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Admitted in: ME

April 30, 2018

Mr. James Parker, Chairman
Board of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Ms. Cynthia Bertocci, Executive Analyst
Board of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Re: Appeal of Juniper Ridge Landfill DEP Order # S-020700-WD-BL-A

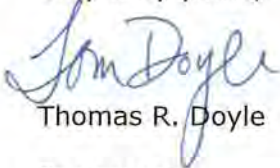
Dear Mr. Parker and Ms. Bertocci:

Please find enclosed: (1) the Appeal of Bureau of General Services (BGS) and NEWSME Landfill Operations, LLC (NEWSME) of the above-referenced DEP Order, and (2) BGS and NEWSME's Motion to Disqualify Mr. Parker from participating as Chair and as a member of the Board in this Juniper Ridge Landfill (JRL) appeal proceeding.

This appeal involves a Department Order issued March 31, 2018 on BGS and NEWSME's application to extend the deadline for accepting non-bypass Municipal Solid Waste (MSW) at JRL. The deadline being extended was approved, on appeal, by this Board in its Order # S-020700-WD-BG-Z, Condition 10. In that appeal proceeding, Mr. Parker agreed to recuse himself after BGS and NEWSME filed a similar motion to disqualify. The exact same issues that were involved in the 2014 appeal proceeding – disposal of non-bypass MSW at JRL and compliance with Maine's solid waste management hierarchy – are again the key issues in this appeal to extend the MSW deadline beyond the date approved in the Department's recent March 31, 2018 Order. Consequently, out of an abundance of caution and to avoid even the appearance of impropriety, BGS and NEWSME are renewing their motion to disqualify Mr. Parker in this proceeding.

Thank you very much for your attention to this matter.

Very truly yours,



Thomas R. Doyle

Enclosures

cc: Commissioner Paul Mercer, DEP
David Burns, DEP
Kathy Tarbuck, DEP
William Laubenstein, Esq., AAG

**STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:

STATE OF MAINE, ACTING THROUGH THE
BUREAU OF GENERAL SERVICES AND
NEWSME LANDFILL OPERATIONS, LLC
OLD TOWN, PENOBSCOT COUNTY, MAINE
JUNIPER RIDGE LANDFILL
DEP AMENDMENT APPLICATION
SOLID WASTE #S-020700-WD-BL-A

SOLID WASTE LICENSE AMENDMENT
PARTIAL APPROVAL

**APPEAL OF BUREAU OF GENERAL SERVICES AND
NEWSME LANDFILL OPERATIONS, LLC**

Pursuant to Section 24 of Chapter 2 of the Department's rules, co-applicants Bureau of General Services ("BGS") and NEWSME Landfill Operations, LLC ("NEWSME") appeal Conditions 5, 6, and 7 of the Commissioner's March 31, 2018, decision to limit disposal of in-state municipal solid waste ("MSW"¹) at the Juniper Ridge Landfill ("JRL") for only 12-18 months and to direct the applicants to develop and implement measures that eliminate the need to accept MSW in the future.² Both of these limitations are based on an erroneous reading of the solid waste management hierarchy and should be amended because they: (1) will lead to disposing of MSW in other landfills after the 12-18 month period, which in no way promotes the hierarchy, and (2) require BGS and NEWSME to take steps to resolve state-wide MSW management problems that are beyond their control. Furthermore, early expiration (after only 12 or 18 months) of the amended license approving MSW disposal at JRL will terminate prematurely Casella Waste Systems, Inc.'s ("Casella") heavily negotiated contracts to deliver

¹ Any reference to MSW throughout this appeal document is to in-state, non-bypass MSW only, unless otherwise indicated. "Bypass" is "any solid waste that is destined for disposal, processing, or beneficial reuse at a solid waste facility, but which cannot be disposed, processed, or beneficially used at that facility because of malfunction, insufficient capacity, inability of the facility to process or burn, down-time, or any other reason." See 06-096 CMR 400 § 1(V).

² As discussed below, BGS and NEWSME also object to certain findings and conclusions associated with these three conditions and believe these too were made based on an erroneous application of the hierarchy.

significant MSW tonnage to the Penobscot Energy Recovery Company (“PERC”) (up to 130,000 tons of MSW, 80,000 in-state and 50,000 out-of-state, annually) and Coastal Resources of Maine LLC (“CRM,” a.k.a. “Fiberight”) (up to 40,000 tons of in-state MSW annually), resulting in major disruption and instability in a solid waste market already reeling from the *de facto* closure of a primary recycling market (China), operational changes at PERC, the delay in Fiberight’s construction/operation, and the inability to replace the Maine Energy Recovery Company’s (“MERC”) incineration capacity. As will be discussed below, the applicants respectfully request that Conditions 5, 6, and 7 (and associated findings and conclusions) be revised and propose instead that the term of the amended license be extended through December 31, 2023.

EXECUTIVE SUMMARY

This is an appeal about how to apply the Department’s still relatively new rules, which were promulgated in 2015, for implementing the State’s solid waste management hierarchy. *See* 06-096 CMR 400 § 4(N). The hierarchy is a list of management steps for solid waste in order of preference, from source reduction at the top to landfilling at the bottom. Interim steps include reuse, recycling, composting, and processing (including incineration).³

³ Specifically, the statute establishing the hierarchy provides:

It is the policy of the State to plan for and implement an integrated approach to solid waste management for solid waste generated in this State and solid waste imported into this State, which must be based on the following order of priority:

- A. Reduction of waste generated at the source, including both amount and toxicity of the waste;
- B. Reuse of waste;
- C. Recycling of waste;
- D. Composting of biodegradable waste;
- E. Waste processing that reduces the volume of waste needing land disposal, including incineration; and
- F. Land disposal of waste.

The Department's rule for applying the hierarchy to a specific license application provides that waste (here, MSW) must be reduced, reused, recycled, composted, and/or processed "to the maximum extent practicable" prior to incineration or landfilling. *See* 06-096 CMR 400 § 4(N)(2)(a). This only applies, however, to programs or efforts that "are sufficiently within the control of the applicant to manage or facilitate." *Id.* Further, the analysis reasonably includes practical considerations, such as cost and logistics:

[T]he "maximum extent practicable" prior to disposal means handling the greatest amount of waste possible through means as high on the . . . hierarchy as possible, resulting in maximizing waste diversion and minimizing the amount of waste disposed, without causing unreasonable increases in facility operating costs or unreasonable impacts on other aspects of the facility's operation. Determination of "maximum extent practicable" includes consideration of the availability and cost of technologies and services, transportation and handling logistics, and overall costs that may be associated with various waste handling methods.

Id.

BGS and NEWSME were originally licensed to dispose of MSW at JRL in late 2013, but only through March 31, 2018. In late 2017, they filed an application with the Department seeking approval to continue to dispose MSW at JRL beyond the March 31, 2018, deadline. Ultimately, the Commissioner partially approved the request, *see* Department Order #S-020700-ED-BL-A, page 41 (March 31, 2018) ("Order"), but with two significant limitations based on the hierarchy. First, the applicants may continue to dispose up to 81,800 tons of MSW annually at JRL, but only for one year, and with an option to request an extension to dispose up to 30,000 tons, and only for six more months. *See* Order, page 41, Conditions 5 & 7. Second, the Commissioner directed BGS and NEWSME to prepare and implement measures that somehow eliminate the need to dispose of MSW at JRL. *See* Order, pages 41-42, Condition 6.

While the short-term extension of the disposal deadline for at least a year to March 31, 2019, is helpful in the immediate short-term, these two limitations on the scope of the approval

are significant. They are also inconsistent with the hierarchy. As will be discussed in more detail below, because there is insufficient capacity in Maine or otherwise to manage MSW at levels higher on the hierarchy than JRL, the result of the Commissioner's decision will be to move MSW from JRL to other landfills. This has nothing to do with the hierarchy, because all landfills are at the same level, and will only end up preferencing some landfills over others. Early termination of the amended license also triggers the expiration of Casella's MSW supply contracts with PERC and CRM, likely significantly impacting those facilities, leading to further instability and turmoil in the MSW marketplace. In addition, the decision requires BGS and NEWSME to take steps to eliminate the need for disposal of MSW at JRL, even though they do not generate the MSW and cannot control how those who do generate it will manage that waste.

Therefore, BGS and NEWSME respectfully appeal Conditions 5, 6, and 7 and the corresponding findings and conclusions⁴ of the Commissioner's decision because they incorrectly apply the hierarchy and will cause significant instability in Maine's solid waste marketplace.

BACKGROUND

BGS owns and NEWSME operates JRL in Old Town, Maine, pursuant to a solid waste facility license initially issued by the Department in 1993 to a prior owner, James River Paper Company. That license has been amended multiple times, including in 2004, when the

⁴ The corresponding findings and conclusions that BGS and NEWSME object to and believe result from an erroneous application of the hierarchy are specifically highlighted in the redline of the Order appended as Exhibit 3 and can be found in the Order at: page 17, § 8 (B) (2), 1st para. and 18, § 8 (B) (2), 4th para. (regarding Casella's MSW diversion efforts); page 27, § 8 (D) (1), 1st para. (regarding alternative waste management options); page 28, § 8 (D) (1), 2nd para. (regarding application of the hierarchy to this amendment request) and § 8 (D) (2) (describing Casella's recycling programs and MSW disposal at JRL); page 32, § 8 (D) (5), 1st full para. (use of "near-term"); page 33, § 8 (E) (1), 2nd sent. (regarding amount of MSW disposed at JRL since 2013), § 8 (E) (2) (same), and § 8 (E) (4) (length of uncertainty over future capacity for MSW management); page 34, § 8 (E) (5) (use of "near-term" and length of agreements) and § 8 (E) (6) (use of "near-term," available options higher on the hierarchy, term of this extended license, and recognition of increased costs); page 35, § 8 (E) (6) (a) and (b) (objectionable conditions), page 39, Concl. 1 (A) (limited term of license); page 40, Concl. 8 (A) and (B) (limited term of license and objectionable conditions) and Concl. 9 (use of "sufficient" and Casella diversion of MSW to PERC and CRM); and pages 41-42 (in "Therefore" paragraph, limited term of license), as well as Conditions 5, 6, and 7.

Department approved a vertical increase at JRL to the final elevation of the existing landfill. The landfill was acquired by the State in 2004, first through the State Planning Office and then through BGS in 2012. NEWSME, an indirect subsidiary of Casella, now operates JRL pursuant to a contract with the State known as the Operating Services Agreement, which states that NEWSME is responsible for all costs associated with operating the landfill and for obtaining any permits needed. *See* Order, page 2 at § 1(B) (describing history of JRL).

I. The Department Authorized JRL to Accept MSW in 2013, Concluding it Was Consistent with the Hierarchy.

At the end of 2012, another Casella subsidiary, MERC, reached an agreement with the City of Biddeford to shut down the solid waste incinerator that MERC operated in downtown Biddeford. *See* BGS & NEWSME Response to Comments at 1 (March 1, 2018). That permanent closure set off a series of significant changes in the solid waste industry in Maine that are still being felt today. Perhaps most pressingly, the MSW that used to go to the MERC incinerator needed to be managed in another way. Because there was not enough capacity at other incinerators in Maine to manage all of the MSW that had gone to MERC, and NEWSME was bound by contracts to handle much of it, NEWSME applied to amend JRL's license to allow disposal of that volume, approximately 93,000 tons per year, at JRL instead.

Even though it was not yet a permitting standard (as it is today), a key issue in the 2013 review of that application was nonetheless whether the disposal of MSW at JRL was consistent with the State's solid waste management hierarchy. At the time, the Commissioner concluded that it was and amended JRL's license to authorize disposal of up to 81,800 tons per year of non-bypass MSW, until either the existing landfill was full or March 31, 2016, whichever occurred first. *See* Department Order #S-020700-WD-BC-A, Condition 10. In addition, in an effort to

promote the hierarchy, the amended license also required NEWSME to “make its best effort to divert MSW from landfilling at JRL to the greatest extent practicable.” *See id.*, Condition 5.

On appeal, this Board modified the license to extend the March 31, 2016, date for two years, until March 31, 2018, but otherwise affirmed the Commissioner’s decision. *See* Board Order, #S-0207000-WD-BG-Z, Condition 10. The March 31, 2018, date was chosen presumably because that was the date that an important contract between Casella and PERC to supply 30,000 tons of MSW per year for incineration, was scheduled to expire. *Id.*, page 5.

II. JRL Complies with the 2013 MSW Amendment.

Since it began accepting MSW at JRL in 2014, NEWSME has complied with the amended license by diverting *over five times more* MSW to other solid waste facilities than it disposed at JRL. Some of this diversion has been to other landfills, which are obviously at the same level as JRL on the hierarchy, but much has gone to facilities that are higher on the hierarchy than JRL, as well. A summary of JRL’s disposal and diversion efforts can be prepared from the information provided in Table 4 of the Commissioner’s decision, as follows:

Year	MSW Diverted from JRL (tons)	MSW Disposed at JRL (tons)	MSW Diverted from v. MSW Disposed at JRL
2014*	228,179	36,878	6.2 times
2015	306,725	57,521	5.3 times
2016	317,384	69,934	4.5 times
Total	852,288	164,333	5.2 times

* Disposal in 2014 did not begin until March 2014.

From this, it is clear that although MSW tonnage disposed at JRL has gone up modestly since 2014, but never beyond the 81,800 ton annual limit, the amount of MSW disposed at JRL pales in comparison to the amount of MSW that Casella has diverted from JRL since issuance of the 2013 license.

III. There Continues to be Insufficient Capacity to Manage MSW without Landfills.

As in 2012, there continues to be significant uncertainty in Maine's solid waste landscape, including the following.

- Two of the three remaining Maine incinerators – ecomaine and Mid-Maine Waste Action Corporation (“MMWAC”) – are already operating at capacity, meaning they cannot process any more MSW, and ecomaine even notified two existing customers, which combined handle nearly 30,000 tons of MSW per year, that as of April 1, 2018, it would no longer have room for them.
- PERC has stated that its capacity will be reduced by 100,000 tons per year and that it cannot operate viably at more than 210,000 tons per year due to significant economic pressures from low electrical and tipping fees.⁵
- Construction of another commercial incinerator (such as one to replace MERC) is prohibited by law. *See* 38 M.R.S. § 1310-X(1).
- CRM's new Fiberight facility, a mixed material processing facility that will convert MSW into fuel, remains under construction and is already contracted for tonnage up to its licensed capacity.⁶
- No additional mixed material processing facility (like Fiberight) could be designed, licensed, and built in the 12-18 month timeframe provided by the Order. (The process for the Fiberight facility began more than six years ago.)
- The MSW recycling market is highly unstable, particularly given that the U.S. exports about one-third of its recycling, approximately half of which goes to China, which declared over the summer of 2017 that it would no longer accept imported recycling materials unless they meet exceedingly low contamination levels. As a result, recycling prices have plunged significantly and many recyclers now have to pay to recycle, leading to the incineration or landfilling of MSW (e.g., plastics and mixed paper) formerly recycled.

⁵ PERC's President explained that the market conditions required to operate at 310,00 tons per year “do not exist in 2018 or for the foreseeable future,” and said that the “competitive dynamics of the current [MSW] market have depressed or limited the range of available tipping fees necessary to procure new [MSW]. He concluded that “[t]hese economics combined with the extremely low electrical sales market required PERC to modify its operation to . . . 210,000 tons per year.” *See* BGS & NEWSME Responses to Department's March 12 Follow-up Comments at Exhibit B (March 15, 2018).

⁶ CRM recently announced that it would not open the Fiberight facility on April 1, as planned, and that it did not expect to open because of construction delays until at least the end of 2018. *See* Exhibit 1. (This information was not included in the record because it was not announced until April 6, 2018, well after the Department issued its decision. The applicants request that it be admitted as supplemental evidence because we have shown due diligence in bringing it to the attention of the Department at the earliest opportunity and it could not have been presented during the licensing process. *See* 06-096 CMR 2 § 25(D)(2).)

See BGS & NEWSME Response to Comments at 1-2 and Exhibits 3 and 9 (March 1, 2018); *see also* Exhibit 2 to this appeal.⁷

The key issue today, therefore, is the same as in 2012: there is insufficient capacity to manage all of the MSW generated in Maine without resorting to some amount of landfilling. Mainers continue to generate nearly 1.2 million tons of MSW annually, a number that has been rising slightly every year since 2013. *See* Order, page 20, Table 5. A significant quantity of that, approximately 440,000 tons, is recycled⁸ and composted in compliance with the hierarchy. That leaves roughly 757,000 tons of MSW each year that must be managed by incineration, processing, or landfilling. *See* Order, page 20 at § 8(B)(3)(a). The problem is that, by the Department's own admission, there is at best about 595,000 tons of non-landfill disposal capacity available in Maine. *See id.* Further, even that figure assumes the uninterrupted operation of two facilities, PERC and Fiberight, which is far from certain.⁹ The result is that, even with PERC and Fiberight operating as hoped, there is at least an approximately 162,000 ton *shortfall* in Maine's capacity to manage MSW at levels of the hierarchy above landfilling. As a

⁷ The article in Exhibit 2 was not included in the record because it was not published until April 10, 2018, well after the Department issued its decision. The applicants request that it be admitted as supplemental evidence because we have shown due diligence in bringing this article to the attention of the Department at the earliest opportunity and it could not have been presented during the licensing process. *See* 06-096 CMR 2 § 24(D)(2).

⁸ Given recent revelations about municipalities now needing to dispose of formerly recycled materials due to basic economics of the marketplace, the ability of Mainers to continue to recycle MSW at this pace is highly questionable. This makes the need for more MSW disposal capacity even more critical.

⁹ The Department candidly acknowledges its aspirational approach in the Order:

The Department has independently calculated the future non-landfill capacity as 170,000 tons per year at ecomaine, 70,000 tons per year at MMWAC, 210,000 tons per year at PERC and 145,000 tons per year at CRM for a total of 595,000 tons. Absent other considerations, the Department considers the projected non-landfill capacity to be 595,000 per year *as long as PERC successfully achieves a stable operating capacity and CRM has been constructed and achieves commercial operation.*

See Order, page 20 at § 8(B)(3)(a) (emphasis added). Clearly, without the operation of either PERC or Fiberight (or both), Maine's capacity numbers would fall dramatically and the need for landfill space would only increase.

result, there is a significant need for landfills to be able to accept MSW, both now and in the foreseeable future.

IV. BGS and NEWSME File an Application to Extend the MSW Disposal Deadline.

With this as background, because the existing JRL is not yet full, and the March 31, 2018, date was fast approaching, BGS and NEWSME applied in late 2017 to amend JRL's license to extend the deadline for acceptance of MSW. The application requested only that the term of the MSW amendment be revised to allow disposal of MSW at JRL until the existing landfill is full up to its existing licensed capacity. *See* Application, page 1-1 at § 1.0. The application did not request approval for disposal of any MSW in the JRL Expansion project that this Board recently approved in #S-020700-WD-BI-N.

A. Casella Made Substantial Efforts to Comply with the Hierarchy.

The application and several supplemental filings provided extensive information about Casella's efforts to comply with the hierarchy, as directed by Condition 5 of the 2013 amended license. As the Commissioner's decision correctly points out, Casella is an integrated solid waste management company, and so has made significant investments in steps like composting and recycling that reduce the amount of MSW that needs to be managed by incinerators and landfills. *See* Order, page 16 at § 8(B)(2); *see also* Amendment Application § 2.2 (discussing Casella's Zero-Sort[®] recycling system, its new recycling materials recovery facility in Lewiston, land-application and composting of wastewater treatment plant sludges, composting of biosolids at a facility in Unity, and even a trial food waste diversion program in Scarborough); Comments on Draft Amendment § 2 (detailing attempts to support operation of the digester at Exeter Agri-Energy and Casella's consideration of developing a new mixed material MSW process facility to increase recycling).

B. The Applicants Manage Waste Efficiently at JRL to Save Landfill Space.

In addition, NEWSME manages wastes as efficiently as possible at JRL once they arrive. For example, JRL achieves a 61% greater compaction rate than the average compaction rate at the five municipal landfills remaining in Maine, thus saving the State valuable landfill volume. *See* Application, page 2-10 at § 2.2. NEWSME also utilizes MSW beneficially to perform important functions at JRL that would otherwise be performed with other wastes or virgin materials, like soil or woodchips, including as a bulking material for wastewater treatment plant sludges, in the soft layer to protect a new liner, and as a grading material to reach final grades before installation of the landfill closure cover system. *See id.* and § 2.5.2.

C. Casella Diverts Substantial Volumes of MSW to Other Facilities.

Finally, Casella has taken significant steps to ensure that it will continue to divert MSW from JRL to other facilities higher on the hierarchy. Pine Tree Waste, Inc., a Casella subsidiary, has executed another agreement with PERC under which it will supply significant MSW tonnage (up to 80,000 tons of in-state MSW and up to 50,000 tons of out-of-state MSW) per year to that facility, potentially until December 31, 2023. *See* Order, page 31, § 8(D)(5)(b) and BGS & NEWSME's Response to Comments at Exhibit 11 (March 1, 2018). This represents approximately 62% of PERC's inbound material under its post-March 31, 2018, operating plan. *See id.* and footnotes 5 and 9 above. Under this agreement, JRL also is the disposal outlet for PERC's bypass and residuals, including its ash, a necessary aspect of PERC's continued operation. *See* BGS & NEWSME's Response to Comments at Exhibit 11 (March 1, 2018). Likewise, Pine Tree has signed a long term agreement with CRM to supply 40,000 tons of MSW per year to Fiberight, approximately 28% of its planned (145,000 ton) annual inbound capacity, once it is operational, thus diverting still more MSW from JRL. *See* Order, pages 29-30, §§ 8(D)(4)(a) and (5)(a) and BGS & NEWSME's Response to Comments at Exhibit 10 (March

1, 2018). Because both of these agreements were executed to help the applicants demonstrate compliance with the hierarchy, they are contingent on and coterminous with the Department's approval of JRL's request to dispose of 81,800 tons of MSW annually. *See* BGS & NEWSME's Response to Department's March 12 Follow-Up Comments, page 8 (March 15, 2018). Thus, as currently written, the Commissioner's decision reduces the term of both contracts to one-year deals.

D. Cutting Off the Supply of MSW to JRL Will Increase Operating Costs.

BGS and NEWSME's application also documented how refusing to allow existing JRL to accept MSW through its closure will increase operating costs and may necessitate using materials like virgin soil or woodchips that will take up valuable landfill space in lieu of MSW. *See* Application, page 2-10 at § 2.2 and BGS & NEWSME's Response to Department's February 15, 2018 Comments, pages 7-8 (March 1, 2018) (explaining how MSW will be used beneficially at JRL as pre-grading and shaping material as part of closure and to aid in bulking of treatment plant sludges with significant liquid volume); BGS & NEWSME's Response to Department's February 15, 2018 Comments, pages 13-14 (March 1, 2018) (discussing additional costs of substituting other materials for MSW). Replacing the bulking material with soil, for example, would cost approximately \$500,000 per year, while replacing the shaping material could cost an additional \$1.4 to \$1.7 million. *See id.*

V. The Commissioner Approves the Application, But Subject to Severe Restrictions.

After significant discussions with Department staff on the details of the solid waste market, the Commissioner issued the decision on the last day before the MSW allowance was set to expire. As summarized above, it authorizes an extension of 12-18 months in Conditions 5 and 7, as follows:

5. BGS and NEWSME shall accept no greater than 81,800 tons per year of non-bypass, in-state MSW at JRL, limited to a period of time up to and including March 31, 2019, except for a possible one-time six-month extension beyond March 31, 2019 of no greater than 30,000 tons of non-bypass, in-state MSW based on a demonstrated need, as stated in Condition 7 below. . . .
7. If a demonstrated need exists, BGS and NEWSME may submit a one-time request for a six-month potential additional extension . . . under the following conditions:
 - A. The one-time request shall be limited to not greater than 30,000 tons of non-bypass, in-state MSW over the six-month extension period; and
 - B. The one-time request shall be submitted no later than November 30, 2018 . . . with a specific plan detailing the need for the extension based on the then-current solid waste landscape in Maine, with emphasis on the operational status of other solid waste management facilities in Maine which are higher on the hierarchy.

In addition, the Commissioner's decision also includes in Condition 6 a requirement by March 31, 2019, to "develop and prepare to implement measures that eliminate the need for non-bypass, in-state MSW disposal at JRL."

ARGUMENT

The Commissioner's decision limiting the disposal of MSW at JRL to a 12-18 month period and requiring BGS and NEWSME to determine how to eliminate the need to dispose of MSW at JRL is inconsistent with the hierarchy and should be revised for three main reasons. First, as required by the hierarchy, the applicants have demonstrated compliance with the maximum extent practicable test to reduce the landfilling of MSW. Second, the Commissioner's decision simply, and without justification, pushes MSW to other landfills, thereby favoring those facilities over JRL even though they are on the same level of the hierarchy. This in no way satisfies the intent of the hierarchy. Third, the Commissioner's decision requires BGS and NEWSME somehow to solve problems with MSW generation and disposal that are beyond their control (and in some cases, such as a new commercially-owned incinerator, impossible), also in conflict with the hierarchy. Indeed, the overall result of the Commissioner's decision will be the

premature termination of major MSW supply agreements with PERC and Fiberight, causing further instability in the marketplace, in effect, undermining the applicants' considerable efforts to support the hierarchy.

I. NEWSME's Efforts to Promote the Hierarchy Are Robust.

After reading the Commissioner's decision, which is initially described as a denial of the application even though it authorizes the requested activity, one might think that the applicants have done little over the past four years to comply with the hierarchy. *See* Order, page 41 (stating "THEREFORE, the Department DENIES the noted application..."). On the contrary, to grant even a partial approval, the Commissioner must have concluded that the application met the hierarchy at least in the near-term, and there is no affirmative statement anywhere in the decision finding that the application did not meet the hierarchy in the medium- or long-term. *See* 38 M.R.S. § 1310-N(1)(D) (requiring Department to find applicant for solid waste facility license has met hierarchy). For example, the Commissioner's decision readily acknowledges that Casella engages in substantial recycling and composting efforts, among other things, opening in 2014 a new MSW materials recovery facility in Lewiston, increasing the number of communities and businesses that use its Zero-Sort[®] recycling system, and pursuing a project for food waste collection and diversion in Scarborough. *See* Order, pages 17-18 at § 8(B)(2) (stating "Casella has a diversity of waste management programs, including reduction and recycling that have managed more MSW from 2014 to 2016"). In addition, the Commissioner also recognizes that forcing the applicants to divert all MSW will increase costs at JRL because NEWSME will have a greater financial burden if MSW is taken to another landfill and will have to replace MSW with other materials to bulk treatment plant sludges, fill settled areas, and do final grading prior to capping the existing landfill. *See* Order, page 32 at § 8(D)(6) (acknowledging there will be an "increase in financial burden" due to the decision).

A. The Commissioner's Concerns About Casella's Compliance with the Hierarchy Are Misguided.

Thus, it appears that the Commissioner agrees that Casella takes significant steps to comply with the hierarchy and that prohibiting disposal of MSW at JRL will be a financial burden. Nonetheless, the Commissioner concluded that the applicants have only made this showing in the short term. In reaching that conclusion, the Commissioner's decision seems to depend upon three points of concern with how the applicants have addressed the hierarchy.

1. Which Towns or Businesses Generate the MSW is not the Problem.

First, the Commissioner focuses on the fact that the genesis of the MSW management shortfall in 2012 was the closure of MERC and Casella's corresponding need to address the solid waste tonnage under contract with communities that had previously been serviced by MERC. *See* Order, page 15 at § 8(B)(1). Exactly where the MSW is generated or pursuant to which contracts it is handled as of the moment an application is filed is not the key issue. Rather, what matters is how much MSW there is to manage. As discussed in detail above, there is clearly a shortfall in Maine's capacity for non-landfill disposal of MSW. In addition, there is no basis under the hierarchy to prefer one landfill over another in determining how to manage that shortfall.

2. JRL's Disposal of MSW under the 2013 Amendment Has Been Appropriate, and is Significantly Less than the MSW Diverted from JRL.

Second, the Commissioner notes several times that the tonnage of MSW disposed at JRL under the 2013 Order has gone up each year. *See e.g.*, Order, page 16 at § 8(B)(1). The decision fails to acknowledge, however, that NEWSME has *not once reached the 81,800 ton per year limit that it was authorized to accept* in compliance with the hierarchy in 2013. Moreover, although there were modest gains in how much MSW went to JRL (from 36,878 tons in part of

2014¹⁰ to 69,934 tons in 2016), Casella has diverted from JRL *more than 5 times* the MSW it has disposed at JRL over this period. See Table in Section II above. To put these numbers in perspective, even in 2016, the year with the highest level of disposal, MSW accounted for only about 10% of the total waste tonnage accepted at JRL. See Application, page 2-3 at § 2.2.

3. Casella's Contracts to Divert Waste to PERC and CRM are Contingent on the Department's Approval for a Good Reason – They are the Direct Result of a Desire to Comply with the Hierarchy.

Third, the Commissioner also appears to be concerned that the new contracts with PERC and CRM were somehow intended to create undue pressure on the Department. That is not the case. As a direct result of its need to promote the hierarchy for this application, Casella has agreed to deliver up to 120,000 tons of in-state MSW each year, collectively, to these facilities for processing and incineration.¹¹ These deals support the hierarchy by ensuring that up to 120,000 tons of in-state MSW will not be landfilled each year, an amount that, by itself, is far in excess of the MSW JRL accepted for disposal in each of 2014, 2015, and 2016.

To be sure, both of these agreements are contingent upon the Commissioner's approval of the request to dispose of 81,800 tons of MSW per year at JRL. The Department seemed to take offense at that, stating in correspondence with the applicants that it does not "condone the fact that these agreements are contingent on the Department's approval of the application request." See Department's Follow-Up Comments, page 8 (March 12, 2018). This contingency should not be surprising. NEWSME is obligated by the 2013 license amendment and the current licensing process to make best efforts to divert MSW to facilities like PERC and CRM. Without approval of the MSW at JRL requested in the application, however, NEWSME no longer needs a license

¹⁰ Disposal of non-bypass MSW at JRL did not begin until March 2014.

¹¹ Notably, when the Department approved the initial MSW amendment in 2013, Casella had signed a contract to supply PERC with 30,000 tons per year of MSW. Thus, for this application, the amount that would be diverted to other facilities higher on the hierarchy pursuant to such contracts is *up to four times* more MSW than what was deemed acceptable in 2013.

amendment, and thus no longer needs to demonstrate compliance with the hierarchy for this waste stream. As a result, it would not need the contracts. Linking the PERC and CRM contracts to the JRL amendment is not a bad thing. Rather, it shows that the hierarchy actually alters behavior in favor of facilities like PERC and CRM, exactly as the Department intends. As noted above, the irony of the Commissioner's decision limiting continued disposal of MSW at JRL to just 12 or 18 months, is that it will drive MSW away from PERC and CRM to other landfills, the lowest rung of the hierarchy.

4. The Hierarchy Cannot Compel Facilities to Enter Contracts that are Uneconomical.

Although the Commissioner never says so in the decision, there may be an assumption that Casella could somehow have reached agreements with PERC and CRM to send even more MSW to those facilities. As explained in detail in the various application filings with the Department, these are both arms-length contracts that were heavily negotiated by private parties. To supply greater tonnage to either facility, beyond the significant MSW tonnage already contracted for (collectively at PERC and Fiberight, up to 120,000 tons of in-state MSW), would have required a tip fee that was uneconomical, and thus no further supply could be negotiated. *See* Supplemental Information on Solid Waste Management Hierarchy, page 2 (December 14, 2017) and BGS & NEWSME's Response to Department's February 15, 2018 Comments, pages 11-12 (March 1, 2018). The hierarchy does not allow the Department to insert itself into private contracts and force parties to make bad deals. *See* 06-096 CMR 400 § 4(N) (clarifying that the "maximum extent practicable" standard requires consideration of costs "without causing unreasonable increases in facility operating costs"). In any event, with respect to the PERC contract, the approximately 80,000 tons of in-state MSW that the parties did agree upon is by far

the largest amount of contracted MSW that PERC will be relying on.¹² With respect to the CRM contract, NEWSME cannot even utilize this facility to divert MSW from landfill disposal until Fiberight is operational and it is still unclear when that might occur.

Thus, in short, BGS and NEWSME have demonstrated that the pending application complies with the hierarchy, and nothing more should have been required. Nonetheless, the Commissioner severely limited his approval of that application, as will be discussed below.

II. The Commissioner's Decision Is Inconsistent with the Hierarchy.

There are two flaws in the conditions of approval in this case. First, as laid out in statute, the purpose of the hierarchy is to ensure that solid waste is being managed at levels as high on the hierarchy as practicable. There is no preference for facilities that are on the *same level* of the hierarchy. This, however, is exactly what the Commissioner's decision does here. Second, the Department has ordered BGS and NEWSME to facilitate this preference for other landfills by forcing them to develop the plan to eliminate the need to dispose of MSW at JRL. Given that BGS and NEWSME cannot stop the generation of MSW or determine where and how its generators seek to manage it, or otherwise practicably develop within the next 12-18 months better management options higher on the hierarchy, this effectively means that JRL will be forced simply to stop accepting delivery of MSW and require haulers to take the waste to other landfills instead.

A. The Hierarchy Cannot Be Used to Justify Sending MSW to Other Landfills.

Conditions 5 and 7 of the Commissioner's decision grant only 12-18 months for JRL to continue accepting MSW for disposal. Rather than pushing waste up the hierarchy, however, the result of this will be merely to require disposal at other landfills. Nothing in the hierarchy can be

¹² As describe above, Casella also agreed to use commercially reasonable efforts to deliver to PERC up 50,000 additional tons of out-of-state MSW, as it has at PERC's request for many years.

read to justify that result, and so these conditions should be amended. *See* 06-096 CMR 400 § 4(N)(2)(a) (promoting reuse, recycling, composting, and processing over disposal).

The reality is that despite focused effort by many different participants in Maine's solid waste marketplace, Maine's capacity to manage non-bypass MSW is outstripped by the amount it actually generates. The Commissioner's decision seems to recognize this fact, noting that Maine generates nearly 1.2 million tons of non-bypass MSW annually, but, at best, has only 595,000 tons of non-landfill capacity for managing it if both PERC and Fiberight are able to operate at the capacities assumed by the Commissioner. *See* Order, page 20 at Table 5 & § 8(B)(3). As discussed above, there is no prospect that this will change any time soon, as state law prohibits developing new commercial incinerators, it takes years to design, permit, and build new MSW processing facilities like Fiberight, and there is no evidence in the record (and the Commissioner makes no finding) that other facilities could somehow make up the gap through steps like recycling and composting. Indeed, the prospects for recycling are now significantly hamstrung by China's new policy severely limiting recycled materials from the U.S. and elsewhere. Casella has successfully negotiated new agreements with PERC and CRM to divert from JRL up to 120,000 tons of in-state MSW each year, and despite the parties' best efforts, could not reach agreements to expand that figure. The Commissioner even agrees that out-of-state options for managing solid waste are not practicable. *See* Order, page 30 at § 8(D)(4)(b) (concluding that "the capacity constraints and/or economic considerations do not appear to make this a viable option").

Thus, there is nothing in the record, let alone in the Commissioner's decision, to suggest in any reasonable way that the MSW to be barred from JRL after 12 months (or 18 months, if the modest extension of Condition 7 were granted) is somehow going to be managed at a level higher on the hierarchy. That, however, is a critical flaw in the decision, as it sets up the near

certainty that this very same issue will need to be addressed again in 12-18 months. There simply is no capacity today to manage the stranded MSW at levels higher on the hierarchy and there is no basis in the record to conclude anything will change in the very short time authorized in the Order. Thus, although the Commissioner clearly recognizes this situation, and even concedes that sending MSW to another landfill does not support the hierarchy, *see* Order, page 33 at § 8(D)(6), the decision fails to recognize that the short-term approval will have precisely that effect, at no benefit to the hierarchy.

Nothing in the hierarchy requires the Department to ignore reality. In fact, it is the opposite, as the hierarchy specifically directs that we look only to what is “practicable,” which is defined explicitly to recognize these kinds of facts. *See* 06-096 CMR 400 § 4(N) (“maximum extent practicable” includes consideration of “availability and cost of technologies and services, transportation and handling logistics, and overall costs”). Indeed, it appears that this test is not applied with the same level of rigor to other facilities as it is to JRL. For example, when the Fiberight facility was licensed, it was similarly required to comply with the hierarchy (albeit as a processing facility). While it is being built and even when it becomes operational, however, it is allowed to divert MSW collected from its customers to a commercial landfill (for bridge and bypass MSW). There was no discussion whatsoever in the Commissioner’s decision there of whether that tonnage could have gone to another facility higher on the hierarchy, such as PERC. *See* Municipal Review Committee, Order #S-022458-WK-A-N at 27-29 (July 14, 2016), as referenced by the Commissioner at page 31, Section 8(D)(5)(c) in the current decision. Similarly, when the City of Bath recently amended its landfill license to increase capacity, the Commissioner’s discussion of the hierarchy did not even mention the possibility that Bath should first have to consider taking MSW to an incinerator prior to landfilling. *See* City of Bath, Order

#S-004991-WD-J-A at 7-8 (May 23, 2017).¹³ The hierarchy analysis in that permit took up *less than a full page* to present a stark comparison to the approximately 22 pages of discussion devoted to this topic in the Commissioner's decision here. Although there are some solid waste laws that distinguish on the basis of state-ownership, nothing in the hierarchy even suggests state-owned landfills must meet a different standard. *See* 06-096 CMR 400 § 4(N)(2) (focusing on the type of facility, not its ownership). This disparate treatment of JRL has no support in the law authorizing the operation of a state-owned landfill and is in excess of the authority granted to the DEP.

In the end, given the conditions of the solid waste marketplace in Maine, which appear to be undisputed by the Department, the result of boxing JRL out of the MSW market after 12-18 months will simply be to push up to 81,800 tons of the stranded MSW from JRL to other landfills (and presumably drive up the price of disposal for generators by limiting the number of disposal options). This is neither consistent with nor authorized by the hierarchy, which is intended only to promote management options *higher* on the scale, not at the same level. Therefore, Conditions 5 and 7 (and the corresponding findings and conclusions) of the Commissioner's decision should be revised to remove the March 31, 2019, deadline for 81,800 tons and the option to seek an additional six-month extension for 30,000 tons, as neither can realistically be justified as supporting the disposal of MSW in that timeframe in anything other than other landfills.

B. The Hierarchy Does Not Require Resolving Problems Beyond the Applicant's Control.

In addition to limiting the term of the license, Condition 6 of the Commissioner's decision goes a step further by ordering BGS and NEWSME to "develop and prepare to

¹³ Nor does the Bath Landfill license have any tonnage or time limit on the MSW it may accept. *Id.*

implement measures that eliminate the need for non-bypass, in-state MSW disposal at JRL.” These measures are to be in place by March 31, 2019, unless the six-month extension is granted. This condition improperly relies on the hierarchy to require the applicants to resolve problems that are beyond their control and should be struck from the decision. *See* 06-096 CMR 400 § 4(N)(2)(a) (limiting hierarchy to steps “sufficiently within the control of the applicant”).

While Casella and its subsidiaries continue to make significant efforts to promote activities like recycling, composting, and providing feed stock to incinerators and processors (and, indeed, has built businesses that depend upon them), neither Casella nor BGS generates the MSW at issue. Its source is Maine’s municipalities, residents, and businesses, and they are the ones who determine how it is managed in the first instance by, for example, choosing to recycle or compost or to sign up for disposal at an incinerator.

As discussed above, Casella makes significant efforts to comply with the hierarchy, ranging from operating recycling and composting facilities to hauling significant amounts of MSW to incinerators that it is otherwise licensed to dispose of at JRL. Other than stating several times that the amount of MSW being disposed at JRL has increased each year for the period 2014-2016 (well under the license limit), the Commissioner’s decision nowhere directly states that Casella has failed to do its share.

It is clear, therefore, that Condition 6 is requiring Casella to figure out a problem that the State and the rest of the solid waste industry have been trying to resolve for many years – how to create practicable options higher on the hierarchy for MSW management other than landfilling. Because NEWSME happens to be owned by an integrated solid waste company, it has done a great deal to promote those higher options through other business ventures. But, as amply demonstrated above, there is no realistic prospect that the MSW disposal problem will be resolved soon, and it is certainly well beyond Casella’s ability to alter that. Change will, at its

root, have to come from those homes, businesses, and municipalities that generate the waste and then decide how to manage it.

Accordingly, ordering the applicants to develop and implement a plan to eliminate the need to dispose of MSW at JRL is not within the applicants' control, and thus cannot be required under the hierarchy. Condition 6 should be removed from the Commissioner's decision.

CONCLUSION

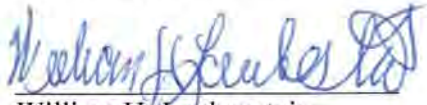
BGS and NEWSME respectfully request that the Board delete Conditions 5, 6, and 7 and that the associated conclusions and findings on which they are apparently based be modified (or deleted, as applicable).

In the place of Conditions 5 through 7, BGS and NEWSME request that the term of the license amendment be extended until December 31, 2023, to authorize disposal of up to 81,800 tons per year of non-bypass, in-state MSW at JRL.

This revised deadline would be coterminous with the full potential term of the new PERC agreement and will allow sufficient time for both PERC and CRM to achieve a sustainable operating status. The supply of MSW under the Casella agreements will be of significant benefit to PERC and CRM. The revised deadline also allows more time for other factors in the marketplace to make up for the MSW capacity shortfall with non-landfill disposal options. In addition, the applicants understand that Condition 5 of the 2013 MSW amendment, which requires them to continue to make best efforts to divert and report annually to the Department on such activities, will continue in full force, and thus provide the Department with adequate insight into any relevant changes in the solid waste marketplace in the interim.

A redlined version of the Commissioner's Order reflecting this remedy is appended as Exhibit 3 for the Board's convenience and consideration.

Dated: April 30, 2018


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EXHIBIT 1

Bangor Daily News article, dated April 6, 2018

Supplemental Evidence

EXHIBIT 1

**BANGOR'S
BIGGEST
& BEST.**



VARNEY
GMC

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MONTH'S DEALS**

SHOP NOW >

WE ARE VARNEY BUICK GMC.

Bangor

Tons of trash going to landfills due to Hampden waste facility delay



Alex Acquisto | BDN

The 144,000-square foot Fiberight facility will be able to process up to 180,000 tons of solid waste each year, diverting 80 percent of rubbish from landfills.

By **Alex Acquisto**, BDN Staff • April 5, 2018 6:52 pm

Updated: April 6, 2018 8:41 am

The solid waste processing and recycling facility that was slated to open April 1 in Hampden could take months longer to be operational,

meaning that trash from 115 municipalities will meanwhile be dumped in landfills.

Construction of the \$69 million Fiberight facility off Coldbrook Road has taken longer to finish because of winter storms, Maryland-based Fiberight CEO Craig Stuart-Paul said Thursday.

"If we'd had a mild winter, we would have had the building under roof by January, and the recycling equipment would have been installed commencing March. But we had anything but a mild winter," Stuart-Paul said.

The **appeal by a competitor** of state permits issued to his company also slowed down the facility's construction last summer, he said. Though he told **Maine Public in October** that plans were on track for an April 1 opening. Most of the communities that will use Fiberight's facility previously sent their trash to Fiberight's competitor for the contract, the Penobscot Energy Recovery Co.

The finished facility will allow member communities — including Bangor, Brewer and Hampden — to process organic waste into biofuel. Non-organic materials, such as glass, metals and plastics, will be removed and sold. Leftover fibrous material will be reused to make fuel pellets for heating.

But in the meantime, tens of thousands of tons of waste, including organics and some recyclables, will be diverted to nearby landfills.

"It is our absolute goal to recycle as much of the region's waste as soon as possible. Landfilling waste runs counter to our entire reason for being," Stuart-Paul said. "We don't like the fact that so much waste is being landfilled, but the fact of the matter is trash has got to go somewhere."

The **Municipal Review Committee**, which represents more than **180 municipalities** in central, northern and Down East Maine, decided to **end its contract with Orrington-based PERC** to work with Fiberight and build the new **144,000-square-foot** facility in 2016. Construction began in July with the goal of an April 1 opening. In late January, Stuart-Paul said his company had **secured the necessary funding** for operations to begin in May.

But MRC Executive Director Greg Lounder said it became apparent to him at the beginning of the year that the facility wouldn't meet its deadline and would, instead, have to employ a "backup arrangement."

The majority of waste from MRC municipalities is being sent to either the Juniper Ridge Landfill in Alton, or the Crossroads Landfill in Norridgewock, at \$70 per ton. Fiberight has also entered into an agreement with Casella Waste to set aside any recyclable items it collects to be recycled at the Fiberight facility, once it's up and running, Stuart-Paul said. He wasn't able to provide a specific date for when that would be.

In a March 28 **memo**, Lounder told participating communities that the new Fiberight facility wouldn't be able to accommodate waste for up to another six months.

"We appreciate your patience and support while we reached an interim MSW delivery resolution," Lounder wrote. The new waste delivery plan went into effect on April 1.

Stuart-Paul requested a one-year permit for Juniper Ridge to "accept at least 81,800 tons" of municipal solid waste from MRC communities, according to a March 29 **letter** to the Department of Environmental Protection. Stuart-Paul told Project Manager Kathy Tarbuck the plant will be fully functional by the end of the year.

In 2017, MRC communities produced 108,000 tons of waste, Lounder said. If that amount is diverted to a landfill for one year, it will make up a third of the waste Fiberight said it would divert from landfills in its first 15 years of operation.

"We're all quite anxious, as are all the project participants, to conclude the interim period as quickly as possible, and to be delivering to the facility as soon as possible," Lounder said.

Ad

At the unfinished facility on Thursday, crews continued working.

The siding and roof on the structure are two-thirds of the way completed, and in the next two weeks, the concrete foundation will be poured, said Alan Iantosca, vice president of engineering and projects for Fiberight.

Once the roof is finished and the concrete dries, the recycling equipment will be moved inside, all of which are contingent on weather, said Stuart-Paul.

"Weather permitting, we'll have these things done by the end of the year," he said.

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EXHIBIT 2

Knox Village Soup article, dated April 10, 2018,
on disposal of formerly recycled MSW in Maine

Supplemental Evidence

EXHIBIT 2

You have read 1 story of your 3 free stories per week. ✕

Medical Waste Disposal - Bio Waste & Sharps Disposal

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OPEN

Changes affect Appleton, Union residents

Transfer station stops recycling no-longer-profitable plastics

By Louis Bettcher | Apr 10, 2018



A sign at the Tri-County Solid Waste transfer station outlines the plastics that will no longer be accepted for recycling at the facility.

Photo by: Louis Bettcher



Enlarge...

UNION — The Tri-County Solid Waste transfer station announced April 1 that a variety of plastics will no longer be sorted or recycled on premises, but should be disposed of by residents in their trash bags.

A white sign affixed to a wall at the station's recycling center informs users that plastics numbered 1, 3, 4, 5 and 7 will no longer be accepted, and should be placed along with other trash in garbage bags. The numbers of specific plastics can often be identified on the bottom of the container. Examples of the above-numbered plastics include certain yogurt containers, plastic vinegar and ketchup bottles, as well as peanut butter jars.

The facility will continue to recycle number 2 plastics, which are sturdier and are typically used for water bottles and milk jugs. David Stanley, who manages the Union facility, said the recent change in plastic recycling resulted in part from the fact that several plastics have become much less valuable recently, and that sorting them has also

proved time-consuming and difficult.

Tri-County, which serves residents of Appleton, Liberty, Somerville, Union and Washington, ships the recyclables it collects to Lincoln County. Stanley said the recent changes may prove more profitable for the transfer station, and will yield a quality of product that is more valuable to international markets.

A global event that impacted transfer stations throughout the state was China's decision Jan. 1 to discontinue recycling a number of post-consumer plastics and papers. Known as the "National Sword" policy, the change means that China will no longer accept more than 20 materials. Up until this point, China had been a major importer of post-consumer materials from the United States.

Stanley relies on two or three employees throughout the week to ensure that waste and recyclable materials are disposed of or sorted carefully, but said as the volume of waste has continued to increase, this has become challenging. He said the numbers on containers indicating their category also have proven difficult for some people to read -- which results in items' being placed in the wrong bin, or being thrown in with the trash anyway.

"Up until the last moment, we looked at what it would take to make this happen," Stanley said April 9 regarding exploring the feasibility of continuing to accept plastics 1, 3, 4, 5 and 7. In the end, Stanley said, the April 1 change wasn't a surprise to him, and he didn't feel it was fair Lincoln County Recycling to ship it a product that was of poor quality or little value.

One silver lining, Stanley said, is the fact that the plastics no longer recycled at the transfer station will not end up in a landfill. The household waste collected at Tri-County is shipped to a facility in Portland, where it is incinerated by EcoMaine, and the waste is used to create energy.

Within the first week of the new recycling plan, Stanley had explained the change and the reasons for it to a number of visitors to the transfer station, and said going forward he is always happy to share information about recycling and waste disposal with customers.

"Some people might have been throwing these [plastics] away anyway, but some people are also very concerned with what they can and cannot recycle," said Stanley, who hopes that this change may serve as a catalyst for customers to seek out more information about what happens to their waste after they leave the transfer station.



Comments (0)

EXHIBIT 3

Commissioner's March 31, 2018 Order Redlined to Show
Remedy Sought

EXHIBIT 3



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

STATE OF MAINE, ACTING THROUGH	)	SOLID WASTE LICENSE
THE BUREAU OF GENERAL SERVICES	)	
OLD TOWN, PENOBSCOT COUNTY, ME	)	
JUNIPER RIDGE LANDFILL	)	
#S-020700-WD-BL-A	)	
(PARTIAL APPROVAL WITH CONDITIONS)	)	AMENDMENT

Pursuant to the provisions of the *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 Maine Revised Statutes (M.R.S.) §§ 1301 to 1319-Y; *Solid Waste Management Hierarchy*, 38 M.R.S. § 2101; the *Rule Concerning the Processing of Applications and Other Administrative Matters*, 06-096 Code of Maine Rules (C.M.R.) ch. 2 (last amended October 19, 2015); the *Solid Waste Management Rules: General Provisions*, 06-096 C.M.R. ch. 400 (last amended April 6, 2015), *Landfill Siting, Design and Operation*, 06-096 C.M.R. ch. 401 (last amended April 12, 2015), and *Water Quality Monitoring, Leachate Monitoring, and Waste Characterization*, 06-096 C.M.R. ch. 405 (last amended April 12, 2015) (collectively, the Rules), the Department of Environmental Protection (Department) has considered the application of the State of Maine acting through the Bureau of General Services, with all supportive data, agency review comments, and other related materials on file, and FINDS THE FOLLOWING FACTS:

1. APPLICATION SUMMARY

A. Application

The State of Maine, acting through the Bureau of General Services (BGS), has applied for Maine Hazardous Waste, Septage and Solid Waste Management Act approval to remove the municipal solid waste (MSW) acceptance date of March 31, 2018 for the disposal of no more than 81,800 tons per year of non-bypass, in-state municipal solid waste (MSW) at the Juniper Ridge Landfill in Department license #S-020700-WD-BC-A, Condition 10, as revised in Board of Environmental Protection Order #S-020700-WD-BG-Z. The Juniper Ridge Landfill (JRL) is located in Old Town, Maine. The northern edge of the JRL property parcel is on the Alton/Old Town border and a portion of the access road is located in Alton.

BGS, as the owner of JRL, and NEWSME Landfill Operations, LLC (NEWSME), as the operator of JRL, prepared the amendment application.

B. History

The following is a relevant historical summary and does not include all

STATE OF MAINE, ACTING THROUGH	2	SOLID WASTE LICENSE
THE BUREAU OF GENERAL SERVICES	)	
OLD TOWN, PENOBSCOT COUNTY, ME	)	
JUNIPER RIDGE LANDFILL	)	
#S-020700-WD-BL-A	)	
(PARTIAL APPROVAL WITH CONDITIONS)	)	AMENDMENT

licensing actions:

- (1) On July 28, 1993, James River Paper Company, Inc. was issued a license to construct and operate a 68-acre secure landfill, known as the West Old Town Landfill, to dispose of the James River Paper Company's pulp and papermaking residuals (license #S-020700-7A-A-N). The project impacted 1.31 acres of freshwater wetland. The compensation package included preservation of 27.92 acres of land adjacent to the facility and the restoration and enhancement of 1.76 acres of wetland within the preserved parcel.
- (2) On October 21, 2003, the Department issued conditional approval for the transfer of licenses for the West Old Town Landfill, from the Fort James Operating Company, to the State of Maine, State Planning Office (SPO) (including license #S-020700-WR-M-T); the transfer became effective when the sale of the landfill to the State of Maine, acting by and through SPO, occurred on February 5, 2004.
- (3) On February 5, 2004, the State of Maine, acting by and through the SPO, and Casella Waste Systems, Inc. (Casella) entered into an Operating Services Agreement (OSA) for the operation of the West Old Town Landfill.
- (4) On April 9, 2004, the Department approved an amendment application (license #S-020700-WD-N-A) for a vertical increase in the final elevation of the landfill and the disposal of additional waste streams.
- (5) In 2006, the West Old Town Landfill became known as the Juniper Ridge Landfill.
- (6) Pursuant to PL 2011, ch. 655, § GG-69, on July 1, 2012, the BGS, within the Department of Administrative and Financial Services (DAFS), became the state agency acting as the owner and licensee of JRL. The Department of Economic and Community Development is the manager of JRL. NEWSME, a wholly-owned indirect subsidiary of Casella, operates the landfill for the State of Maine, acting through the Bureau of General Services.
- (7) On December 20, 2013, the Department approved an amendment application (license #S-020700-WD-BC-A) for the disposal of 81,800 tons per year of MSW at JRL, limited to the period of time during which licensed disposal capacity remains available within the approved horizontal and vertical boundaries of the landfill or March 31, 2016, whichever is earlier.

STATE OF MAINE, ACTING THROUGH 3 SOLID WASTE LICENSE
THE BUREAU OF GENERAL SERVICES)
OLD TOWN, PENOBSCOT COUNTY, ME)
JUNIPER RIDGE LANDFILL)
#S-020700-WD-BL-A)
(PARTIAL APPROVAL WITH CONDITIONS)) AMENDMENT

- (8) On June 19, 2014, the Board of Environmental Protection (Board) issued a Denial of Appeals (license #S-020700-WD-BG-Z) which modified Condition 10 in license #S-020700-WD-BC-A to change the date from March 31, 2016 to March 31, 2018.

C. Terms and Acronyms

The following terms and acronyms can be found in this license and are listed in Table 1 for ease of reference:

Table 1: License Terms and Acronyms

applicant	Refers to both BGS and NEWSME (or a successor operator)
Application	Refers to the November 2017 application, the December 14, 2017 Supplemental Information on Solid Waste Management Hierarchy, and associated submittals
Board	Maine Board of Environmental Protection
BGS	Bureau of General Services
Casella	Casella Waste Systems, Inc.
CDD	Construction and Demolition Debris
C.M.R.	Code of Maine Rules
CRM	Coastal Resources of Maine, LLC. CRM refers to the solid waste processing facility in Hampden which was established by Fiberight as a special purpose entity and is managed entirely by Fiberight
Department	Maine Department of Environmental Protection
H ₂ S	Hydrogen Sulfide
JRL	The Juniper Ridge Landfill
MERC	The former Maine Energy Recovery Company, an incinerator previously operated in Biddeford, Maine
MMWAC	Mid-Maine Waste Action Corporation
MRC	Municipal Review Committee, Inc.
M.R.S.	Maine Revised Statutes
MSW	Municipal Solid Waste
MSW Bypass	Any MSW that is destined for disposal or processing at a solid waste incinerator, but that cannot be disposed of or processed at that incinerator because of the incinerator's malfunction, insufficient capacity, inability to process or burn, down-time, or any other comparable reason as approved by the Department
NEWSME	NEWSME Landfill Operations, LLC
OSA	Operating Service Agreement
PERC	Penobscot Energy Recovery Company
Rules	The Department's Solid Waste Management Rules, including 06-096 C.M.R. chs. 400, 401, and 405

STATE OF MAINE, ACTING THROUGH
THE BUREAU OF GENERAL SERVICES
OLD TOWN, PENOBSCOT COUNTY, ME
JUNIPER RIDGE LANDFILL
#S-020700-WD-BL-A
(PARTIAL APPROVAL WITH CONDITIONS)

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SOLID WASTE LICENSE

AMENDMENT

Soft Layer	A protective layer of waste above the liner and leachate collection systems
State Plan	Maine Materials Management Plan: 2014 State Waste Management and Recycling Plan Update & 2015 Waste Generation and Disposal Capacity Report, January 2017, prepared by the Maine Department of Environmental Protection

D. Summary of Proposal

The proposed application includes a request to remove the date in the existing amendment license, #S-020700-WD-BC-A, to allow continued acceptance of no more than 81,800 tons per year of non-bypass, in-state MSW at JRL beyond the currently licensed March 31, 2018 date. The request is applicable to the existing landfill operations and does not extend to the recently licensed landfill expansion.

Condition 10 of Department license #S-020700-WD-BC-A states the following, pertaining to the approval of disposal of no more than 81,800 tons per year of MSW at JRL:

10. The term of this license is limited to the period of time during which licensed disposal capacity remains available for disposal within the horizontal and vertical boundaries approved in Department license #S-020700-WD-N-A, or until March 31, 2016, whichever comes sooner. This condition does not limit the authority of the applicant to accept MSW bypass after March 31, 2016 provided that such acceptance is consistent with the relevant terms of Department license #S-020700-WD-N-A and the soft layer license.

Board Order #S-020700-WD-BG-Z, Denial of Appeals, states:

- Condition #10 is modified to change the date from March 31, 2016 to March 31, 2018.

The applicant states that an approved amendment will serve to meet the ongoing need of primarily southern Maine communities, formerly contracted with Maine Energy Recovery Company (MERC), as a disposal option and asserts that there is a potential shortfall beginning April 1, 2018 in the availability of existing and planned solid waste facilities to manage the MSW generated within the State.

The solid waste application, dated November 2017, along with a supplement titled "Information on Solid Waste Management Hierarchy" dated December 14, 2017 (Application), was accepted as complete for processing on December 15, 2017.

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The Department commented on the Application in a February 15, 2018 review letter. On March 1, 2018 BGS and NEWSME submitted a response to comments. A follow-up comment letter by the Department was dated March 12, 2018, and BGS and NEWSME responded to the follow-up comments on March 16, 2018.

E. Ownership and Operation of the Juniper Ridge Landfill

The State of Maine, acting through BGS, owns JRL. Casella is the operator of the landfill through NEWSME, a wholly-owned indirect subsidiary of Casella. The terms and conditions of NEWSME's operation of the landfill are established by the OSA between the State of Maine and Casella dated February 5, 2004, and amended on July 24, 2006 and November 2, 2006.

In accordance with the OSA, Casella is required to pay all costs associated with the development, operation, closure and post-closure care of the landfill. In addition, Casella is required by the OSA to establish and maintain financial assurances for the landfill sufficient to meet the closure and post-closure care provisions of the applicable Rules, assume liability for the landfill under both the current and future conditions, and assure that adequate disposal capacity is provided for the wastes currently disposed in the landfill for at least a 20-year period. Resolve 2003, Chapter 93 requires contract terms and conditions to be "revenue-neutral to the State and as the office [former Executive Department, State Planning Office] determines are advisable and in the public interest."

The OSA is a contract between the State of Maine, acting through BGS, and Casella. The Board and Department are not parties to the OSA. Section 4.1 of the OSA includes language that specifies that the State shall work with Casella in maintaining in the State's name the existing permit, amendments, and all permits, licenses, statutory amendments and legislation, approvals and authorizations reasonably requested by Casella and agreed to by the State for the operation of the landfill in accordance with the terms of the OSA.

Reference to the "applicant" in this license determination refers to both BGS, as the owner of JRL, and NEWSME, as the current operator, acting as an agent on behalf of BGS in accordance with the terms in the OSA.

2. PUBLIC PARTICIPATION

A. Pre-Application Meetings

Pre-application meetings were held on September 19 and October 13, 2017, attended by the applicant and the Department. Although the meetings were not explicitly required by 06-096 C.M.R. ch. 2, § 10, discussions centered on the proposal concept and required application contents.

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B. Notice of Intent to File

A Notice of Intent to File an application was published in the Bangor Daily News on November 21, 2017, in addition to being mailed to the abutters and prior appellants, the Old Town and Alton municipal offices, the Landfill Advisory Committee and the Penobscot Nation. The notice and mailing of the notice fulfilled the public and local participation requirement of 38 M.R.S. § 1310-S(1), the citizen's advisory committee notification requirement of 38 M.R.S. § 1310-N(12), and the public notice requirements of 06-096 C.M.R. ch. 2, § 14.

C. Public Hearing Requests

The Department received 19 timely requests for a public hearing in late December 2017 and early January 2018. According to 06-096 C.M.R. ch. 2 § 7(B) of the Department's Rule Concerning the Processing of Applications and Other Administrative Matters, "the Department will hold a hearing in those instances where the Department determines there is credible conflicting technical information regarding a licensing criterion and it is likely that a hearing will assist the Department in understanding the evidence." The hearing requests included many statements that the proposal goes against the State's solid waste management hierarchy. Additional concerns included that out-of-state waste continues to be accepted, MSW was not originally allowed when the State took over the facility and shouldn't continue, Casella has a history of unveiling additional plans immediately after obtaining approvals, the environment will be harmed, the State's interest should be considered not just Casella's, contracts involving Casella should be made available, and disagreement over the State's available solid waste capacity assertions in the Application. Two additional submittals did not include hearing requests, but included comments. One commenter stated concern with the proposal and the second stated support for the Application.

After review of the submitted requests for a public hearing, the Department determined that the requests received did not contain credible conflicting technical information regarding licensing criteria to support holding a public hearing; however, the Department held a public meeting to provide an opportunity for comments to be presented on the Application in a public forum.

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D. Public Meeting and Comments Submitted

The Department held a public meeting on the Application on February 28, 2018 in Bangor, Maine pursuant to 38 M.R.S. § 345-A and 06-096 C.M.R. ch. 2, § 8. The public meeting was noticed in the Bangor Daily News on February 17, 2018 and posted on the Department's website with interested persons being separately notified. Approximately 100 people attended the public meeting and approximately 40 total speakers commented on the Application, either in support, in opposition, or neither for nor against.

Additional written comments were received over the course of the licensing process. The comments received during the public meeting and subsequent to the meeting included comments in support, in opposition, and neither for nor against the application.

Comments received in support included, but were not limited to: JRL's MSW capacity is needed for the MRC communities due to the status of the Coastal Resources of Maine, LLC's (CRM) facility and waste transportation costs; concern over the available outlets for solid waste after March 31, 2018 and the need for a landfill like JRL as an option; and recognition of Casella's diversion efforts.

Comments received in opposition included, but were not limited to: concern for the environment and surrounding area: JRL has had time to find other viable options for MSW waste disposal from the former MERC communities; the hierarchy requirements will not be met; landfilling should be the last option considered and shouldn't necessarily be the easiest and least expensive; the State's landfill space should be conserved; JRL will continue to request acceptance of MSW if it's allowed through this licensing process; more should be done to recycle.

Comments received neither for nor against summarized the history of JRL, the solid waste legislative timeline, and some of the past and current solid waste management concerns in Maine. A number of the comments received are further expanded on in Findings of Fact ("Finding") 8.

E. Draft License Comment Period

A draft license was made available for comment on March 23, 2018 through notification to the applicant and interested persons. The draft license was posted on the Department's website and the five-working day comment period closed on March 30, 2018.

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Written comments were received on the draft license. The comments on the proposed draft license included, but were not limited to, the following: the term of the MSW amendment license should be until December 31, 2023 to allow sufficient time for PERC and CRM to achieve sustainable operating status; the limited one- year extension perpetuates the considerable uncertainty for solid waste management services; MSW for grading purposes for phased closure over the entire life of the existing landfill should be provided for; the annual license limit of 81,800 tons per year of MSW was never reached; the need for management of commercial MSW should be noted; and suggested clarifying wording changes should be incorporated.

One commenter requested that the Department consider extending the approval term from the one year due to the terms of their waste supply agreement, the short- term extension placing stress on their construction project, and the uncertainty in PERC's role in the region's disposal structure.

Additional comments included: the time extension should be denied and non-bypass MSW be banned from JRL after March 31, 2018; Casella should be diverting more MSW rather than increasing MSW accepted over the previous years; if the one-year extension is granted, the limit for that year should be lower; out-of- state options should be addressed; H2S production from CDD or CDD fines will occur anyway as the material is currently accepted and will decompose; and the curbside MSW from the Bangor area should not be brought to JRL.

Based on comments received, revisions were made to the draft license that address the relevant review criteria and issues raised within the purview of the Department's authority. The revisions include, but are not limited to, clarification of language, insertion of out-of-state facility information, recognition that former MERC incineration capacity has not been replaced and clarification of the terms of the waste agreements.

3. TITLE, RIGHT OR INTEREST

The applicant must demonstrate sufficient title, right, or interest in all of the property which is proposed for use pursuant to 06-096 C.M.R. ch. 400, § 4(A). The applicant has provided evidence of the State's title to the property pursuant to the Rules by submitting the documentation provided in the 2012 application for amendment #S-020700-WD-B-C: the appropriate site and quitclaim deeds for the parcels of land on which the landfill is located. The Department therefore finds that the applicant has demonstrated sufficient title, right, or interest in the existing landfill property.

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4. FINANCIAL ABILITY AND FINANCIAL ASSURANCE

State law at 38 M.R.S. § 1310-Y requires the applicant to provide assurance of its financial ability to satisfy the estimated costs for corrective action and assurance of financial capacity to satisfy the estimated costs of closure and post closure care; however, 38 M.R.S. § 1310-Y applies to privately owned solid waste facilities. The Department's rules at 06-096 C.M.R. ch. 400, § 4(B)(1) and § 11 require financial ability and financial assurance for the operation, maintenance, closure and post-closure care of a solid waste facility; however, as a State-owned facility, it is not subject to the requirements of § 11 to provide financial assurance sufficient to ensure that funds are available to pay for the anticipated costs of compliance with all facility closure, post-closure maintenance, post-closure monitoring requirements, and corrective action.

Although not all of the financial requirements of the State laws and Rules apply to the State owned JRL, Casella maintains financial assurance as required by the OSA. Ongoing activities at JRL are funded by revenues generated from the operation of the landfill (i.e., tipping fees). The applicant provided a letter dated September 8, 2017 from the Bank of America, N.A. stating that Casella maintains a Revolving Credit Facility and has adequate financial resources with all accounts in good standing. Casella maintains surety bonds as financial assurance for final closure and post-closure care costs for the entire developed site for a 30-year period. The closure and post-closure care costs are updated yearly with updates of costs by an independent third party and the documentation of any changes made to the funding agreement are submitted in the facility's Annual Report. The most recent updated surety bond documentation was submitted to the Department in an August 11, 2017 letter with attachments.

The Department finds that financial ability and financial assurance is maintained by NEWSME as the current operator of JRL to operate, maintain, close, and accomplish post-closure care in a manner consistent with applicable State law and Rule requirements, provided NEWSME submits the appropriate financial assurance package updates to the Department on an annual basis.

5. TECHNICAL ABILITY

The applicant must have the technical ability to design, construct, operate, maintain, close, and accomplish post-closure care in a manner consistent with State environmental standards, as well as meeting the civil or criminal record standards in 06-096 C.M.R. ch. 400, § 12.

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A. Technical Experience

NEWSME has managed JRL since April 2004 and employs qualified management personnel and operations staff at the facility, along with utilizing qualified consultants as appropriate. NEWSME's parent company, Casella also provides expertise in solid waste, recycling, and resource management.

The Department finds that the combination of BGS staff, NEWSME operations and management personnel, and the consultants retained by the applicant have the technical ability to operate JRL in a manner consistent with the applicable State law and Rule requirements.

B. Civil or Criminal Record

Finding 9 of this license contains the information on civil and criminal disclosure.

6. PROVISIONS FOR TRAFFIC MOVEMENT

The applicant must make adequate provisions for safe and uncongested traffic movement of all types into, out of, and within the proposed solid waste facility as set forth in 06-096 C.M.R. ch. 400, § 4(D)(1).

Traffic movement is not expected to significantly change with the proposed amendment since the request does not include an increase in the volume of MSW delivered to the site from what is currently licensed. A traffic assessment was provided in the 2012 application for amendment #S-020700-WD-B-C for disposal of MSW at the facility and reviewed by the Department during issuance of that amendment license. The primary waste haul route to JRL will remain as currently established: I-95, to the Route 16 Bennoch Road interchange (exit 199), then Route 16 West for 0.1 miles to JRL's site access road. The internal roads currently allow for continuous traffic flow to minimize danger to pedestrians or other vehicles. The site access and internal site roads are maintained by NEWSME, including winter plowing and summer dust control.

The Department finds that the applicant has demonstrated that the roads and intersections in the vicinity of JRL have the ability to safely and appropriately handle all of the traffic attributable to the handling of MSW into, out of, and within the facility pursuant to the applicable State law and Rule requirements.

7. NO UNREASONABLE ADVERSE EFFECT ON AIR QUALITY

The solid waste facility may not unreasonably adversely affect air quality pursuant to 06-096 C.M.R. ch. 400, § 4(G)(1). The facility must obtain an air emission license, if required;

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control fugitive dust and nuisance odor; and prohibit open burning of solid waste other than clean or painted wood waste. The proposed amendment is not expected to change the findings of JRL's air emission license or negatively impact JRL's current approved practices regarding fugitive dust and nuisance odor control.

A. Air Emission License

Air emission license renewal #A-921-70-B-R was issued on October 7, 2014 for the existing landfill facility with findings that emissions from the source will receive Best Practical Treatment, will not violate applicable emissions standards, and will not violate applicable ambient air quality standards in conjunction with emissions from other sources. The air emission license renewal includes State and federal emission limits and operational requirements associated with landfill gas collection and control, as well as monitoring and reporting requirements.

The 2014 air emission license renewal addresses control of landfill gas emissions through use of a landfill gas collection and control system, with the extracted and collected landfill gas passing through a Thiopaq® sulfur removal system, then being combusted in either the main flare (Flare #4) or back-up flares prior to release to the atmosphere. In addition to monitoring air emissions from the control equipment, as well as control equipment parameters, the facility is also required by the Federal New Source Performance Standards (NSPS) to perform periodic gas surface scans on the landfill.

The Department finds that the applicant has an air emission license, as required by State law and the Rules.

B. Fugitive Dust

The measures to control dust at the landfill will continue to include utilization of water spray trucks to wet secondary roads during dry weather and making use of a road sweeper to remove dirt buildup on paved roadways. Calcium chloride may be utilized on an as-needed basis, primarily on internal cell access roads.

On the landfill's active working area, MSW and other acceptable wastes are off-loaded and covered with daily cover material which minimizes the potential for airborne dust from the disposed material.

The Department finds that the dust control measures in place at the landfill are sufficient to control fugitive dust as required by State law and the Rules.

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C. Nuisance Odors and H2S

The proposed amendment is not expected to increase the quantity or quality of landfill gas generated at the facility above what was previously projected. The facility manages odors through the operation of an active gas collection and control system which collects, treats via the Thiopaq® sulfur removal system, and combusts the gas through the flares; daily cover practices; the placement of intermediate and final cover; and a misting system to control odors around the active filling areas at the landfill. The facility's current Operations Manual includes the facility's Odor Complaint Management and Response Plan to manage landfill-related odors and limit off-site odor migration.

Due to the composition and characteristics of the waste, MSW has the potential for odor generation as the waste is transported to the facility and off-loaded in the active area, as well as during the production of landfill gases, including odorous H₂S, as the waste in the landfill decomposes. Measures for minimization of odor associated with incoming odorous waste streams such as MSW include placement within a small area in the active cell, waste compaction, and placement of a cover layer of non-odorous material above the disposed waste at the end of each day. The facility also utilizes odor neutralizing spray systems, as needed, including a mobile mounted unit within the active cell, a trailer spray system for incoming and outgoing trailer loads, and a perimeter misting system. The facility minimizes odor from landfill gas produced due to waste degradation by the installation of daily cover, intermediate cover and final cover over non-active portions of the landfill and the operation of the facility's gas collection and control system. An evaluation provided in the 2012 application for amendment #S-020700-WD-BC-A included projected landfill gas generation rates with an MSW acceptance rate that was slightly above the current 81,800 tons per year acceptance rate and it was determined that the collection and control system was appropriate for minimizing air emissions.

The facility maintains an odor complaint hotline, four off-site gas monitors, and two on-site gas monitors. Odor complaints for calendar year 2017 totaled 14, most occurring in the last two months of the year possibly due to intermediate cover damage from a late October wind storm. Each complaint was followed-up by NEWSME personnel. The gas monitors measure H₂S concentrations through real-time data collection and a response procedure has been established and is implemented when specific H₂S thresholds have been measured. The monitoring data is also utilized when responding to odor complaints.

The Department finds that the applicant has odor control mechanisms sufficient to control nuisance odors from the landfill as required by State law and the Rules.

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8. SOLID WASTE MANAGEMENT HIERARCHY

A. Applicable Requirements

As stated in 38 M.R.S. § 1310-N(1)(D) and 06-096 C.M.R. ch. 400, § 4(N)(1), the purpose and practices of the solid waste facility must be consistent with the State's solid waste management hierarchy (hierarchy) set forth in 38 M.R.S. § 2101(1), which reads as follows:

Priorities. It is the policy of the State to plan for and implement an integrated approach to solid waste management for solid waste generated in the State and solid waste imported into this State, which must be based on the following order of priority:

- A. Reduction of waste generated at the source, including both amount and toxicity of the waste;
- B. Reuse of waste;
- C. Recycling of waste;
- D. Composting of biodegradable waste;
- E. Waste processing that reduces the volume of waste needing land disposal, including incineration; and
- F. Land disposal of waste.

In addition, 38 M.R.S. § 2101(2) establishes that "it is the policy of the State to actively promote and encourage waste reduction measures from all sources and maximize waste diversion efforts by encouraging new and expanded uses of solid waste generated in this State as a resource."

The Department's rule at 06-096 C.M.R. ch. 400, § 4(N)(2)(a) states that for a solid waste disposal facility, the applicant must affirmatively demonstrate consistency with the hierarchy, including the following:

that the waste has been reduced, reused, recycled, composted, and/or processed to the maximum extent practicable prior to incineration or landfilling, in order to maximize the amount of material recycled and reused, and to minimize the amount of waste being disposed. Such evidence shall include, but is not limited to, a description of the reduction, reuse, recycling, composting and/or processing programs/efforts that the waste is or will be subject to, and that are sufficiently within the control of the applicant to manage or facilitate, including relevant metrics to evaluate effectiveness; and a

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description of ongoing efforts to increase the effectiveness of these programs/efforts.

For the purpose of 06-096 C.M.R. ch. 400, § 4(N):

reducing, reusing, recycling, composting and/or processing waste to the “maximum extent practicable” prior to disposal means handling the greatest amount of waste possible through means as high on the solid waste management hierarchy as possible, resulting in maximizing waste diversion and minimizing the amount of waste disposed, without causing unreasonable increases in facility operating costs or unreasonable impacts on other aspects of the facility’s operation. Determination of the “maximum extent practicable” includes consideration of the availability and cost of technologies and services, transportation and handling logistics, and overall costs that may be associated with various waste handling methods.

State law also imposes limits on the origin of wastes accepted at a State-owned solid waste facility. In accordance with 38 M.R.S. § 1310-N(11):

a solid waste disposal facility owned by the State may not be licensed to accept waste that is not waste generated within the State. For purposes of this subsection, “waste generated within the State” includes residue and bypass generated by incineration, processing and recycling facilities within the State or waste, whether generated within the State or outside of the State, if it is used for daily cover, frost protection or stability or is generated within 30 miles of the solid waste disposal facility.

B. Application Information

The applicant has proposed to remove the March 31, 2018 licensed date restriction on the allowance to accept 81,800 tons per year of non-bypass, in-state MSW in license #S-020700-WD-BC-A, issued in 2013. The applicant addressed the requirements of the hierarchy for managing MSW and the current MSW disposal capacity at Maine facilities in Section 2.2 of the Application.

(1) Sources of MSW and Past Amounts

The applicant states that the findings regarding the sources of MSW in the 2013 amendment application would not be significantly altered with the

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removal of the March 31, 2018 date. The waste proposed is consistent with the MSW accepted over the last four years. The contracted municipalities that utilized JRL for MSW disposal in 2017 are shown in Table 2 below, as presented in the table on page 2-2 of the Application.

Table 2:
Contracted Municipalities that Utilize JRL for MSW Disposal, 2017*

Communities Utilizing JRL for Direct MSW Disposal		
Town of Alfred	Town of Arrowsic	Town of Acton
Town of Arundel	City of Biddeford	Town of Bowdoinham
Town of Buxton	Town of Casco/Naples	Town of Cornish
Town of Dayton	Town of Denmark	Town of Dresden
Town of Durham	Town of Frye Island	Town of Harpswell
Town of Kennebunk	Town of Kennebunkport	Town of Long Island
Town of Newfield	Town of North Berwick	City of Old Orchard Beach
Town of Phippsburg	Town of Sanford	Town of Shapleigh
Town of Sebago	Town of South Berwick	Town of Topsham
Town of Wells	City of Westbrook	Town of York

* **Bold** denotes those communities under long-term contracts that formerly used Maine Energy Recovery Company (MERC).

There are 14 communities under long-term contracts with JRL that formerly utilized MERC as a disposal option. These contracts extend to 2025, with the exception of the City of Biddeford whose contract runs to 2022. In the response to comments, the applicant states that the sole reason for the prior amendment application, which resulted in the 2013 Department license to accept non-bypass MSW at JRL, was the closure of the MERC incinerator. The response to comments also includes the statement that in 2016, the 14 communities under long-term contract that formerly used MERC for MSW disposal generated 22,827 tons of residential MSW, in addition to commercial MSW, which was disposed at either JRL or the Penobscot Energy Recovery Company (PERC) incinerator facility in Orrington.

In addition to the 14 former MERC communities, there are also 16 additional southern Maine communities with MSW handling and disposal contracts with JRL, as well as commercial customers throughout Maine currently utilizing JRL for MSW disposal. Table 3 shows the total MSW disposal at JRL, excluding bypass, in a three-year period, excerpted from the table on page 2-3 of the Application.

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Table 3: Total MSW Disposal at JRL, Excluding Bypass

Year	Non-Bypass MSW Disposed at JRL (tons)
2014	36,878*
2015	57,521
2016	69,934

* The applicant stated in comments on the public draft license that disposal of MSW did not begin until March 2014.

The Department notes that the amount of non-bypass, in-state MSW disposed of at JRL has increased each year and that not all of the municipalities and commercial entities with JRL disposal contracts appear to be former long-term contracted MERC customers. The applicant noted that the incineration capacity lost due to the MERC closure has not been replaced. The applicant commented, on the public comment draft license, that MSW disposed of at JRL has increased each year but has remained below the licensed 81,800 tons per year limit; that in 2014 and 2015 the applicant diverted MSW temporarily to other landfills which are no higher on the hierarchy than JRL; the applicant has no control over the amount of MSW generated in Maine; MSW generation rates have increased over the years; and the 2013 Department amendment did not limit the non-bypassed MSW disposal at JRL to only municipalities (residential and commercial) that were former long-term contracted MERC customers.

(2) Reduction, Reuse, and Recycling Programs and MSW Diversion Efforts

The Application states that the applicant will continue to promote and encourage waste reduction measures and the maximization of waste diversion efforts of the users of JRL to the maximum extent practicable in accordance with the Rules and licensing requirements. Casella, as an integrated solid waste management company, is involved in state recycling and reuse infrastructure, along with handling logistics and transportation. However, BGS, NEWSME, and Casella's subsidiaries do not have control over the extent to which municipalities, homeowners, and businesses utilize these recycling services.

For the last few years, the applicant states that they have diverted MSW from landfilling at JRL to disposal at various other outlets, as seen in Table 4, which also includes the amount of non-bypass, in-state MSW disposed at JRL for comparison. Table 4 is based on the table in Appendix 4 of the Application.

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Table 4: Maine MSW Diversion from Disposal at JRL, Diversion Locations, and MSW Disposed at JRL

MSW Diversion from JRL (Tons)	2014	2015	2016
Maine Recyclables Processed at Casella's Zero-Sort® Program	25,026	28,688	35,851
Cardboard Recycling			
Brokered	37,385	53,244	55,903
Collected/Baled	12,840	29,071	27,288
ecomaine			
Lewiston Zero-Sort® Processing Residue -	97	329	-
Incinerator MSW - Incinerator	42,506	41,130	45,837
Single-stream Recyclables	-	11,430	11,934
MMWAC Incinerator			
Lewiston Zero-Sort® Processing	-	1,742	2,777
Residue MSW	147	32,212	35,384
PERC Incinerator	89,902	89,054	79,443
Bath Landfill	388	6,097	5,740
Brunswick Landfill	10,144	528	3,474
Fort Fairfield Landfill	7,249	10,500	11,204
Norridgewock Landfill	2,495	2,720	2,549
Total Maine MSW Disposal Diverted from JRL	228,179	306,725	317,384*
Total Maine Non-bypass, In-state MSW disposed of at JRL	36,878	57,521	69,934

* Corrected from number in error in the Application.

The Department notes that some of the MSW outlets identified in the table above as taking "diverted" waste may be the result of contracts for waste disposal that would not have been destined for JRL at any point due to logistical, economic, contractual and other factors. but Casella has diverted significant volumes of MSW from JRL in any event.

Casella's Zero-Sort® Program allows commingling of all recyclable materials, requiring no sorting or separating. In 2014, a new materials recovery facility in Lewiston was opened by Casella. The benefits of this type of facility include increased ease and convenience, reduction in disposal costs due to reduction in volume, increase in range of recycled materials, and more efficient collection of materials. The number of Maine municipalities participating in Casella's Zero-Sort® Program along with the corresponding year has been: 52 (2014), 62 (2015), and 64 (2016). In 2016, 18 of the 30 municipalities listed in Table 2 utilized Casella for their recycling. The number of Maine businesses participating in Casella's Zero-Sort® Program along with the corresponding year has been: 3,200 (2014),

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3,482 (2015), and 3,381 (2016). Casella also brokers and collects and/or bales cardboard at its Maine transfer stations for recycling.

Casella continues to evaluate options for food waste collection and diversion. Casella conducted an eight-month pilot project in 2017 with the Town of Scarborough which included curbside collection with disposal at Exeter Agri-Energy through ecomaine although transportation costs were deemed cost prohibitive.

The former MERC communities have reported a range of recycling rates resulting in an average of 39.96%, similar to the State average. Some communities exceed the state average, such as the City of Biddeford with a reported recycling rate in excess of 53% in 2016. The lowest reported recycling rate is 19.49%.

Additionally, Casella notes that they have served to increase MSW recycling rates over the past few years. The application states that waste disposed at JRL is reduced to the maximum extent practicable by Casella's various programs.

The Department notes that Casella has a diversity of waste management programs, including reduction and recycling and diversion to incinerators, that have managed more MSW from 2014 to 2016, but has also increased MSW disposal at JRL from 2014 to 2016. As noted earlier, however, the applicant has no control over the amount of MSW generated in Maine, and generation of MSW has increased modestly in Maine over these years. At the same time, the incineration capacity lost at the end of 2012 when Maine Energy closed has not been replaced. Further, the Department notes that some of the MSW that Casella specifies as being diverted from JRL is already destined and/or contracted to other Maine facilities. Therefore, the Department notes that it is not appropriate to define these practices as diversion from JRL but rather as obligations to transport waste to the most suitable facility based on logistical, economic, contractual and other factors. The Department finds that these MSW reduction, recycling and diversion programs performed by Casella do result in diversion of MSW that could otherwise have been landfilled at JRL.

(3) Existing Waste Management Facilities Capacities and Potential Shortfalls

a. Maine

The applicant asserts that beginning April 1, 2018, scheduled changes in Maine's solid waste management infrastructure are likely to result in the State not having the capacity for Maine generated MSW and waste may be "stranded" unless JRL is

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allowed to continue to accept in-state MSW.

The changes identified to occur on March 31, 2018 include:

- i. The expiration of existing MSW disposal contracts between MRC municipalities and PERC;
- ii. The expiration of the existing disposal agreements between PERC and Casella (30,000 tons per year of former MERC MSW);
- iii. Potential changes to PERC's operational structure due to the expiration of the existing above-market power sales agreement with the local utility, resulting in a reduction in MSW processed to approximately 210,000 tons per year and reduction in disposal volumes of PERC residue;
- iv. The non-operational status, due to continued construction, of CRM's MSW processing facility in Hampden which was previously expected to be operating by April 1, 2018; and
- v. The expiration of the approval for JRL to accept non-bypass MSW for disposal.

The applicant states that with conservative estimates of future planned disposal capacity at PERC and CRM's facility post-2018 (210,000 tons per year and 105,000 tons per year, respectively) and the known capacity at ecomaine and MMWAC, there will likely be a continual shortfall in management options at a higher level on the hierarchy than landfills for MSW generated in Maine, which has not changed since the closure of MERC in 2012. Table 5, below, was included in Appendix 5 of the Application to corroborate the shortfall concept.

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Table 5: Management of Maine Municipal Solid Waste (Tons)

	2011	2012	2013	2014	2015	Projected
MSW Generation(1) (not including	1,398,429	1,307,787	1,161,579	1,187,265	1,196,964	1,196,964
MSW Recycled & Composted(1) (not including	553,778	554,225	480,456	430,215	439,950	439,950
Total MSW Disposal (Landfill & Incineration)	751,187	753,562	681,123	757,050	757,014	757,014
Disposal/Management Availability in Maine: Non-Landfill(4)	854,000	854,000	544,000	544,000	544,000	555,000

- (1) Maine Solid Waste Generation and Disposal Capacity Report or Materials Management Plan: Calendar Year 2011; page 10 (calculated), Calendar Year 2012-2013, Table 3; Calendar Year 2014-2015, Table 2
- (2) CDD = Construction and Demolition Debris
- (3) Data projected to be same as last full dataset (2015) for comparison
- (4) Permitted capacity at Maine operating incinerators through 2015, stated future capacity at Maine incinerators and CRM in 2018

The above numbers (2013 through 2015) for non-landfill capacity are taken from the State Plan which specifies a capacity of 170,000 tons per year at ecomaine, 70,000 tons per year at MMWAC and 304,000 tons per year at PERC for a total of 544,000 tons. The projected non-landfill capacity was calculated by BGS and NEWSME in the application as 170,000 ton per year at ecomaine, 70,000 tons per year at MMWAC, 210,000 tons per year at PERC and 105,000 tons per year at CRM for a total of 555,000 tons. The Department has independently calculated the future non-landfill capacity as 170,000 ton per year at ecomaine, 70,000 tons per year at MMWAC, 210,000 tons per year at PERC and 145,000 tons per year at CRM for a total of 595,000 tons. Absent other information, the Department considers the projected non-landfill capacity to be 595,000 tons per year as long as PERC successfully achieves a stable operating capacity and CRM has been constructed and achieves commercial operations.

In the response to comments, the applicant provided copies of two written agreements that Casella has entered into with other Maine

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waste management facilities. One contract includes an agreement between CRM and Pine Tree Waste, Inc. (a subsidiary of Casella) for Pine Tree Waste, Inc. to deliver 40,000 tons per year of MSW to the CRM facility (20,000 tons from commercial businesses from an identified geographic area and 20,000 tons from the West Bath and Waterville transfer stations). The other contract includes an agreement with PERC, NEWSME, and Pine Tree Waste, Inc. to deliver 30,000 tons per year of MSW to PERC. As clarified in the follow-up response to comments, the originally agreed upon 30,000 tons of former MERC disposed MSW is part of the larger approximate tons listed in Section 2.3 of the agreement (within Category 3, 50,000 tons of in-state MSW as part of the 130,000 total tons). Both the CRM and PERC agreements are contingent on the authorization to accept no less than 81,800 tons per year of non- bypass, in-state MSW after March 31, 2018, with varying terms further described in Finding 8(D)(5).

In the follow-up response to comments, a draft swap agreement between MRC, Waste Management Disposal Services of Maine, Inc. (WMDSM) in Norridgewock, NEWSME, Pine Tree Waste, Inc., and CRM was described further, with the potential for a waste swap on a one to one (1:1) tonnage basis at agreed tip fees.

b. Out-of-State

In the response to comments, the applicant stated that within a transportation distance similar to that of the Westbrook transfer station to JRL, the two identified out-of-state incinerators are either at capacity and will remain so or are charging certain tip fees that, plus the cost of transportation, will make them an uneconomical option. It was also stated that, to the applicant's knowledge, there are no out-of-state MSW processing facilities within a similar distance of the Westbrook transfer station to JRL. The applicant did acknowledge that there is some limited capacity in out-of-state landfills; however, the applicant stated that utilizing one landfill in favor of another does not address the solid waste management hierarchy standard and it is prudent and sound policy for Maine to provide for management of its own MSW.

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(4) Technical Uses for MSW

The applicant states that the acceptance of MSW at JRL is beneficial to site operations and does not unnecessarily consume capacity that would be better utilized by waste that cannot be managed at facilities at higher levels on the hierarchy. The two main beneficial uses of MSW for landfill operations and closure were identified as use as a bulking material to stabilize sludge and use to bring interim grades to final grade prior to placement of the final cover system. In the response to comments, the applicant stated that prior to 2014, JRL received ash and front end process residue (FEPR) from MERC which were used as bulking material. The closure of MERC changed the quantities of these materials received, necessitating different bulking material be utilized, such as MSW. It was also stated that effective bulking material to stabilize sludge includes virgin soil material or CDD/CDD fines; however, the use of CDD or CDD fines provides an opportunity for increased H₂S production from the breakdown of sheetrock in the material. The applicant provided cost estimates to treat the H₂S production if these materials were used as bulking materials.

Additionally, the applicant asserts that JRL operations utilize a higher compaction rate than the average of five other municipal landfills across the state. The average compaction rate for JRL is 0.88 (airspace utilization factor based on tons of waste placed in a single cubic yard of landfill space), as compared to the compaction range of five municipal landfills from 2014 to 2016 of 0.2 to 1.07 with an average compaction rate of 0.55. The applicant states that this difference in compaction rate results in the ability of JRL to place an additional 668 pounds of waste per cubic yard of landfill capacity utilized, as compared to the average compaction rate of the five municipal landfills, proving the efforts of the applicant to prevent unnecessary consumption of valuable landfill space. The information used to calculate the compaction rates is from the information in the Maine Solid Waste Generation and Disposal Capacity Report, Calendar Years 2014 and 2015 and the submitted 2016 Annual Reports for each facility (tons received and volume consumed).

(5) Cost Considerations

As stated in Finding 8(A) above, the hierarchy requirements contain the determination of reducing, reusing, recycling, composting and/or processing waste to the maximum extent practicable, which includes consideration of the availability and cost of technologies and services, transportation and handling logistics, and overall costs that may be

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associated with various waste handling methods. In the Supplemental Information on Solid Waste Management Hierarchy portion of the Application submitted by the applicant on December 14, 2017 and follow-up responses to comments, the applicant addresses three potential scenarios where additional MSW could theoretically be diverted from JRL and the practicability of the scenarios in terms of cost. The three scenarios are: additional diversion to ecomaine and/or MMWAC; additional diversion to PERC or CRM's facility; and additional separation or processing of the MSW to remove recyclables or organics. Information was also provided on the alternatives and cost implications of not using MSW in site operations and potential disposal of the MSW at other landfill facilities. The applicant states that not using MSW in site operations will increase the cost of JRL's operations.

The applicant states that the southern Maine incinerators (ecomaine and MMWAC) are already at capacity so further diversion of MSW to them is not practicable and therefore, cost considerations are secondary. Both ecomaine and MMWAC have entered into contracts with municipalities previously contracted with PERC through MRC, which with their current long-term contracts, put both facility's operations at or exceeding capacity. Additionally, documentation has been provided stating that ecomaine has notified existing "spot market" waste haulers that ecomaine will not be able to serve them after March 31, 2018 per the information in the applicant's March 1, 2018 response to comments, Exhibit 9.

The agreements Casella has executed with PERC and CRM have been negotiated to supply the two entities with a specific amount of waste, contingent on Department authorization to accept no less than 81,800 tons per year of non-bypass, in-state MSW to meet the ongoing need of primarily southern Maine communities. The applicant states that for Casella and its Pine Tree Waste, Inc. subsidiary as the supplier of the waste, the agreements have a cost limitation related to how much can be paid in tipping or disposal fees while still covering expenses for collecting, consolidating and transporting the MSW to the receiving facility. The applicant states that both CRM's facility and PERC could accept additional volumes of material, but to cover their operational costs and make a profit as commercial entities, the necessary disposal tipping fee would be so high as to preclude Casella's ability to cover the cost of waste handling and management. Restating, it is asserted that it would be uneconomical for the applicant to divert additional MSW to either CRM's facility or PERC at the significantly higher tipping fees those receiving facilities would require, and those receiving facilities

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would not accept additional MSW at the tip fee the applicant would be able to pay.

The applicant states that the ability to provide additional separation or processing to remove recyclables or organics from MSW consolidated at any transfer station is limited by operational safety considerations, and design, permitting, and construction of such a facility. The majority of the former MERC communities utilize Casella's Westbrook transfer station for the mixed MSW remaining following the individuals' and business' use of their communities recycling programs and/or Casella's Zero-Sort® Program. In order to further separate potentially recyclable materials, the facility would need to be modified from a transfer station to a materials recycling and processing facility, resulting in a number of cost factors that would not financially support a conversion. In the response to comments, the applicant states that organics separation would require an initial estimated capital investment of \$1.5 million and organics separation would cost approximately \$20.00 more per ton than MSW transfer and disposal on a 20-year amortizable basis. An additional \$1.0 million capital investment was estimated for the conversion of the transfer station to a recycle sorting facility.

The applicant addressed the higher cost of utilizing material as an alternative to MSW such as CDD fines, virgin soil or woodchips for landfill closure pre-grading and shaping, as well as for sludge bulking material. As an example, in the response to comments, the applicant estimated that purchasing grading materials at a cost of \$10.50 to \$13.00 per cubic yard would result in an additional cost in the range of \$1.4 to 1.7 million if all 133,500 cubic yards of fill required to achieve final closure grades in the Phase 1 closure area of approximately 15 acres was purchased. A portion of this expense may be able to be reduced by utilizing waste where a deeper fill depth is required. As an alternative to purchasing material for landfill closure grading and shaping, landfill final grades could be reduced, but this would decrease the facility's permitted disposal capacity, potentially resulting in increased cost per ton for the remaining materials disposed in order to fund closure cost requirements. The applicant estimated that if soils were purchased to bulk the sludge at 1.25 parts soil for each part sludge bulked, this would likely require about 47,000 cubic yards of soil at a cost of \$10.50 per yard, with potential costs of approximately \$500,000 per year that could be offset by using MSW as the bulking agent.

The applicant also addressed the cost of disposal at other Maine landfills other than the local hauling and subsequent disposal that already occurs to

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these landfills. The statement was made that “while not a requirement of achieving compliance with the hierarchy, [the applicant has] reviewed the availability of alternative landfills to provide capacity for MSW.” Augusta, Bath, Brunswick, and Presque-Isle municipal landfills accept MSW, but primarily from within their own municipalities. The Tri-Community Sanitary Recycling and Sanitary Landfill accepts MSW from beyond their communities, but transportation is cost-prohibitive since the facility is located in Aroostook County. The ecomaine landfill is operated only for their own use. WMDSM’s Crossroads Landfill in Norridgewock has capacity but the applicant stated disposal fees at Norridgewock and transportation costs would preclude Casella from the ability to cover the cost of waste handling and management from the southern Maine communities. However, there is a draft “waste swap” agreement that addresses a 1:1 tonnage swap among MRC, WMDSM, NEWSME, Pine Tree Waste, Inc., and CRM.

The applicant addressed the potential use of out-of-state incinerators and processing facilities as uneconomical, even if capacity is available as discussed in Finding 8(B)(3).

C. Comments Received

The Department received written comments from various individuals and entities over the course of the licensing process, as well as verbal comments received at the public meeting.

Comments were provided that focused around the timeframe already given to JRL to find an alternative disposal method for the southern Maine MSW. These comments included: JRL had five years to plan for the MSW acceptance end date of March 31, 2018 and should have figured out an alternative disposal plan for the waste; Old Town residents shouldn’t be penalized for the lack of Casella planning; and based on past actions, Casella will most likely come in for an amendment to continue any date extensions and to request MSW acceptance in the landfill expansion. Additionally, others stated that if granted, the continued MSW acceptance could prolong the active areas of the existing landfill since all other waste could be put in the expansion and only MSW put in the existing landfill, keeping it open longer than necessary. It was also presented that JRL is asking to accept in a year the same amount of waste that two municipal landfills dispose of, but JRL claims it is a “relatively small portion” of the overall Maine MSW disposal capacity.

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Other comments focused on the issue that the intent of the 2013 amendment license was to be a “temporary” allowance due to the closing of MERC and not an ongoing situation. Comments were made that the landfill’s operation and licensing history never included MSW acceptance except for the short-term allowance. A number of commenters stated that continuance of MSW acceptance may increase pollution of the area, the river, and the watershed.

Comments were provided stating that landfill options should be made harder to utilize, which would then force usage of options higher on the hierarchy; that the assertion of “stranded waste” is overstated; that other options should be required; that JRL has a lower tipping fee set by the OSA which undercuts other disposal options; and that granting the amendment would give Casella hauler subsidiaries an unfair advantage to disposal capacity that other haulers would not be able to access.

Numerous comments were made in support of the amendment application. Many of these comments stated that the amendment is needed to assist the 115 MRC communities in the short term, for transportation infrastructure and financial reasons, prior to CRM’s facility coming on-line. Comments were also submitted by several private haulers over concern for cost effective MSW outlets if JRL is not an option. Supporters also presented that JRL is a well-run facility, Casella is involved in multiple recycling options, Casella contributes to the community and is philanthropic, and landfiling options are needed.

A few commenters mentioned that if an extension is granted, the extension shouldn’t be open ended, but should be very specific for the short-term only. Examples were given to possibly allow a one or two year extension with prescriptive requirements.

D. Department Analysis

With respect to the hierarchy requirements, the Department considered the proposed amendment application request and related documents, the intent of the 2013 amendment, the comments received, the overall current and future MSW capacity in Maine, the current and future operating status of Maine’s waste management facilities, cost considerations and various options. The following presents the Department’s analysis.

(1) Amendment #S-020700-WD-BC-A (issued 2013)

The intent of the 2013 amendment was for MERC waste to be disposed of at JRL temporarily. As stated on page 15, “the Department finds that the

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applicant has adequately demonstrated the need for disposal of 81,800 tons per year of MSW on a temporary basis.” On page 25, it is stated that regarding the limiting of time for MSW acceptance to March 31, 2016 (revised to March 31, 2018 in the Board Order) that “this limitation is appropriate to ensure that activities at JRL support, and do not subvert, the waste management hierarchy.” On page 41, it is noted that the “acceptance of additional unprocessed MSW at JRL in addition to bypass and soft layer material for cell construction is consistent with the hierarchy provided that limitations are placed upon such activity to ensure that other waste management options will be implemented for former Maine Energy MSW. Such limitations include a volume limit, a time limit, and requirements for delivery of some MSW to a facility at a higher level on the hierarchy.”

The 2013 amendment license #S-020700-WD-BC-A states in Finding 5(B)(3) on page 25 that “alternative waste management options exist for this MSW that are better aligned with the hierarchy.” But that license amendment did not identify what those options were. The 2013 amendment license also included requirements for ongoing steps to be taken by JRL to meet the condition of no non-bypass MSW after March 31, 2018.

Condition 5 of the 2013 amendment license #S-020700-WD-BC-A required the following:

5. Casella shall continue to plan for, and will make its best effort to divert MSW from landfilling at JRL to the greatest extent practicable. JRL shall include in each annual report a summary of its efforts to meet this diversion requirement. This summary shall include, but not be limited to:
 - 5.A. A list and description of all diversion options evaluated and/or pursued by Casella, including currently operating Maine waste-to-energy facilities as options;
 - 5.B. A narrative detailing the specific efforts made by Casella to implement diversion options; and,
 - 5.C. A narrative describing the results of Casella's evaluation/pursuit of MSW diversion options, including the volume of waste and diversion destination of MSW

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successfully diverted, and/or the specific reasons that MSW was not diverted to other destination options.

The Department notes that JRL did include the summary required in its 2014, 2015 and 2016 annual facility reports. The information included, in part, a summary of operations regarding Casella's Zero-Sort® Program, information relating to MSW delivered to Maine incinerators and information relating to MSW delivered to Maine landfills including JRL.

At the time of issuance of the 2013 amendment license #S-020700-WD-BC-A, Maine's solid waste management hierarchy was in statute as a policy, but not as a specific licensing criterion. However, the hierarchy was used as a consideration for the date limitation in Condition 10. The findings of the 2013 amendment are of utmost importance, but now that the hierarchy is a licensing standard, it must be applied to this amendment application request ~~is a license criterion.~~

(2) Casella Recycling Programs

The Department notes that Casella-owned facilities have active recycling and reuse programs that divert waste from JRL. However, the Department also notes that MSW tonnage brought to JRL has increased from 2014 through 2016 (36,878 tons to 69,934 tons), yet below the 81,800 limit, and that the MSW tonnage allowed by the 2013 amendment license was based on the needs of former MERC communities and businesses. In 2016, the 14 communities under long-term contract with Casella that formerly used MERC for MSW disposal generated 22,827 tons of residential MSW in addition to commercial MSW.

Although recycling is encouraged by Casella and Casella maintains and manages recycling infrastructure, MSW disposed at JRL has increased and there has been a modest ~~without a corresponding~~ increase in the annual generation of MSW in Maine. The applicant has no control over the amount of MSW generated in Maine. For example, ~~the~~ The State Plan specifies that from 2015 to 2016, the "[o]verall disposal of MSW rose slightly from 757,014 to 759,638 tons; the per capita disposal amount also rose slightly from 0.569 to 0.571 tons per person in 2016." This slight increase in Maine's MSW disposal amount does not equate to the relative increase in MSW disposal at JRL from 2015 to 2016 (57,521 to 69,934 tons). The applicant explained, however, that the reason for the increase in MSW disposed at JRL in 2015 and 2016 is that MSW was temporarily delivered in 2014 and 2015 to other landfills, which are not always available. Although this represented diversion from disposal at JRL, it is neutral with respect to the hierarchy, because other landfills are on the same level on the hierarchy as JRL. Moreover, there has been no

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replacement of the incineration capacity that MERC represented and there is likely to be none, principally due to the statutory ban on new commercially-owned solid waste disposal facilities.

(3) Currently Available Capacity in Maine for Management of MSW

As of 2018, Maine's solid waste disposal facilities include three waste-to-energy plants, five municipally-owned landfills, one state-owned landfill and one commercially-owned landfill. The State Plan specifies that the total remaining licensed capacity of the seven abovementioned landfills, as of 2016, is 8,043,980 cubic yards although some of this capacity includes landfill space that has not been built. The total available capacity, as of pre- March 31, 2018, at Maine's waste-to-energy plants is approximately 550,000 tons per year with PERC having an average annual processing capacity of 310,000 tons; MMWAC having an average annual processing capacity of 70,000 tons and ecomaine having an average annual processing capacity of 170,000 tons. Solid waste disposal facilities not included in the capacity consideration include generator-owned and CDD or woodwaste landfills.

(4) Future Available Capacity for Management of MSW

a. Maine

At the conclusion of 2018, Maine's solid waste management facilities will include three waste-to-energy plants, one processing facility, five municipally-owned landfills, one state-owned landfill and one commercially-owned landfill. The total available capacity at some point post-March 31, 2018 at Maine's waste-to-energy and processing plants will be 595,000 tons per year with PERC having an average annual processing capacity of 210,000 tons; MMWAC having an average annual processing capacity of 70,000 tons; ecomaine having an average annual processing capacity of 170,000 tons and CRM having an average annual processing capacity of 145,000 tons. Based on 2016 annual report data, Maine's municipal and regional MSW landfills received approximately 87,000 tons of MSW and the commercially-owned landfill received approximately 85,000 tons of MSW. Solid waste disposal facilities not included in the capacity consideration include generator-owned and CDD or woodwaste landfills.

- i. PERC. Post-March 31, 2018, PERC will reduce their operating level from 310,000 tons per year to 210,000 tons per year. In the follow-up to comments, a March 9, 2018 letter from PERC to Casella was included stating that the "planned reduction to this level is already being

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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.”

- ii. CRM. Construction of the CRM facility is currently underway with the commissioning of the materials recovery facility (MRF) portion expected during the second quarter of 2018. When fully commissioned, the MRF will operate at 55,000 equivalent annual tons. In parallel with the MRF commissioning, the “wet end” of the facility will be constructed and will be fully commissioned during the fourth quarter of 2018. Once fully commissioned, the CRM facility will process the entire 105,000 tons committed to the project by MRC municipalities. The CRM facility has an average annual design capacity of 145,000 tons.

The Department notes that the applicant and some commenters have suggested that there is uncertainty regarding future operations at PERC and the CRM facility, which are both higher on the hierarchy. Specifically, the applicant and some commenters have noted that operations of both PERC at the new tonnage and CRM’s commercial operations have yet to be demonstrated.

b. Out-of-State

The Department notes that the applicant evaluated out-of-state options, which are higher on the hierarchy, including incineration and processing for the management of Maine MSW. However, based on information submitted, the capacity constraints and/or economic considerations do not appear to make this a viable option.

(5) Agreements Among Maine Waste Management Facilities

The following summarizes the agreements between a number of Maine’s waste management facilities, as presented to the Department, either through submittal of the actual written agreements or through a summary of information submitted regarding the actual agreements.

- a. The agreement for waste delivery services between Pine Tree Waste, Inc. and CRM includes 20,000 tons per year commercial MSW and 20,000 tons per year municipal from the West Bath and Waterville transfer stations delivered by Pine Tree Waste, Inc. to

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CRM's facility once it is able to accept and process waste. Pine Tree Waste, Inc. will pay CRM an agreed upon tipping fee. There is a clause for cost to CRM, if it is necessary and allowed, for CRM to directly bypass non-Pine Tree Waste, Inc. MSW from CRM to JRL and for CRM to pay a tipping fee. At this time, JRL is not licensed to accept bypass waste from CRM. The agreement includes a condition that CRM shall support the JRL amendment application and the agreement is contingent on the Department's authorization to accept no less than 81,800 tons per year of non-bypass, in-state MSW. The term of the agreement is for eight years or coterminous with the duration of approval to take no less than 81,800 tons per year of Maine MSW at JRL, whichever is shorter, unless the agreement is earlier terminated as provided.

- b. The agreement for disposal services between Pine Tree Waste, Inc. NEWSME, and PERC (collectively, Maine Waste Processing, LLC and Penobscot Energy Recovery Company) includes delivery of various waste categories in various tonnages (20,000 tons per year from Pine Tree Commercial Waste, 10,000 tons per year from Waterville/West Bath transfer station, 50,000 tons per year from Westbrook/Naples transfer station, and 50,000 tons per year from out-of-state). There is a statement contained in the agreement for bypass if PERC cannot accept waste, that notification will occur and that Pine Tree Waste, Inc. may take the bypass to a facility of its choice. The agreement includes a condition for delivery of acceptable waste to PERC by Pine Tree Waste, Inc. that PERC shall support the JRL amendment application and the term of the agreement is until "the earlier of March 31, 2019 or the expiration, revocation or lapse of the Pine Tree's authorization to accept no less than 81,800 tons per year" of non-bypass, in-state MSW at JRL. The agreement includes a condition for delivery of acceptable waste to JRL of material produced at PERC which has an extension at the option of Pine Tree Waste, Inc. and NEWSME to the earlier of December 31, 2023 or the point at which JRL is no longer authorized to accept 81,800 tons per year of Maine MSW.
- c. The waste disposal agreement between the MRC and Waste Management Disposal Services of Maine, Inc (WMDSM) is for the exclusive disposal of MRC's bridge capacity (waste from the communities prior to the CRM facility becoming operational) and bypass at the Crossroads Landfill in Norridgewock. This agreement is for a 10-year period.
- d. The waste disposal agreement between PERC and the MRC states that in excess of 62,000 tons per year of waste might be delivered to the PERC facility under certain terms. However, the Department

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understands that the terms have not been finalized.

- e. The Department understands from verbal communications with PERC that they have contracted with local communities to dispose of approximately 31,000 to 38,000 tons per year of MSW starting April 1, 2018, reduced from the municipal contracts they are currently operating under.
- f. The Department has received a draft swap agreement between MRC, NEWSME, Pine Tree Waste, Inc., WMDSM and CRM, with the potential for a waste swap on a 1:1 tonnage basis at agreed tip fees.

As part of the evaluation process for the proposed amendment application, the Department has reviewed the agreements that have been established to ensure the management of MSW during this ~~near-term~~ uncertainty period with Maine's solid waste infrastructure. The Department notes that it is not a party to these agreements and does not have the authority to direct waste flow per *Delivery of Solid Waste to Specific Waste Facilities*, 38 M.R.S. § 1304-B.

(6) Cost Considerations

Cost is a relevant consideration in the determination of whether solid waste has been reduced, reused, recycled, composted and/or processed to the "maximum extent practicable" prior to disposal and whether the greatest amount of solid waste has been handled through means as high on the solid waste management hierarchy as possible, resulting in maximizing waste diversion and minimizing the amount of waste disposed. BGS and NEWSME have shown an increase in financial burden if MSW is taken to another solid waste disposal facility other than JRL or if other materials are substituted for MSW in its operations. The Department has considered these financial burdens in the analysis of near-term capacity and currently available waste management options that are higher on the hierarchy. Included as part of the Department's review was the evaluation of tipping fees established in the current agreements between various solid waste management facilities. This information was provided to the Department as part of an approved request to treat the information 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).

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Although the applicant evaluated the availability of MSW disposal at other solid waste landfills, the Department notes that this will not result in MSW being managed at a higher level on the solid waste management hierarchy. Therefore, this aspect of the information submitted does not change the Department's analysis.

Although estimated costs were provided for purchasing all material for filling, grading and bulking purposes in lieu of MSW, the Department notes that the possibility exists that other waste material or soil could be utilized for the same purpose.

E. Department Findings

With the respect to the hierarchy requirements, the Department makes the following findings:

- (1) Amendment #S-020700-WD-BC-A (issued 2013). The Department finds that the intent of the 2013 amendment license was for MERC waste to be disposed of at JRL temporarily and to ensure that activities at JRL support, and do not subvert, the hierarchy. Although the applicant is actively engaged in MSW recycling and diversion activities, it does not control the amount of MSW that is generated nor whether municipalities, businesses or residents recycle. The Department finds that since 2013 MERC's MSW incineration capacity has not been, and is unlikely to be, replaced. The Department further finds that the amount of non-bypass, in-state MSW disposal at JRL has increased for understandable reasons since the issuance of the 2013 amendment license, but not beyond the licensed limit, and that restrictions are necessary to ensure that activities at JRL continue to support, and ~~do not~~ subvert, the hierarchy.
- (2) Casella Recycling Programs. The Department finds that although recycling is encouraged by Casella and Casella maintains and manages recycling infrastructure, Casella does not control the amount of MSW generated in Maine, nor whether municipalities, businesses or residents decide to engage in recycling. ~~MSW disposed at JRL has increased without a corresponding increase in the annual generation of MSW in Maine.~~
- (3) Currently Available Capacity in Maine for Management of MSW. The Department finds that disposal capacity for Maine generated MSW, as of pre-March 31, 2018, is sufficient based on current operating conditions in Maine.
- (4) Future Available Capacity for Management of MSW. The Department

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finds that there is uncertainty in the ~~future~~~~near-term~~ with the solid waste landscape in Maine until PERC's planned reduction in operating level is complete and successfully stabilized and the construction of CRM is complete and commercial operations have been achieved. The Department further finds that sufficient MSW incineration and processing capacity exists in the future provided that the PERC facility is operational at its planned reduction level of 210,000 tons per year and the CRM facility is operational at its currently contracted capacity of 105,000 tons per year or greater. The Department also finds that these solid waste management options are preferred over disposal at JRL in accordance with the hierarchy. The Department also finds that out-of-state disposal options for Maine MSW, which are higher on the hierarchy, do not appear to be viable given capacity constraints and/or economic considerations.

- (5) Agreements Among Maine Waste Management Facilities. The Department finds that a number of Maine's waste management facilities have entered into, or drafted, waste agreements. The agreements serve to manage MSW at varying levels of the hierarchy during this ~~near-term~~ uncertainty period with Maine's solid waste infrastructure. Both the CRM and PERC agreements with Casella entities are contemporaneous with the length of any extended Department license to accept MSW at JRL, and thus would expire when MSW can no longer be disposed at JRL. The Department notes that it is not a party to these agreements and does not have the authority to direct waste flow per 38 M.R.S. § 1304-B.
- (6) Cost Considerations. The Department finds that given the ~~near-term~~ uncertainty, the applicant has demonstrated that there may be a financial burden if MSW is taken to another solid waste disposal facility other than JRL under the ~~near-term~~ options currently available. and that other landfills are no higher on the hierarchy in any event. The Department finds that, although MSW may be technically appropriate and economical for filling, grading and bulking purposes, there are other materials, including other waste and soil, that can be utilized successfully for these purposes at an increased cost.

~~The Department also finds that the applicant's proposal to remove the March 31, 2018 date resulting in acceptance of MSW until horizontal and vertical licensed disposal capacity is attained is not consistent with the applicable State laws and Rules relating to the solid waste management hierarchy, as there may be future capacity for all or some of the 81,800 tons per year of non-bypass, in-state MSW that could be directed to facilities that operate at a higher level on the hierarchy. The Department finds that the applicant has demonstrated a need in the short-term to provide disposal options due to the shortfall in practicable options higher on the hierarchy and unknowns associated with the change in operating capacity of PERC and the construction and commercial operation date of the CRM facility.~~

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The Department further finds that based on the disposal capacity uncertainty of the PERC and CRM facilities and the associated cost considerations (i.e., tipping fees and agreements), along with the applicant's ongoing recycling and reuse efforts to divert waste from JRL to the maximum extent practicable, ~~an short-term~~ extension, for the 81,800 tons per year non-bypass, in-state MSW to be accepted at JRL ~~until December 31, 2023 for one additional year beyond March 31, 2018 with the potential for a one-time extension not to exceed six months beyond the one-year~~ meets the applicable State laws and Rules relating to the solid waste management hierarchy, ~~provided that:~~

- a. ~~During the one-year extension period, scheduled to occur from April 1, 2018 through March 31, 2019, BGS and NEWSME must develop and prepare to implement measures that eliminate the need for non-bypass, in-state MSW disposal at JRL. On or before March 31, 2019 these measures must be implemented unless the six-month extension referenced in (b) below is granted by the Department; and~~
- b. ~~If warranted, based on a demonstrated need, BGS and NEWSME may submit a one-time request to the Department for review and approval to extend the timeframe for a period not to exceed six months for the disposal of no greater than 30,000 tons of non-bypass, in-state MSW at JRL. The Department's basis for 30,000 tons is twofold: 1) an approximate 25% reduction in tonnage annualized for six months ($81,800/2 * 0.75$), which is consistent with the requirements of the solid waste management hierarchy; and 2) the average acceptance rate of non-bypass, in-state MSW over the past 3 years is comparable to this rate. The six-month extension beyond March 31, 2019 must be requested by November 30, 2018 as a Condition Compliance submittal with information detailing the need for the extension based on the then-current solid waste landscape in Maine, with emphasis on the operational status of other solid waste management facilities in Maine which are higher on the hierarchy. This submittal must also include information sufficient for the Department to determine how the approved non-bypass, in-state MSW under this amendment will be handled after September 30, 2019 without utilization of JRL for disposal.~~

9. CRIMINAL OR CIVIL RECORD

In accordance with 38 M.R.S. § 1310-N(7) and 06-096 C.M.R. ch. 400, § 12, a license for a solid waste facility or activity may be denied if the owner or the operator or any person having a legal interest in the applicant or the facility has been convicted of any criminal law or adjudicated or otherwise found to have committed any civil violation of environmental laws or rules of the State, other states, the United States, or another country.

Civil and criminal disclosure statements dated 2017 were submitted for BGS and NEWSME as part of the application. The disclosure statements included those for

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NEWSME's operation of JRL, a related entity New England Waste Services of ME, Inc, and the six officers, directors, and partners of the two businesses.

In the five-year environmental compliance history submitted for New England Waste Services of ME, Inc., three notices of violations and one administrative order were listed. These have been addressed through responses required by the notices of violation and administrative order.

Based upon information in the application, the Department finds that the applicant filed complete disclosure statements as required by applicable State law and Rule. Based on the disclosure statements submitted and the evaluation criteria contained in 06-096 C.M.R. ch. 400, § 12(B), the Department finds no basis for denying the license.

10. LANDFILL DESIGN AND OPERATIONS

The applicant must address the appropriate landfill design and operations requirements set forth in 06-096 C.M.R. ch. 401.

A. Geotechnical Properties and Landfill Cell Development

There will be no change in the landfill design and individual cell configurations due to continued acceptance of MSW. The stability evaluations have shown that the required slope stability factors have been met and no slope instability has been detected since NEWSME has been the landfill operator. The use of MSW in the waste mix does not alter the strength and density properties (shear strength of 32 degrees and waste density of 74 pounds per cubic foot) utilized to support the stability analysis and Cell Development Plans.

B. Waste Placement, Compaction and Capacity Consumption

The applicant states that allowance of continued MSW acceptance during final filling, grading, and phased final landfill closure could be advantageous to operations. MSW has physical properties that make it a suitable "select waste" to bring interim grades up to final grade, including that it is easily compacted and non- bulky and with proper compaction the amount proposed to be placed is not expected to have substantial settling. The MSW would be placed and mixed with other approved wastes (i.e., treatment plant sludge and combustion ash for bulking purposes) in the remaining capacity in Cell 10 and used to reach final waste grades in the phased closure of Cells 1 through 10.

An estimate of final cover for the 15-acre area on the northwest side slope is expected to require about 133,500 cubic yards (120,150 tons of material) of slope fill to bring the current interim grades up to final permitted grades. Utilizing MSW as this slope fill material, it is estimated that approximately 7,900 tons of MSW will be needed per acre of closure area.

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The applicant states that MSW is also a suitable material for sludge bulking. JRL utilizes a ratio of two to three parts bulking waste to one part sludge, with MSW and PERC incinerator ash as the current wastes used for bulking sludge. The average three-year sludge intake between 2014 and 2016 was approximately 48,000 tons annually. JRL has stated a concern with the volume of ash received post- March 2018 due to the uncertain configuration of PERC.

Overall, the amount of available capacity within the licensed footprint of Cells 1 through 10 after March 31, 2018 is projected to be 1,220,000 cubic yards, and will be approximately 800,000 cubic yards (720,000 tons) by the end of October 2018 when construction of Cell 11 of the expansion is expect to be finalized.

C. Cover

There will be no change in cover practices due to continued acceptance of MSW. The facility currently places daily cover over all areas receiving MSW, front-end processing residue (FEPR), and other wastes with odor generating potential. Geomembrane intermediate cover is placed on areas that have reached interim grades and will be inactive for 6 months or longer. Final cover is proposed in the cell development plan for every other year in a phased approach.

D. Leachate Management

The continued use of MSW is not anticipated to change the current leachate generation rates, quality, or handling procedures.

E. Litter Control

Litter will continue to be minimized with compaction of the MSW as it is placed in the landfill and placement of daily cover or other non-litter producing waste over the MSW. JRL also utilizes litter control fencing at the perimeter of each cell.

F. Vector Control

Vectors will continue to be controlled by placement of daily and intermediate cover; use of the techniques allowed in JRL's depredation permit; implementation of additional techniques to control birds in the active waste placement area, as necessary; and a contract with a local pest control company for rodent control.

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G. Environmental Monitoring

Environmental monitoring will not change with the proposed amendment. JRL will continue to monitor the landfill as detailed in the approved Environmental Monitoring Plan located in the Operations Manual, including characterization and evaluation of groundwater and surface water, evaluation of the performance of the primary liner system, and characterization and evaluation of the quality and quantity of leachate.

H. Acceptable Solid Waste, Waste Characterization, and Hazardous Waste Exclusion

The waste acceptance, characterization, and hazardous waste exclusion programs will not change with the proposed amendment. JRL will continue to operate per the approved Waste Characterization and Acceptance Plan in the Operations Manual.

I. Facility Access/Hours of Operation

The proposed amendment will not change access to, or the hours of operation of, the landfill.

J. Hot Loads

Any hot loads received at the landfill will continue to be handled utilizing the procedures in place as described in the Operations Manual.

The Department finds that current JRL design and operations, including the procedures and cell development plans detailed in the Operations Manual, appropriately address handling and disposal of MSW at the landfill pursuant to the requirements in 06-096 C.M.R. ch. 401. The Department further finds that utilization of MSW as grade fill and for waste bulking is a viable option, but it is not the only material available that can be utilized for these operational needs. Additional discussion of the technical aspects as related to the hierarchy can be found in Finding 8.

11. ALL OTHER

All other Findings of Fact, Conclusions and Conditions made in Department licenses #S-020700-WD-BC-A and #S-020700-WD-BG-Z remain unchanged.

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BASED on the above Findings of Fact, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS pursuant to 38 M.R.S. §§ 1310 to 1319-Y, 38 M.R.S. § 2101, and the applicable Department Rules:

1. JRL will not pollute any waters of the State, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance pursuant to 38 M.R.S. § 1310-N(1)(A) and 06-096 C.M.R. ch. 400, § 3(D); provided that:
 - A. The acceptance of up to 81,800 tons per year of non-bypass, in-state MSW at JRL is limited until December 31, 2023 ~~to a period of time up to and including March 31, 2019, except for a possible one-time six-month extension beyond March 31, 2019, based on a demonstrated need, for no greater than 30,000 tons of non-bypass, in-state MSW;~~
 - B. The MSW that is the subject of this license amendment is handled at JRL using the same procedures as the MSW currently licensed for disposal; and
 - C. The sources of MSW are limited as described in the Finding 4 of #S-020700-WD-BC-A and this amendment, and the landfill is operated in accordance with the facility's approved Operations Manual.
2. The applicant has complied with the public and local participation and notification requirements pursuant to 38 M.R.S. §§ 1310-S(1) and 1310-N(12) and 06-096 C.M.R. ch. 2, § 14.
3. The applicant has demonstrated sufficient title, right, or interest in all of the property which is proposed for use pursuant to 06-096 C.M.R. ch. 400, § 4(A).
4. The applicant has provided a sufficient demonstration of financial ability and assurance and technical ability to permit, design, construct, operate, close, and accomplish post-closure care of the landfill pursuant to 38 M.R.S. § 1310-Y, and 06-096 C.M.R. ch. 400, §§ 4(B)(1) and 4(C)(1); provided that NEWSME, as the current operator of JRL, submits the appropriate financial assurance package updates in accordance with the Rules on an annual basis.
5. The applicant has provided sufficient provisions for safe and uncongested traffic movement of all types into, out of, and within the landfill pursuant to 06-096 C.M.R. ch. 400, § 4(D)(1); provided the facility continues to encourage waste haulers to use I-95 as a primary hauling route.
6. The applicant has sufficiently demonstrated that the proposed amendment will not unreasonably adversely affect air quality pursuant to 06-096 C.M.R. ch. 400, § 4(G)(1).

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7. Restrictions on the amount of non-bypass, in-state MSW disposed at JRL are necessary to ensure that activities at JRL support, and do not subvert, the hierarchy.

8. The applicant has demonstrated that ~~sufficient near-term~~ uncertainty exists in the solid waste landscape in Maine and will likely continue for some period of years to warrant an ~~short-term~~ extension of up to 81,800 tons per year of non-bypass, in-state MSW at JRL and the Department concludes that an extension of up to 81,800 tons per year of non-bypass, in-state MSW at JRL until December 31, 2023 ~~for one additional year beyond March 31, 2018 with the potential for a one-time extension of six months beyond the one year~~ is reasonable and consistent with the solid waste management hierarchy pursuant to 38 M.R.S. §§ 2101 and 1310-N(1)(D) and 06-096 C.M.R. ch. 400, § 4(N)(1), ~~provided that:~~
 - A. ~~During the one-year extension period, scheduled to occur from April 1, 2018 through March 31, 2019, BGS and NEWSME shall develop and prepare to implement measures that eliminate the need for non-bypass, in-state MSW disposal at JRL. On or before March 31, 2019 these measures must be implemented unless the six-month extension referenced in Conclusion 8(B) below is granted by the Department; and~~

 - B. ~~If warranted, based on a demonstrated need, BGS and NEWSME may submit a one-time request to the Department for review and approval to extend the timeframe for a period not to exceed six months for the disposal of no greater than 30,000 tons of non-bypass, in-state MSW at JRL. The six-month extension beyond March 31, 2019 shall be requested by November 30, 2018 as a Condition Compliance submittal detailing the need for the extension based on the then-current solid waste landscape in Maine, with emphasis on the operational status of other solid waste management facilities in Maine which are higher on the hierarchy. This submittal must also include information sufficient for the Department to determine how the approved non-bypass, in-state MSW under this amendment will be handled after September 30, 2019 without utilization of JRL for disposal.~~

9. ~~Sufficient~~ MSW incineration and processing capacity exists in the future provided that the PERC facility is operational at its planned reduction level of 210,000 tons per year and the CRM facility is operational at its currently contracted capacity of 105,000 tons per year or greater. Based on the hierarchy, these solid waste management options are preferred over disposal at JRL. Casella's Pine Tree Waste has entered into contracts with PERC and CRM to deliver significant quantities of in-State MSW to these facilities, coterminous with this approval, thereby diverting significant quantities of MSW from disposal at JRL.

10. The applicant has provided a civil/criminal disclosure statement demonstrating that the entities are not in violation of environmental or criminal law pursuant to 38 M.R.S. § 1310- N(7) and 06-096 C.M.R. ch. 400, § 4(C)(1)(b) and § 12.

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11. The applicant has sufficiently demonstrated that the proposed amendment will meet the appropriate stability and operational requirements of 06-096 C.M.R ch. 401.

THEREFORE, the Department ~~DENIES the noted application of the applicant as proposed to allow for the continued disposal at JRL of up to 81,800 tons per year of non-bypass, in-state MSW but APPROVES the noted application of the applicant to allow for the disposal of up to 81,800 tons per year of non-bypass, in-state MSW up to and including December 31, 2023 March 31, 2019, with the potential for a one time extension not to exceed six months beyond the one year based on a demonstrated need for the disposal of no greater than 30,000 tons of non-bypass, in-state MSW at JRL~~ SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

1. The Standard Conditions of Approval for Solid Waste, copies attached.
2. Severability. The invalidity or unenforceability of any provisions, or part thereof, of this license shall not affect the remainder of the provision or any other provision. This license shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
3. Soil Erosion. The applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in unnecessary or noticeable erosion of soils on site during operation of the landfill.
4. Financial Assurance. The applicant shall submit the appropriate financial assurance package updates in accordance with the Rules on an annual basis, including the most recent surety bond documentation.
5. BGS and NEWSME shall accept no greater than 81,800 tons per year of non-bypass, in-state MSW at JRL, limited to a period of time up to and including December 31, 2023 March 31, 2019, ~~except for a possible one time six month extension beyond March 31, 2019 of no greater than 30,000 tons of non-bypass, in-state MSW based on a demonstrated need as stated in Condition 7 below.~~ The MSW restriction does not limit the authority of the applicant to accept MSW bypass and soft layer material for cell construction after December 31, 2023 March 31, 2019, provided that such acceptance is consistent with the relevant terms of Department licenses #S-020700-WD-N-A and #S-020700-WD-W-M.
6. ~~During the one year extension period, scheduled to occur from April 1, 2018 through March 31, 2019, BGS and NEWSME shall develop and prepare to implement measures that eliminate the need for non-bypass, in-state MSW disposal at JRL. On or before March 31, 2019 these measures shall be implemented unless the six month extension referenced in Condition 7 below is granted by the Department.~~
7. ~~If a demonstrated need exists, BGS and NEWSME may submit a one-time request for a six month potential additional extension to the Department for review and approval~~

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~~under the following conditions:~~

- ~~A. The one time request shall be limited to no greater than 30,000 tons of non-bypass, in-state MSW over the six-month extension period; and~~
- ~~B. The one time request shall be submitted no later than November 30, 2018 as a Condition Compliance submittal with a specific plan detailing the need for the extension based on the then-current solid waste landscape in Maine, with emphasis on the operational status of other solid waste management facilities in Maine which are higher on the hierarchy. This submittal must also include information sufficient for the Department to determine how the approved non-bypass, in-state MSW under this amendment will be handled after September 30, 2019 without utilization of JRL for disposal.~~

DONE AND DATED AT AUGUSTA, MAINE THIS 31ST DAY OF MARCH, 2018.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: _____

David B. Mercer
Paul Mercer, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

Date of initial receipt of application: November 27, 2017

Date of application acceptance: December 15, 2017

Date filed with the Board of Environmental Protection:

XKT82558



**STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:

STATE OF MAINE, ACTING THROUGH THE
BUREAU OF GENERAL SERVICES AND
NEWSME LANDFILL OPERATIONS, LLC
OLD TOWN, PENOBSCOT COUNTY, MAINE
JUNIPER RIDGE LANDFILL
DEP AMENDMENT APPLICATION
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SOLID WASTE LICENSE AMENDMENT
PARTIAL APPROVAL

MOTION TO DISQUALIFY

Appellants Bureau of General Services ("BGS") and NEWSME Landfill Operations, LLC ("NEWSME") hereby file this motion seeking to disqualify Chair James Parker from participating as a member of the Board of Environmental Protection in this appeal proceeding.

By motion dated April 14, 2014, BGS and NEWSME moved to disqualify Mr. Parker from the original appeal to the Board of their request to have non-bypass Municipal Solid Waste ("MSW") approved for disposal at the Juniper Ridge Landfill ("JRL"). The basis for the motion was that Mr. Parker actively opposed BGS and NEWSME's application during the licensing process with Department staff, and therefore could not serve as an impartial decisionmaker on appeal and/or could not present the appearance of a neutral adjudicator required for due process. A copy of BGS and NEWSME's April 14, 2014 motion is appended as Exhibit A and is incorporated herein.

By letter dated April 23, 2014, the Board's Executive Analyst, Cindy Bertocci, informed the parties that Mr. Parker had agreed to recuse himself from participation in that appeal. A copy of that letter is attached as Exhibit B.

In the 2014 appeal proceeding, the Board approved acceptance of non-bypass MSW at JRL until March 31, 2018 (Board Order #S-020700-WD-BG-Z, Cond. 10).

The Department license order being appealed by BGS and NEWSME here involves merely a request to extend the March 31, 2018 deadline, for continued acceptance of MSW at JRL. Consequently, the exact same issues that were involved in 2014—disposal of non-bypass MSW at JRL and compliance with the waste management hierarchy—are again the key issues in this appeal to extend the MSW deadline beyond the date approved in the Department's recent March 31, 2018 Order. These are issues, however, that Mr. Parker has already taken a position on and opposed in the original licensing proceeding. In comments sent to then Commissioner Aho and another project opponent, Bob Duchesne, Mr. Parker stated:

Tak[ing] MSW to the landfill flies in the face of all the effort we have put into volume reduction and developing a solid waste hierarchy.

I expect Cassella would like the MSW because it will help increase their gas generation which is an additional revenue stream for them. But more importantly it provides an unequal financial disadvantage to municipalities that still must go to Perc. This puts 180 plus towns at this disadvantage. They currently supplement PERC through local financing if waste volumes are down and power reimbursement doesn't cover costs. Diverting the MERC waste thru PERC helps stabilize this inequity but of course Casella must charge more for handling or reduce their profits.

We all know that direct landfilling of waste is the cheapest alternative but utilizes more space even after "recycling".

If Casella is successful in this attempt to go around the rules then we must encourage the shut down of PERC as well so Eastern Maine won't be further financially disadvantaged.

We must respect the hierarchy we have established and not let a landfill contractor make the State become regressive in managing the landfill it owns.

Email from J. Parker to P. Aho, April 10, 2013, Subject: Solid Waste (forwarded via email by P.

Aho to H. Parent and M. Parker "for the record") (attached as Exhibit 1 to Exhibit A).

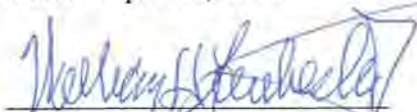
As explained in our original motion to disqualify, Mr. Parker cannot oppose the MSW

application as a member of the public one day and then sit in judgment on it on appeal. Mr. Parker's comments were specific to this matter, provided his view of the key legal issues raised in the applicants' appeal, and were made to the decision-maker while the matter was still pending. His comments were not merely general statements about law or policy, but rather were intended to persuade the decision-maker to deny the application, and even stated that he felt the application was against the rules. Even though this is technically a separate proceeding from the one in 2014, his clear opposition to disposal of MSW at JRL continues to present at least the appearance of impropriety in this proceeding. In this circumstance, it appears that Mr. Parker has pre-judged this matter and to protect the integrity of the process must therefore be disqualified from participating as both Chair and as a Board member for this proceeding.

CONCLUSION

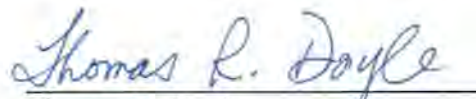
In sum, we respectfully request that, having openly opposed the original application, including on grounds that remain a key issue in the pending appeal, Mr. Parker do, as he did in the 2014 appeal, and recuse himself from participating in this proceeding.

Dated: April 30, 2018


William H. Laubenstein

DEPARTMENT OF ATTORNEY GENERAL
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207-791-1100

Attorneys for NEWSME Landfill
Operations, LLC

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF:

JUNIPER RIDGE LANDFILL
BUREAU OF GENERAL SERVICES AND
NEWSME LANDFILL OPERATIONS, LLC
DEP AMENDMENT APPLICATION
SOLID WASTE #S-020700-WD-BC-A
OLD TOWN, PENOBSCOT COUNTY, MAINE

MAINE HAZARDOUS WASTE, SEPTAGE
AND SOLID WASTE MANAGEMENT
ACT

AMENDMENT

MOTION TO DISQUALIFY

Appellants/Respondents Bureau of General Services (“BGS”) and NEWSME Landfill Operations, LLC (“NEWSME”) hereby file this motion seeking to disqualify James Parker from participating as a member of the Board of Environmental Protection in these proceedings. As will be discussed below, Mr. Parker actively opposed BGS and NEWSME’s application during the licensing process with Department staff, and therefore cannot serve as an impartial decision-maker on appeal and/or cannot present the appearance of a neutral adjudicator required for due process.

As an initial matter, it is important to emphasize that we do not make this request lightly. Any motion to disqualify is difficult for an applicant, a regulatory body, and the particular board member in question, and therefore BGS and NEWSME are filing this reluctantly and only after waiting to see if Mr. Parker would recuse himself voluntarily. Given, however, that the issue is critical to due process and the appearance of fairness, and the need to make this decision before the full Board takes any action in this matter, BGS and NEWSME believe the request is unfortunately necessary in this situation.

ARGUMENT

“[A]n applicant before an administrative board is entitled under the due process clause of the United States and Maine constitutions to a fair and unbiased hearing.” *Gorham v. Town of Cape Elizabeth*, 625 A.2d 898, 902 (Me. 1993); *see also* 5 M.R.S. § 9063(1) (hearings under the Administrative Procedures Act “shall be conducted in an impartial manner”).

In this case, Mr. Parker’s participation in these proceedings would violate due process because record evidence demonstrates that he has already judged this specific matter, and therefore cannot be unbiased for these quasi-judicial proceedings and/or his participation would present an unacceptable appearance of pre-judgment on the merits of the matter now before the Board.

On April 10, 2013, during the second day of a two-day public hearing held by the Commissioner in this case, Mr. Parker submitted comments for the public record in direct opposition to the application, including on the key issue of whether the solid waste hierarchy applies in a licensing proceeding. He addressed his comments to the Commissioner and another project opponent, Bob Duchesne. Specifically, Mr. Parker stated:

Tak[ing] MSW to the landfill flies in the face of all the effort we have put into volume reduction and developing a solid waste hierarchy.

I expect Cassella would like the MSW because it will help increase their gas generation which is an additional revenue stream for them. But more importantly it provides an unequal financial disadvantage to municipalities that still must go to Perc. This puts 180 plus towns at this disadvantage. They currently supplement PERC through local financing if waste volumes are down and power reimbursement doesn’t cover costs. Diverting the MERC waste thru PERC helps stabilize this inequity but of course Casella must charge more for handling or reduce their profits.

We all know that direct landfilling of waste is the cheapest alternative but utilizes more space even after “recycling”.

If Casella is successful in this attempt to go around the rules then we must encourage the shut down of PERC as well so Eastern Maine won't be further financially disadvantaged.

We must respect the hierarchy we have established and not let a landfill contractor make the State become regressive in managing the landfill it owns.

Email from J. Parker to P. Aho, April 10, 2013, Subject: Solid Waste (forwarded via email by P. Aho to H. Parent and M. Parker "for the record") (attached as Exhibit 1).

These comments, which were intended to influence the Commissioner's decision, clearly show that Mr. Parker already thinks that this specific application should be denied. He says that allowing MSW to be disposed of at the Juniper Ridge Landfill flies in the face of volume reduction and the hierarchy. He speculates about Casella's motives, rails against what he sees as the negative financial impact of allowing Casella to dispose of MSW at the landfill, and calls the proposal "regressive." He even characterizes the application as an "attempt to go around the rules," implying that the applicants are somehow attempting to evade the requirements of law, and thus acting at some level unethically.

In *Pelkey v. City of Presque Isle*, 577 A.2d 341 (Me. 1990), the Maine Supreme Court addressed a similar situation, and found that a board member had to be disqualified from the matter. In that case, Pelkey filed an application for a special exception with the local board of appeals. The board initially denied the application, but that decision was overturned because the board had failed to make adequate findings and conclusions to allow the court to review the decision on appeal. On remand, the board made additional findings and conclusions, without holding another hearing, again denying the application. This time, however, the composition of the board had changed, and only two of the five board members who had heard the initial application remained. One of the new board members who voted to deny the application on

remand had opposed the application as a member of the public during the initial proceedings. *Id.* at 343.

Pelkey argued that this decision on remand violated his due process rights. The Court agreed. After stating that due process requires that the decision be made only by those who hear the evidence and assess the credibility of the witnesses, the Court also concluded that the board member who had previously been an opponent could not now be an impartial arbiter:

The record further discloses that prior to his appointment on the present Board, one of the three new members had been a vocal opponent to Pelkey's application at the time of the public hearings. On these facts, it cannot be said that the Board's findings of fact and conclusions conformed to the minimum requirements of due process. Accordingly, we hold that Pelkey is entitled to a hearing *de novo* on his application *before only those Board members who, as then members of the public, did not oppose or support his application at the previous hearings.*

Id. at 343-44 (emphasis added).

Following the reasoning of the *Pelkey* case, Mr. Parker cannot oppose the MSW application as a member of the public one day and then sit in judgment on it the next. Mr. Parker's comments were specific to this matter, provided his view of the key legal issues raised in the applicants' appeal, and were made to the decision-maker while the matter was still pending. Thus, they cannot be brushed aside as in other cases. In *Lane Construction v. Town of Washington*, 2008 ME 45, ¶ 30, 942 A.2d 1202, 1211, for example, the Maine Supreme Judicial Court held that comments made by a board member to a newspaper reporter *after* taking final action on an application were inadequate to demonstrate bias during the prior proceedings, but noted that they may have been of "sufficient magnitude to warrant his recusal from future deliberations." Similarly, in *New England Telephone & Telegraph Co. v. Public Utilities Commission*, 448 A.2d 272, 280 (Me. 1982), the Court held that a "preconceived position on law, policy or legislative facts is not a ground for disqualification."

Here, in contrast, Mr. Parker sent his comments to the Commissioner while the public hearing was going on, well in advance of the current appeal. His comments were not merely general statements about law or policy, but rather were intended to persuade the Commissioner to deny this specific application, and even stated that he felt the application was against the rules. In this circumstance, it appears that he has pre-judged this case and to protect the integrity of the process must therefore be disqualified from participating as a Board member.

CONCLUSION

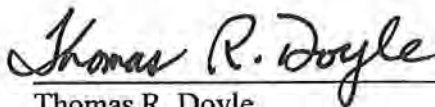
In sum, we respectfully request that, having openly opposed the application, including on grounds that remain a key issue on appeal, Mr. Parker recuse himself from participating in these proceedings.

Dated: April 18, 2014



Edward A. Dahl
Director

Bureau of General Services
77 State House Station
Augusta, ME 04333



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Brian M. Rayback

PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
207-791-1100

Attorneys for NEWSME Landfill
Operations, LLC

Parker, Michael T

From: Aho, Patricia
Sent: Wednesday, April 10, 2013 11:01 AM
To: jparker339@roadrunner.com; Bob Duchesne
Cc: Parent, Heather; Parker, Michael T
Subject: RE: Solid waste

Thank you Jim for your email and comments regarding the application before us related to the Juniper Ridge Landfill. I have copied Michael T. Parker, the project manager so that these comments are also submitted for the record.

Best regards,
Patti

Patricia Aho
 Commissioner
 Maine Department of Environmental Protection
 207-287-2812
Patricia.Aho@Maine.gov

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

From: jparker339@roadrunner.com (<mailto:jparker339@roadrunner.com>)
Sent: Wednesday, April 10, 2013 10:40 AM
To: Aho, Patricia; Bob Duchesne
Subject: Solid waste

Patti

First of all thank you for recommending me for the Interstate water pollution control commission. I have put my information in and have not heard back yet.

This is a period I do wish I sat on the ENR committee to have input to the modification request for Juniper Ridge.

Take MSW to the landfill flys in the face of all the effort we have put into volume reduction and developing a solid waste heirachy.

I expect Cassella would like the MSW because it will help increase their gas generation which is an additional revenue stream for them. But more importantly it provides an unequal financial disadvantage to municipalities that still must go to Perc. This puts 180 plus towns at this disadvantage. They currently supplement PERC through local financing if waste volumes are down and power reimbursement doesn't cover costs. Diverting the MERC waste thru PERC helps stabilize this inequity but of course Casella must charge more for handling or reduce their profits.

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We must respect the heirachy we have established and not let a landfill contractor make the State become regressive in managing the landfill it owns.

Jim



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

EXHIBIT B

Robert A. Foley, Chair

Cynthia S. Bertocci
Executive Analyst

Ruth Ann Burke
Board Clerk

April 23, 2014

Thomas Doyle, Esq.
Pierce Atwood
Merrill's Wharf
254 Commercial Street
Portland, ME 04101

RE: State of Maine Bureau of General Services / Juniper Ridge Landfill
Appeal of Department Order #S-020700-WD-BC-A
Motion to Disqualify

Dear Mr. Doyle:

Chairman Foley has conferred with Board member James Parker regarding the Motion to Disqualify filed by the Bureau of General Services and NEWSME Landfill Operations on April 21, 2014. Mr. Parker has agreed to recuse himself from participation in the Appeal of Juniper Ridge Landfill DEP Order #S-020700-WD-BC-A.

Sincerely,

Cynthia S. Bertocci, Executive Analyst
Board of Environmental Protection

cc: Service List by electronic mail