest is in making what we have last as long as possible. As an owner, the State has the legal ability to restrict waste flows into state-owned landfills, whereas a commercial landfill is subject to provisions of the U.S. Commerce clause.

An important exchange at the Hearing related to regulations is on Pages 481-482 of the transcript. In response to a question by Chair Parker relating to definitions of municipal solid waste and construction and demolition waste, Ms. King said "So that varies by regulatory subsets, so different states and different communities have their own definitions and in the last few decades, those definitions have gotten tighter and whittled down." What she is saying is that in other states, regulations for what can be disposed of in landfills have gotten stricter. One could argue that since the inception of JRL, many of Maine's Waste rules and regulations have become less restrictive. We need to find out how that effects JRL and wastes flowing into it.

Throughout my testimony, I have referred to Maine statutes regarding Waste Hierarchy, including

38 M.R.S. 1310-N(5-A): "The proposed solid waste disposal facility will accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, voluntary or otherwise, at least as effective as those imposed by this chapter and other provisions of state law..."

We spent a lot of time at the Hearing talking about processing facilities and that by definition, once a waste is processed in Maine, it becomes Maine generated waste, and thus eligible for disposal at JRL. We need to understand what happens to a waste before it gets to a processing facility in Maine. What are the programs for recycling and source reduction where the material was first discarded and became a waste? Otherwise we cannot ascertain whether wastes are in compliance with 1310-N(5-A), and if these wastes have or have not been handled in accordance with our Hierarchy.

A good example of the benefits of source reduction was illustrated in other comments by Ms. King in a discussion with DEP's Ms. Eleftheriou on Pages 173-174 of the transcript:

Ms. Eleftheriou: “In general, are you aware of any recycling outlets for OBW within Maine or New England?”

Ms. King: “We have had limited experience at some of our other facilities in New England with mattress recycling, for instance, in the oversized bulky waste category; however, our only success with mattress recycling has been—the mattress recyclers look for three things typically, the metal in the springs, the wood in the frame and the fabric, and if you can find a source separated the generation point for mattresses, so like a residential drop off or potentially a bulky waste pick up day and then you can segregate the mattresses and bring them to a recycler, it’s successful; but the problem is by the time they get to a landfill, they have typically been picked up, transferred, brought to a processing facility, screened, loaded again and then dumped at the landfill and by that point, according to the mattress recyclers we’ve discussed this with, because they’ve looked at, you know, both commodities with us at our landfill facilities and our transfer facilities, this is in Massachusetts, it—they are too contaminated for the fabric to be able to be recycled, the wood is typically crushed by that point and not feasible for removal and recycling of that, and then, you know, if you can’t get those two commodities, they’re not too keen on ripping it apart just to get the metal.”

The key words here are “...if you can find a source separated the generation point...” (I’m sure she meant “at the generation point”). Ms. King identifies separation at the source as the key to recycling mattresses, and we can be sure that this holds true for other commodities in the OBW category as well as other wastes. Unfortunately, it seems that a high percentage of what comes into JRL has NOT been source separated, which is required by our Maine Waste Hierarchy and above statutes requires before an Expansion License is issued.

On Page 175 of the transcript, I asked Ms. King: “Wastes coming into JRL from a processing facility, in your opinion, what is the source of that waste?”

Ms. King: “The source is the generator or the processing facility that produces the residues and the material by-product.”

There is a conflict here: in the first quote she talks about the source as being where the material was actually thrown out, what I call the point of discard. She mentioned that the mattresses in the first quote were rendered unrecyclable because they went from the “source” to the processing facility and then the landfill. She then says that the “processing facility” is the generator and the source. My contention is that to be in full compliance with the above statute as well as Chapter 400 rules, the waste must be reduced at the original source, not just at the processing facility.

Chapter 400(6) Recycling

6.Recycling. “Except as provided below, in order to receive a license for a new or expanded solid waste disposal facility a person must receive a determination by the Department that the volume of the waste and the risks related to its handling and disposal have been reduced to the maximum practical extent by recycling and source reduction prior to being landfilled or incinerated.”

Furthermore,

400(6)B.(1) Consistent with state recycling programs. The proposed solid waste disposal facility will only accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by provisions of state law...”

In my view, in order to receive such a “determination by the Department” DEP needs to identify the true sources of wastes into JRL and what the rules on recycling and source reduction are in that town and state. If this cannot happen, the Expansion License should not be issued, at least for wastes coming through processing facilities that became wastes beyond Maine’s borders. To allow wastes discarded beyond Maine’s borders to be deposited at our State JRL, based on Casella saying that is beyond their control or the source is a processing facility makes a mockery of our Waste Hierarchy and puts actual in-state communities at a disadvantage because they have to comply.

WASTE STREAMS INTO JRL VIA PROCESSING FACILITIES

To make a determination on wastes into JRL being in compliance with Chapter 400 rules, DEP needs to work with both Casella and the processing facilities to identify the actual sources of the wastes that enter the processing facilities. Casella argues that it should not matter due to the definition of Maine Waste currently in statute, but was not in statute at the beginning of JRL. It may be important that before this definition became law, Casella/SPO never notified our Juniper Ridge Landfill Advisory Committee or the City of Old Town of the pending change in law.

At the Hearing I asked a Casella panelist how many landfills Casella owns or operators in their territory which is from Pennsylvania through Maine. My question was deferred to a later time, and never asked. In other submittals, Casella has said that they control 13 landfills and many more transfer stations. At the Hearing they said that they send some CDD from within Maine to the ReEnergy processing facility in Lewiston. My following question was going to be: “Do you also direct CDD from beyond Maine’s borders to the Lewiston processor?” Then I planned to ask: “How many of these other Casella landfills are licensed to accept CDD and CDD subsets?” To understand waste flows into JRL, these questions need to be asked and answered.

Old Town’s Bill Mayo said at the Hearing that the City is told by Casella that they receive \$4 per ton for the fines for daily cover that ReEnergy sends to JRL. Due to this low tip fee, Casella does not have to pay Old Town any fee on this waste stream. I struggle to think of a possible reason for Casella to accept such a small amount for wastes that take up a large percentage of the available capacity at JRL. It seems to me that there must be some other compensation taking place, such as perhaps Casella paying a lower than market price for CDD brought to ReEnergy Lewiston. I raise these concerns as a taxpayer in Old Town who would benefit from more fees being paid, and I am also very curious about the details of Casella’s contract with ReEnergy when they sold their KTI Biofuels to ReEnergy a few years ago.

There is language in JRL’s Public Benefit Determination(PBD) that says that prior to an Expansion, there must be independent third-party audits of processing facilities that send wastes to JRL for disposal. If the Department was to require this auditing to begin right now, we would have useful information as to where the wastes flowing into Maine processing facilities actually come from. Remember: over one-half of wastes coming into JRL are some type of construction and demolition debris.

PBD,OBW, AND FUTURE REGULATIONS

There was a lot of interesting discussion at the Hearing in regard to setting a limit of Oversized Bulky Wastes(OBW). What category of waste should a mattress left at the end of one's driveway be placed in: Municipal Solid Waste(MSW), CDD, or Industrial? In my opinion it is MSW. There is also OBW within CDD, but this is after a demolition has taken place. Most OBW comes to JRL from the ReEnergy processing facility in Lewiston, where in 2015, over 86% of the wastes brought to that facility were discarded out of state. Also according to their annual report, 79% of "processing products" (in the form of Alternate Daily Cover, or ADC) and over 85% of the "Recyclable or waste type" (in the form of OBW) that left Lewiston came to JRL. Simply put, there is no good reason for Maine's state-owned landfill to have to accommodate huge amounts of OBW disposed of beyond our borders.

A limit on OBW must be set. At the Hearing I offered a general solution for assessing the actual OBW outputs of the citizens of Maine, which involved finding out how much OBW came to regional waste facilities such as ecomaine, MMWAC, and the northern Aroostock landfill. After further thought, perhaps it would be useful to ask businesses that sell furniture what their outputs are and what they do with mattresses returned to them during a sale. By the way, couldn't the returned furniture serve as a "source separated" clean stock for recycling?

During this process it became apparent that Casella has abandoned any pretext of joining with the regulators in a spirit of cooperation to see that terms of licenses are met: they refuse to adjust their Operating Services Agreement(OSA) as Commissioner Aho directed based on her Conclusions not being an "Enforceable Violation". Regulations and restrictions need to be followed strictly by permittees and should be dealt with strictly for non-compliance. So in the future, we need to be sure that all licenses are enforced with serious consequences. To me, if Casella/BGS does not want to fully comply with everything in the PBD, that license should be voided until concerns are met.

INADEQUATE ENDANGERED SPECIES EVALUATION

In my testimony and especially the written and oral testimony of Dr. Coghlan, witness, we discussed the inadequate evaluation of the impact of JRL Expansion on endangered species conducted by the Applicants. Why is this important? In the summary of Dr. Coghlan's testimony at the Hearing (transcript Page 257) he said:

"So to summarize, the importance of the Penobscot River to Atlantic salmon, first of all, Maine harbors the last remaining wild population of Atlantic salmon in the U.S., the Penobscot River is home to the largest river-specific stock and of course all stocks but also the Penobscot River are on the brink of extinction, and of all Maine rivers, the Penobscot River contains the most and highest quality habitat for all freshwater life stages, and as we heard in previous testimony, the federally-designated critical habitat for Atlantic salmon extends throughout the Penobscot River watershed and portions of the JRL property are located within that critical habitat."

Dr. Coghlan offered criticism of the application (transcript Page 258):

"And so one of my first criticisms of the application is the language conveys confidence, and in my opinion some overconfidence, of non-impact to fish and their habitats. So, for example, one quote is Volume 5, page 8, 'this activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat,

travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.’ Another example, ‘these watersheds, that is, containing critical habitat, will not be affected by the expansion’, and another one, ‘a portion of the expansion area occurs within the broad area designated as critical habitat for Atlantic salmon, *salmo salar*, listed under the Endangered Species Act, ESA but the onsite wetlands do not contain any streams that would provide Atlantic salmon habitat.’”

At the Hearing I questioned Casella’s Bryan Emerson as to the scope of the Applicants’ efforts to evaluate possible Expansion impacts to wildlife (transcript Page 192):

Mr. Spencer: “Okay, Mr. Bryan Emerson, you mentioned that your consultation regarding Atlantic salmon consisted of two sentences transmitted via e-mail. Did you engage in a formal consultation with U.S. Fish and Wildlife Service as may be required under the Federal Endangered Species Act and if not, does this e-mail exchange serve as an adequate replacement for a formal ESA consultation review?”

Mr. Emerson: “We have not engaged in formal consultation with U.S. Fish and Wildlife service regarding Atlantic salmon, as we understand from our conversations with the Corps that formal consultation will not be required.”

Mr. Spencer: “Has there been any analysis done as part of this application of potential impacts to fisheries associated with disposal of JRL leachate into the Old Town mill’s wastewater treatment plant?”

Mr. Emerson: “We did not do any studies of that, no.”

It sounds like the Applicants declined to do a more thorough review of any possible Expansion effects on endangered species based on what they heard from the U.S. Army Corps of Engineers. We have seen nothing official or in writing from the Corps allowing Casella to not pursue a robust investigation into an Expansion’s possible impact on endangered species. There is scant justification and no explanation for avoiding any engagement with the federal U.S. Fish and Wildlife. Mr. Emerson admits that there has been no consideration whatsoever of the impact of disposing of ten million gallons of JRL leachate per year at the former Old Town mill’s wastewater treatment plant. This is clearly inadequate. How is it that the State (as owner and regulator of JRL) gets to avoid fully engaging on essential information for approving an NRPA permit?

In addition to not evaluating leachate effects on Penobscot River, it appears that there was no analysis of any possible effects on surrounding wetlands as a result of pumping groundwater from beneath 12 acres of the proposed Expansion area. Mr. Emerson stated (transcript Page 103): “...the Corps regulates 750 feet out from the pools.” Other Casella witnesses testified that all the groundwater would have to be pumped from beneath the 12 acres to allow construction and that they have pumped groundwater in the past and effected groundwater levels 2000 feet from the wells. Since groundwater underlies surface water, pumping it dry would have to have an impact on surface waters and surrounding wetlands.

In discussing the area to the north of the proposed expansion area that would be preserved as compensation, Mr. Emerson said (transcript Page 108): “It contains approximately 209 acres of developable uplands that could be—you know, that will be protected from any future development or landfill expansion...”. I would dispute this being factual. When Casella applied for its PBD license for Expansion, they asked for approximately 23 million cubic yards of capacity and were granted partial approval for 9.35 million cubic yards. I haven’t looked at the map for that larger proposal, but it must

contain part of the 266 acres set aside. We can be certain that should this Expansion be granted, that a decade or so from now Casella will be looking to expand again, and probably into that acreage.

STATE AS OWNER

I misspoke when I said that the State goal is to reduce wastes deposited in Maine by 5% every two years. The goal is actual to reduce State MSW outputs by that amount. According to Maine Materials Management Plan 2014, total wastes in Maine were 2,574,104 tons and MSW was 1,307,787 tons. MSW is about 51% of total wastes. My point is that as recently as 2012, DEP predicted waste outputs would increase as the economy recovered from the Great Recession. This has not happened, and the State has wisely decided to make waste reduction a priority from this point forward. Reducing MSW by 5% would reduce overall wastes by 2.54% every two years.

Another mistake which I apologize for is that when I said contained in the OSA it says “The State control the landfill”. I posited at the Hearing that it was actually in the RFP; this is not the case. At this point, I think I possibly saw that language in a Draft Copy of one of those documents, or possibly the 1989 legislation that mandated state-owned landfills only in Maine from that point on. I have used this language earlier in submittals leading up to this Hearing, as well as during past engagement with the DEP and BEP. The point is that it is clearly the intent of the State as owner of landfills to have some control over waste inputs. This is because as a market participant the State has the right to approve or deny waste inputs to its landfill(s), whereas a commercial landfill has to comply with the U.S. Commerce Clause, which says that States cannot restrain interstate commerce.

Chairman Parker pressed Mr. Barden as far as wastes coming into JRL through processing facilities (transcript Page162):

Chairman Parker: “So our only mechanism then as the Board, I guess you’d say, is to physically put a limit on the OBW and then it has to either be processed or not put in your landfill?”

Mr. Barden: “It would either not have to be put into JRL but then it would go to another landfill and use up capacity at that facility.”

Chairman Parker: “Well, we’re only talking about a permit for JRL right now, okay?”

Mr. Barden: “No, but it’s not going to disappear.”

Chairman Parker: “I understand that or maybe it will be processed.”

Mr. Barden also tried to make a case that any restriction of OBW into JRL would harm the economy of Maine, and also cause the last commercial landfill in Maine, Waste Management Inc.’s(WMI) Crossroads landfill in Norridgewock. The CDD coming into ReEnergy in Lewiston is over 80% from out of state, and would be far more likely to go to WMI’s landfill in Rochester, New Hampshire, which is much closer and larger than Crossroads. As far as high OBW amounts being a reflection of greater economic activity, the largest amounts of OBW into JRL occurred in 2010 or 2011, while amounts have greatly decreased as the economy has slowly improved.

It is disturbing that the State as owner, overseen by Mr. Barden, has chosen not to follow DEP Commissioner Aho’s advice in the PBD and amend the OSA in response to greater CDD imports into

Maine and JRL. Citizens expect our State as owner and our DEP as regulator to work together and not have the owner constantly go along with whatever Casella wants. Remember, there is an inherent conflict between What is Good for the State and What is Good for Casella. During the existence of JRL the State as owner has been more of an advocate for Casella and their shareholders than a strong representative for the people of Maine.

FINAL THOUGHTS

We are at an extremely important juncture in the future handling of wastes in Maine. Our other New England States have made landfilling more restrictive, and if we do not join them in that effort we will become the dumping ground for the entire Northeast. Putting limits on CDD inputs and OBW would stimulate the Maine economy because better source reduction and recycling requires more hands to be involved than does knocking down buildings with big machines and throwing it into a truck. Changing regulations may indeed have an impact on certain companies, but any workers displaced would benefit from more intensive efforts to divert materials from landfilling and greater job options.

Casella's application is lengthy but lacking. Expansion's possible effects on wildlife were inadequately investigated. Provisions of the Endangered Species Act were never given any attention, even though a portion of the Expansion would be in critical habitat for Atlantic Salmon, as defined by NOAA. Their Alternatives Analysis, which is also part of the NRPA permit, is likewise lacking. Casella does not want there to be any choice but to expand JRL and maintain and expand current waste streams. My Alternatives Analysis is much more comprehensive and practical. The potential impacts of JRL leachate flowing into the Penobscot River barely treated may threaten the recovery of our entire Penobscot River ecosystem.

It is unwise to build a large, complicated structure with a base below the groundwater level and adjacent to wetlands. There is a conflict between current DEP regulations and what will likely be more extreme precipitation events in the future. Saying they will build stormwater systems to withstand a 100 year flood sounded positive until we heard that retention ponds would simply overflow into the surrounding wetlands.

We have a mandate to implement our Waste Management Hierarchy for ALL of the wastes coming to JRL. This will involve third-party independent auditing of all the major sources of waste inputs, as well as identification of those points of discard which are beyond our borders. If Casella does not want to comply with our PBD or other licenses, any Expansion should be out of the question. It is also very troubling that the State as owner of JRL and owner of any future landfills in Maine has done close to nothing to develop another site. All their eggs are in this basket, which has a troubling history. The costs of waste per ton will continue to rise over time. The challenge for communities and the State regulators is how to reduce the costs of waste disposal by throwing away less material.

Wastes will flow to the least expensive options with the weakest rules. Any wastes left at a landfill should never be labeled as "recycled material". Bringing processing residues all the way from outside Maine's borders because it is needed for daily cover is unnecessary as there are plenty of other wastes for that purpose if used judiciously. Exposing less of a working area at JRL would reduce the need for daily cover, reduce methane and other fugitive emissions, and limit the amount of leachate created, especially if tarps were incorporated as much as possible.

For all of these reasons and more, I feel the Expansion Application should be rejected, both the DEP permits and the NRPA. Their application does not justify their continued operation of our State landfill. They seem to want to be able to pick and choose which regulations to obey, and at times Casella's people want to lecture the Board and Department on what is right, when it is themselves that operate only at the discretion of our Regulators. This is an extremely complicated situation to try to understand and I commend you all for making that effort. I will continue to work to pursue better waste outcomes for the sake of our future residents.

I look forward to attending your deliberative session(s), and hope we all can enjoy a happy and healthy Thanksgiving.

Respectfully submitted,

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