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GOVERNOR

STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE &
FINANCIAL SERVICES
BUREAU OF GENERAL SERVICES
77 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0077

ALEXANDER E. PORTEOUS
COMMISSIONER

GILBERT M. BILODEAU
INTERIM DIRECTOR

March 15, 2018

Ms. Kathleen E. Tarbuck, P.E.
Environmental Engineer
Maine Dept. of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Re: Juniper Ridge Landfill Amendment Application #S-020700-WD-BL-A
Continued Acceptance of In-State Municipal Solid Waste
BGS and NEWSME Responses to Department's March 12 Follow-up Comments

Dear Kathy:

By letter dated March 12, 2018, you forwarded the Department's Follow-up Comments on the above-referenced application. Attached to this letter, please find the BGS and NEWSME Responses to the Department's March 12 Follow-up Comments.

Thank you for your continued attention to our Amendment Application.

Sincerely,

Gilbert M. Bilodeau, Interim Director
Bureau of General Services

Brian Oliver, Vice President
NEWSME Landfill Operations, LLC

Enclosure

**BGS and NEWSME Responses to Department's March 12 Follow-up Comments on
Application #S-020700-WD-BL-A, JRL Amendment for Continued Acceptance of In-State
Municipal Solid Waste**

The Applicants' responses to the Department's March 12, 2018 follow-up comments are set forth below. For completeness and ease of review, we have followed the format the Department has used, providing the Department's February 15 comment first, the Applicants' March 1 response second, the Department's follow-up comment third, and the Applicants' response to each follow-up comment last. To distinguish the Applicants' responses this time, they are in italics and bold type. No response is necessary in those instances where the Department had no follow-up comment.

**Responses to Department Follow-up Comments on the MSW Amendment Application
Dated November 2017**

1. Page 2-2, Table 1. **No follow-up comment at this time.**
2. Pages 2-2 through 2-8, Section 2.2 Amendment Finding 5, Solid Waste Management Hierarchy. BGS and NEWSME should specify whether any of the former MERC communities listed in Table 1 take recyclables to the CWS Zero-Sort® Recycling Facility in Lewiston.

***Response:** The majority of the communities that formerly utilize Maine Energy Recovery Company for MSW disposal, as indicated in table 1 of the application, utilize the Westbrook transfer station for consolidation of their municipal solid waste and their recycling material. All the Zero-Sort® transferred through the Westbrook facility is transported to the Lewiston MRF.*

Follow-up comment: BGS and NEWSME should specify those communities that make up the majority of the former MERC communities that utilize the Westbrook transfer station for recycling, from where the recycling is then taken to the Lewiston MRF.

***Follow-up Response:** Communities listed in Table 1 of the application (p. 2-2) that utilize the Westbrook transfer station for Zero-Sort® recycling, consolidation and delivery to the Lewiston MRF are: Alfred, Arundel, Biddeford, Dayton, Kennebunk, Kennebunkport, Long Island, Newfield, and Westbrook. Due to handling logistics, in 2016, the following additional communities utilized the PTW-operated West Bath transfer station for Zero-Sort® recycling, consolidation and delivery to the Lewiston MRF: Arrowsic, Frye Island, Harpswell, Phippsburg, Topsham. In addition, Acton and North Berwick utilize our Scarborough MRF for their source-separated recycling, and we regularly broker Bowdoinham and Durham recycling, which is bid on a load*

basis. In all, 18 of the 30 municipalities listed in table 1 of the application continue to choose Casella for their recycling solutions, accounting for nearly 7,300 tons in 2016.

3. Page 2-3, Table 2. BGS and NEWSME should provide the amount of non-bypass MSW disposed at JRL that originates from the former MERC communities in order for the Department to have a clear understanding of the final disposition of this non-bypass MSW.

Response: The DEP comment requests information about tonnage that originates from the former MERC communities. It is important to note that MSW received at the Westbrook transfer station originating from these communities includes both residential and commercial MSW. A number of these former MERC communities also deliver their residential and commercial MSW to the WRT transfer station in Wells, Maine, which is then transferred to PERC or JRL. There also are a number of other Maine municipalities and commercial customers that have disposal contracts with JRL that do not use the Westbrook transfer station. All of that MSW tonnage needs a home. That home needs to include JRL.

In response to the DEP comment, however, in 2016, the communities under long-term contract that formerly utilized Maine Energy Recovery Company for MSW disposal (being those denoted in bold in Table 1 of the application) generated 22,827 tons of residential MSW which was disposed at either JRL or PERC. This does not account for the commercial MSW from these municipalities that was also disposed at Maine Energy.

It is not possible to specifically track the MSW from the former MERC municipalities, or any other specific customer, after it arrives at the Westbrook transfer station. MSW from former MERC communities delivered to the Westbrook transfer is co-mingled with other in-state MSW received as it is off-loaded from smaller transport trucks (rear-load, front-load, roll-off) and reloaded into tractor trailers for transport to another location, which would either be PERC (in compliance with Condition 7 of the current amendment license) or JRL.

Follow-up comment: The residential MSW amount from the former MERC communities is stated, but a commercial MSW amount from these communities is not. The estimated commercial MSW amount previously disposed of at Maine Energy from the former MERC communities and now disposed at JRL should be provided.

Follow-up Response: *In 2012, MERC accepted approximately 123,000 tons of in-state residential and commercial MSW volume. Approximately 35,000 tons represented Municipal, residential MSW. The balance of 88,000 tons represented commercial MSW.*

It is impossible to segregate commercial or residential MSW customers that specifically went to either PERC or JRL, so one has to look at the two facilities combined. JRL accepted 78,641 MSW tons of MSW in 2017, while Casella delivered approximately 30,000 tons of MSW to PERC from Westbrook. Total approximate tonnage of 109,000

(29,000 residential MSW and 80,000 commercial MSW), as compared to the 123,000 tons of in-state MSW that formerly went to MERC. The remaining MSW tonnage was disposed at ecomaine or other disposal sites.

Certain amounts of commercial MSW tons that went to ecomaine from communities formerly disposing at MERC (collected by Troiano and Oceanside) are not being re-signed to contracts by ecomaine and now require a disposal site. These are in addition to the approximately 80,000 commercial tons that were delivered to PERC and JRL in 2017.

4. MSW Management Post-March 2018

- a. Page 2-7. BGS and NEWSME should provide additional information regarding the following statement: “[t]he Applicants have evaluated various scenarios for the alternative management of MSW generated in Maine post-March 2018 and in all cases, without approval of the requested extension of existing JRL accepting non-bypass MSW beyond March 31, 2018, some amount of MSW will be stranded (i.e., there will be a shortfall in management options for MSW produced in Maine.)” It is still unclear that there are no other outlets for the MSW. Other outlets may include, but are not limited to: waste processing facilities in Maine or out-of-state, incinerators in Maine or out-of-state, etc. BGS and NEWSME should clearly define what is meant by “stranded” waste and provide justification to support this statement.

Response: *The term “stranded” was used in the application to define the estimated amount of MSW generated in the State post March 31, 2018, which is not reduced, recycled or composted, or disposed of at current landfills and incinerators, minus the amount of this waste that can be handled by the projected in-state incinerators and processing facilities. This is summarized on the Table included in Appendix 5 of the application. As noted on this table, if all the current and future processing and incineration facilities are able to operate at their permitted (for ecomaine and MMWAC) or stated future capacities in 2018 (i.e., PERC at 210,000 tons/yr and Fiberight at 105,000) tons per year), there is still approximately 200,000 tons of MSW in the State that needs to be landfilled. In 2015, the year used for this analysis the total amount of MSW landfilled in the State not including JRL was about 163,000tons.*

The statement in the application, “the Applicants have evaluated various scenarios for the alternative management of MSW generated in Maine post-March 2018 and in all cases, without approval of the requested extension of existing JRL accepting non- bypass MSW beyond March 31, 2018, some amount of MSW will be stranded (i.e., there will be a shortfall in management options for MSW produced in Maine),” refers to scenarios where one or more of the facilities could not operate at their stated capacities. These conditions were evaluated because there is no operating history for either the PERC facility, at its newly stated operating capacity, or the Fiberight facility.

Incinerators: Regarding the capacity of each MSW incineration facility in Maine, and the extent to which it is being utilized, the source of that information is the Maine Solid Waste Generation and Disposal Capacity Report: Calendar Year 2015 (the most current at the time of the application), Tables 4 and 7. Tables 3 and 5 in the Report for Year 2016 show the same: PERC, MMWAC, and ecomaine, the three remaining MSW incinerators in Maine, are accepting more than their licensed capacity. As noted in the response to Comment 1, however, PERC's annual waste acceptance rate is expected to decline by about 30 percent beginning on April 1, 2018. With the closure of Maine Energy in 2012 and the expected decrease at PERC, MSW incineration going forward will have declined 47 percent (450,000 tons per year, down from 854,000 tons per year) over a five year period. Source: DEP Waste Generation and Disposal Capacity Reports 2011-2016.

Therefore, even with ecomaine and MMWAC currently accepting more than their permitted capacities (184,812 versus 170,000 tons at ecomaine, and 77,466 versus 70,000 tons at MMWAC), this doesn't come close to addressing the stranded quantities of MSW that will occur in the State if this application isn't approved.

The history of the establishment of the Juniper Ridge Landfill is also relevant here. As directed by the Resolve authorizing the acquisition of the Fort James landfill in Old Town, the State Planning Office issued a Request for Proposals (RFP) to select the landfill operator. Casella submitted its proposal in July 2003, which the State selected. As part of Casella's proposal, as required by the RFP, Casella identified the anticipated categories, sources, and amounts of solid wastes that would be disposed in the state-owned landfill (see Exhibit 4). Casella's proposal identified up to 200,000 tons per year of MSW that would be disposed at the state-owned landfill in the event a current disposal facility closed (the future of PERC and Maine Energy, "should they close," were specifically noted). The proposal concluded by stating: "...the West Old Town Landfill [later renamed JRL] will be operated to help address future disposal needs of the state as the current providers of disposal are phased out."

Out of State MSW Incinerators: Within a transportation distance similar to that of the Westbrook transfer station to JRL, out-of-state incinerators are either full and will remain so given the state of solid waste disposal in New England (Wheelabrator MSW Incinerator, North Andover, MA) or are charging tip fees plus cost of transportation (in excess of \$100 in total) (Covanta MSW Incinerator, Haverhill, MA) that would make it uneconomic to use them (i.e., not practicable). See Exhibit 5.

Processing Facilities: Regarding MSW processing facilities located in Maine, this would be the Fiberright facility, once it comes on line. The tonnage allocated to this facility was the tonnage that has been signed up under contract with Municipal Review Committee municipalities: approximately 105,000 tons. See Exhibit 6. Casella has recently executed an agreement with the Fiberright owner to deliver the facility 40,000 tons of in-state MSW per year. Other than the planned Fiberright facility, there are no other MSW processing facilities in Maine.

To the applicants' knowledge, there are no MSW processing facilities out-of-state within the distance of the Westbrook transfer station to JRL. Out-of-state recycling- processing facilities only accept recyclables; not co-mingled MSW.

***Out of State Landfills:** There is some limited capacity in out of state landfills, and if this application is not approved some of the MSW that is taken to JRL will be diverted to several of these facilities. However, disposing of MSW in one landfill over another does not address the solid waste hierarchy standard, because the standard does not differentiate between landfill facilities. Moreover, it is prudent and sound policy for Maine to provide for the management of its own MSW, and not rely on other states or out-of-state facilities to manage or dispose of MSW generated by Maine businesses and citizens. In fact, the purpose of Maine's 1989 statutory ban on new commercial disposal facilities, 38 MRS §1310-X, was for the state to be a market participant and to manage in-state waste at State-owned landfills.*

Follow-up comment: Reference is made to Exhibit 6. Exhibit 6 references agreements that are contingent on consent from Waste Management Disposal Services of Maine (WM) and that "[e]fforts to obtain this consent are ongoing." If consent is not received, the MRC and CRM have negotiated the terms of a backup agreement with Casella and WM to implement a "waste swap" (see page 3 of the letter in Exhibit 6). The written consent from WM or the "waste swap" agreement should be provided to assist the Department in understanding where waste will be disposed of in the various potential scenarios.

***Follow-up Response:** Fiberight/CRM submitted an explanation of the "waste swap" agreement as an attachment to an email to DEP's Kathy Tarbuck from Greg Lounder and Craig Stuart-Paul, dated March 14, 2018. The email and attachment are appended to this response as Exhibit A.*

- b. Page 2-8. Page 2-8. BGS and NEWSME should provide confirmation of the stated capacity of PERC and Fiberight after March 31, 2018. It is our understanding that PERC can operate at 310,000 tons per year and Fiberight at 145,000 tons per year.

***Response.** See answer above regarding Fiberight. See Exhibit 1 for PERC, which intends to operate at approximately 210,000 tons per year beginning April 1, 2018.*

Follow-up comment: While the letter provided by PERC in Exhibit 1 specifies that PERC's "current long term operating plan" is based on approximately 210,000 tons, it is the Department's understanding based on a March 6, 2018 telephone conversation with PERC, that PERC could feasibly and economically operate at a capacity between 260,000 to 270,000 tons per year. Absent other information, the Department will be considering this available incineration capacity during review of the application request.

***Follow-up Response:** As demonstrated in the attached letter dated March 9, 2019 from Kevin Nordby, the President of PERC Holdings (appended as Exhibit B to*

this response), PERC cannot operate economically at 260,000 to 270,000 tons given current market conditions. PERC's letter provides, in relevant part, as follows:

"In response to the issue of PERC's operating capacity, the information provided to the DEP from the PERC plant during the March 6th telephone call is technically correct but taken out of context. Given the market conditions that existed in 2016 and 2017, PERC could continue to operate up to a 310,000 ton per year level. Unfortunately, those market conditions do not exist in 2018 or for the foreseeable future. The competitive dynamics of the current msw market have depressed or limited the range of available tipping fees necessary to procure msw. These economics combined with the extremely low electrical sales market required PERC to modify its operation to a reduced operating level to 210,000 tons per year. PERC can operate successfully at this tonnage level.

...

The planned reduction to this level is already being implemented. While PERC may be able to process increased volumes from time to time, low electrical and tipping fee revenues will not support the viability of the plant at significantly higher msw processing levels at this time." (Emphasis added.)

5. Technical Aspects. **No follow-up comment at this time.**
6. Appendix 1. **No follow-up comment at this time.**
7. Appendix 4. **No follow-up comment at this time.**

Follow-up Comments on the MSW Amendment Application Supplement Dated December 14, 2017

8. Additional Diversion to Southern Maine Waste Incinerators. **No follow-up comment at this time.**
9. Additional Diversion to the PERC or Fiberight Facilities
 - a. The executed agreement for Pine Tree Waste, Inc. to supply 40,000 tons annually of Maine MSW to Fiberight should be provided to the Department. Additionally, the extended agreement with PERC to supply 30,000 tons annually of former MERC-disposed MSW, plus additional commercial MSW, noted as being under negotiation, should be provided to the Department when finalized.

Response. See Exhibits 10 and 11, which have been minimally redacted to protect confidential business information (i.e., trade secrets). The redacted information derives independent economic value from not being known by competitors and others who can obtain economic value from its disclosure and the parties to each agreement have taken reasonable measures to maintain its confidentiality.

Follow-up comment: Not all pages of the Pine Tree Waste and PERC agreement were included in Exhibit 11, only the odd numbered pages were submitted. The omitted even numbered pages should be provided.

BGS and NEWSME should provide the Department with the redacted information and a supporting request to protect it as confidential business information in accordance with the definition of trade secret in the *Uniform Trade Secrets Act*, 10 M.R.S. §§ 1542(4)(A) and (B). Once this information is submitted, the Department's FOAA Coordinator will review the request and make a determination as to whether the request is reasonable and whether the information should not be publicly disclosed.

BGS and NEWSME should clarify whether the originally agreed-upon 30,000 tons of former MERC-disposed MSW is part of the approximate tonnage amounts listed in Section 2.3 of the Agreement for Disposal Services provided as Exhibit 11. The Department assumes that the 30,000 tons is included as part of the 130,000-approximate tonnage that may be provided to PERC by Pine Tree Waste, Inc. for a 1-year period. A clarification should be provided if it isn't clear in the previously omitted even numbered pages of the agreement.

Follow-up Response: *A complete copy of the minimally redacted Agreement for Disposal Services, dated January 29, 2018, by and among Pine Tree Waste, NEWSME, PERC and Maine Waste Processing, LLC., was forwarded to the Department in an email to Kathy Tarbuck, dated March 13. In a separate letter, NEWSME-Casella will be requesting the Department to protect the redacted disposal fee information as a trade secret.*

The Applicants confirm that the originally agreed-upon 30,000 tons of former MERC-disposed MSW is part of the larger approximate tonnages listed in Section 2.3 (see Category 3, 50,000 tons of in-state MSW) of the Agreement for Disposal Services, dated January 29, 2018.

The Agreement for Disposal Services with PERC may be extended (a) at the option of NEWSME and Pine Tree, to December 31, 2023, or (b) by written agreement of PERC, NEWSME and Pine Tree, provided JRL is authorized to accept 81,800 tons of Maine MSW per year by the Department. See Agreement, Section 2.2.

- b. The actual costs associated with tipping fees at both PERC and Fiberight and associated differences in transportation costs, in addition to the fixed prices associated with the long-term disposal agreements with the southern Maine communities should be provided in order for the Department to have a clear understanding of the financial limitations to take additional MSW to these facilities. BGS and NEWSME noted that it is uneconomical for them “to divert additional MSW to either of these facilities at the significantly higher tipping fees they would require, and they would not accept additional MSW at the tip fee the Applicant would be able to pay.” Additional clarification should be provided to define what is meant by the tip fee the Applicant would be able to pay.

Response: *The PERC and Fiberight agreements are the result of arms-length, good-faith negotiations that occurred over several months and provide for*

significant in-state MSW tonnage to be supplied to those facilities (and diverted from other facilities, including JRL), assuming approval of this application by March 31. They provide benefits and obligations to both parties. The tonnage and pricing in these agreements do not occur in isolation. They cannot be “cherry-picked” without altering the overall end result that was mutually agreeable to both parties.

Follow-up comment: As noted above, the Department requests that the redacted information including actual costs be provided in order for the Department to make an informed evaluation of the application request.

While the Department respects that BGS and NEWSME have finalized agreements with both Fiberight and PERC as a “result of arms-length, good-faith negotiations,” the Department does not condone the fact that these agreements are contingent on the Department’s approval of the application request. The Department will continue to evaluate the application request in an objective manner in accordance with applicable laws and rules together with Maine’s solid waste needs.

Follow-up Response: *The PERC and Fiberight agreements are contingent on approval of the pending amendment application, and this is appropriate. Those agreements were heavily negotiated and included in the application to demonstrate the applicants’ continued compliance with the hierarchy for this non-bypass MSW after the current agreement with PERC expires on March 31. If the application is not approved, however, there is no need for the applicants to make that demonstration.*

The critical date in question, March 31, 2018, was not established by the applicants. Rather, there are multiple events (most of which have been undertaken by others) that coincide on that date:

- *Expiration of PERC’s existing 30-year disposal agreements.*
- *Commencement of the MRC/Fiberight disposal agreements with municipalities that had previously utilized PERC.*
- *Commencement of disposal agreement at the Crossroads landfill between MRC and Waste Management.*
- *Commencement of a “bridge” disposal agreement between MRC and PERC that requires Waste Management consent.*
- *Commencement of a verbal “swap” agreement between MRC, Waste Management, and Casella, if the MRC/PERC bridge cannot occur.*
- *Commencement of disposal agreements for municipalities that had previously utilized PERC with ecomaine, MMWAC, and Crossroads Landfill.*
- *Expiration of existing license for JRL to accept non-bypassed MSW.*

As a result of the above events, approval of the application and activation of the referenced PERC and Fiberight agreements with Casella are inextricably linked; either both must occur or neither will occur.

As indicated in the Follow-up Response to original comment 9.a., in a separate letter, NEWSME and Casella will be requesting the Department to protect the redacted disposal fee information in the Fiberight and PERC agreements as a trade secret. Provided the Department is able to provide this protection to this confidential business information, NEWSME will provide the unredacted agreements for DEP review only.

- c. If it is possible for PERC to accept additional MSW beyond the tentatively agreed-upon 30,000 tons, written confirmation from PERC should be provided regarding the additional capacity they can accept and at what cost.

Response: *Casella subsidiary, Pine Tree Waste, has entered into an agreement with PERC for delivery of additional MSW significantly beyond the 30,000 tons per year, contingent on approval of this application for continued acceptance of up to 81,800 tons of Maine MSW at JRL by March 31, 2018. See Exhibit 11.*

Follow-up comment: The Agreement for Disposal Services provided as Exhibit 11 specifies that an approximate tonnage of 130,000 may be provided to PERC by Pine Tree Waste, Inc. for a 1-year period. Section 2.3 specifies that 50,000 tons of this total would be out-of-state waste. The specific origin, contract obligations, and available alternatives regarding this waste should be submitted to provide the Department adequate information to determine if out-of-state waste is displacing in-state waste for incineration in Maine. BGS and NEWSME should also provide information relating to the reduction, reuse, recycling, and composting efforts for the 50,000 tons of out-of-state waste.

As noted in the follow-up comment in 9(a) above, the missing even numbered pages of the agreement in Exhibit 11 should be provided and may provide additional clarity to our follow-up comment above regarding out-of-state waste.

Follow-up Response: *PERC, of course, is a commercial MSW incinerator entitled to all of the protections provided the Commerce Clause and Contract Clause of United States Constitution. As such, the Department cannot regulate the flow of MSW, an article of interstate commerce, to PERC, even if it originates from out-of-state, if PERC has decided to continue to contract for certain tonnage of this MSW stream. Notwithstanding these constitutional concerns, PERC and Casella have had delivery of out-of-state MSW in their agreements from their inception. This is a delivery arrangement that is commercially beneficial to both parties and is part of a comprehensive delivery system designed to maximize operations and adherence to the hierarchy. The most recent PERC Agreement, which expires on March 31, 2018, requires that Casella deliver to PERC up to 50,000 tons of out-of-state MSW. This provision is consistent with the new PERC agreement, which begins on April 1, 2018, and is not displacing any in-state volume. It is volume already being contractually delivered to PERC. These 50,000 tons will primarily be delivered from facilities in Peabody and Auburn Massachusetts. Casella operations in these areas engage in very robust Zero-Sort® recycling activities as well as food waste collection and diversion activities. As stated in the applicants' March 1 Response to*

Department comments, Casella has contacted Covanta and Wheelabrator regarding additional disposal options in other states and no practicable options are available. Additionally, PERC has stated that their total out-of-state volumes will decrease beginning on April 1, 2018. See Exhibit B, p. 2.

10. Additional Separation or Processing to Remove Recyclables or Organics. **No follow-up comment at this time.**
11. Alternatives and Costs Associated with Not Using MSW in Site Operations. **No follow-up comment at this time.**
12. Other. **No follow-up comment at this time.**

EXHIBIT A

From: Tarbuck, Kathy <Kathy.Tarbuck@maine.gov>
Sent: Wednesday, March 14, 2018 2:02 PM
To: Greg Lounder <glounder@mrcmaine.org>
Subject: RE: Supplemental answers from Fiberight/CRM

Greg -

I hadn't received the email you forwarded.

I was able to open the attachment.

Kathy

Kathy Tarbuck, P.E.

Senior Environmental Engineer in the Bureau of Remediation and Waste Management Maine Department of Environmental Protection ph (207) 287-7743

<https://na01.safelinks.protection.outlook.com/?url=www.maine.gov%2Fdep&data=02%7C01%7CDon.Meagher%40casella.com%7C3a3d712440c14a67e19708d589d6fe98%7C586801fcd2674a5691c7d8f3e24651d2%7C0%7C0%7C636566478896820155&sdata=Wg3fc%2F6sB4FK6flgz%2Fk8UfKtYM4MuxYCwxygfrQMJo0%3D&reserved=0>

-----Original Message-----

From: Greg Lounder [<mailto:glounder@mrcmaine.org>]
Sent: Wednesday, March 14, 2018 1:56 PM
To: Tarbuck, Kathy <Kathy.Tarbuck@maine.gov>
Subject: FW: Supplemental answers from Fiberight/CRM

Dear Ms. Tarbuck -

In reviewing the below message received today from Craig Stuart-Paul, it wasn't clear to me that you had received it.

Please confirm that you were able to open the attachment.

Thank you

Greg Lounder

-----Original Message-----

From: Craig Stuart-Paul <craigsp@fiberight.com>
Sent: Wednesday, March 14, 2018 10:16 AM
Cc: Don.Meagher@casella.com; Greg Lounder <glounder@mrcmaine.org>
Subject: Supplemental answers from Fiberight/CRM

Dear Ms. Tarbuck

Please see attached supplemental answer regarding pending waste swap discussions.

Kind regards

Craig Stuart-Paul

MRC, WM, and Casella have negotiated the terms of a verbal agreement described as a “waste swap” in the CRM letter, dated February 20, 2018, to DEP’s Kathy Tarbuck, which was attached as Exhibit 6 in the March 1 BGS-NEWSME Response to DEP.

As explained in the CRM letter, the Fiberight/Coastal MSW processing facility located in Hampden will not be operational on April 2, 2018, the first curbside pick-up day under the new contractual arrangements between Fiberight/Coastal the MRC and its member municipalities. The Hampden Zoning Ordinance prohibits the use of the MRC/Fiberight site and building as a transfer station. Therefore, the MRC and Fiberight are seeking to avoid forcing curbside collection vehicles (packer trucks) and other small transfer container trucks to drive considerable distances under uneconomic conditions to dispose of MRC municipal solid waste at the Crossroads Landfill under the existing disposal agreement between WM and MRC, which commences on April 1, 2018.

It should be further noted that there is insufficient regional transfer capacity to enable larger transfer vehicles to provide the transportation element during this period, and thus there are insufficient smaller vehicles to provide both collection and transfer service in the northern part of the MRC service area. A waste swap would solve such an infrastructure shortfall.

The above-referenced waste swap, on a 1:1 tonnage basis at agreed tip fees, would involve Casella’s Pine Tree Waste hauling company delivering MRC municipal MSW it collects in packer trucks and container trucks from the greater Bangor area to JRL. Pine Tree Waste would, in turn, deliver an equivalent amount of Maine MSW from Casella transfer stations closer to the Crossroads Landfill (e.g. Waterville, Westbrook). The waste swap would not change the amount of MSW being disposed of at Crossroads Landfill or JRL, but would reduce the truck miles needed to transport the MSW, and would thus reduce overall truck fuel use and emissions.

This waste swap is, of course, subject to approval of the pending amendment application that would allow for disposal of non-bypassed MSW after March 31, 2018 at JRL.

A second approach that has been attempted and reported in the media and explained in CRM’s February 20 letter to Kathy Tarbuck, is a “bridge” agreement that has been negotiated between the MRC and PERC. Beginning April 2, and until Fiberight is operational, the MRC would deliver its members’ MSW to PERC. The Crossroads Landfill owned by WM is the contracted backup facility on an exclusive basis for bridge and bypass MSW in an agreement entered into between the MRC and WM in August of 2015 and as established in the Fiberight/Coastal processing facility license. WM, however, has not consented to allow delivery of MSW to PERC; a condition precedent for the implementation of such bridge agreement.

EXHIBIT B

PERC Holdings, LLC

Mr. Brian Oliver
Region Vice President
Casella Waste Systems, Inc.
110 Main Street, Suite 1308
Saco, Maine 04072

03/09/2018

Mr. Oliver,

I am in receipt of your copy of the Maine DEP request for further information regarding PERC as it relates to the JRL Permit Amendment. As we discussed, I have no issue providing the information or the clarifications requested provided that the information will be treated and held as confidential by both you and the DEP or at minimum redacted of all pricing terms.

My concern from reading the terms of the DEP's request is that PERC's business and agreement terms will first enter the public domain of the DEP, which would make it open to public disclosure as required by Maine law, before any action to keep this information secure and confidential is approved or enacted by the DEP.

Follow up Comments #9 a., #9 b.

As you know, PERC's position in the Maine marketplace has changed drastically in 2018 due to the expiration of our long term PURPA PPA. PERC now is required to seek msw in a market where lower cost competitors, ecoMaine and WM Norridgewock, have aggressively marketed to and have captured large portions of PERC's pre-2018 customer base. Since WM already has the great advantage of being able to accept unlimited amounts of unprocessed msw, potentially disclosing the terms of my largest remaining contract to my competitors is something that could be very detrimental to the ongoing viability of PERC.

Follow-up Comment #4 b

In response to the issue of PERC's operating capacity, the information provided to the DEP from the PERC plant during the March 6th telephone call is technically correct but taken out of context. Given the market conditions that existed in 2016 and 2017, PERC could continue to operate up to a 310,000 ton per year level. Unfortunately, those market conditions do not exist in 2018 or for the foreseeable future. The competitive dynamics of the current msw market have depressed or limited the range of available tipping fees necessary to procure msw. These economics combined with the extremely low electrical sales market required PERC to modify its operation to a reduced operating level to 210,000 tons per year. PERC can operate successfully at this tonnage level.

This tonnage level is almost exclusively In State msw due to the high cost of transportation. Historically PERC was able to utilize Out of State waste to stabilize operations and to maximize the past PPA. Current conditions have limited the contracting of both In State msw and all but eliminated access to the Out of State msw market.

The planned reduction to this level is already being implemented. While PERC may be able to process increased volumes from time to time, low electrical and tipping fee revenues will not support the viability of the plant at significantly higher msw processing levels at this time.

Please let me know if you need any further clarification and keep me apprised of the confidential status of my information.

Regards,



Kevin Nordby