

**LETTERS OF APPEAL**

294

Mary Dolan  
175 Veazie Street  
Old Town, ME 04468

Edward Spencer  
1140 Kirkland Road  
Old Town, ME 04468

Charles Leithiser  
394 Fourth Street  
Old Town, ME 04468

Re/

STATE OF MAINE, ACTING THROUGH THE	)	MAINE HAZARDOUS WASTE,
STATE PLANNING OFFICE	)	SEPTAGE AND SOLID WASTE
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	MANAGEMENT ACT
TREATED BIOMEDICAL WASTE	)	
#S-020700-WU-AJ-N	)	
(APPROVAL WITH CONDITIONS)	)	NEW LICENSE

7/28/2010

Susan Lessard  
c/o Terry Hanson  
#17 State House Station  
Augusta, ME 04333-0017

Ms. Lessard and members of the Maine Board of Environmental Protection:

We, the residents of Old Town, Maine, listed above, are appealing the Maine Department of Environmental Protection's Order #S-020700-WU-AJ-N, filed with the Maine Board of Environmental Protection on June 30, 2010. This Order permits the disposal of up to 5000 tons of treated biomedical waste per year in the Juniper Ridge Landfill in Old Town, Maine. We are appealing this decision based on reasons that are described in further detail below, but in summary we believe that the Department has erred in its interpretation of the language of applicable regulations, and that the Departmental Order is in conflict with the State's Solid Waste Management Plan and Hierarchy. Additional support for this appeal may be found in documents already submitted to the Department: specifically the City of Old Town's letter, dated 11/24/2009, which requests that no more than 1500 to 2000 tons of treated biomedical waste per year be deposited at Juniper Ridge

Landfill (JRL); the letter from the Penobscot Indian Nation, dated 12/17/09, requesting denial of the application; and the letter from the Old Town Landfill Advisory Committee addressing capacity concerns at the landfill.

- **Aggrieved Status:**

As residents of Old Town, we are affected daily by the number of trucks delivering refuse to and returning from the landfill, the visual impact that the landfill has on the surrounding community, the frequent odors emanating from the landfill, and the associated noise of the daily operations there. As residents of the State of Maine, we are stakeholders in the State-owned landfill, and want to ensure that the State holds true to its promise (and the regulatory statutes) that no out-of-state waste will be deposited there.

- **The basis of the objections or challenge:**

The terms “processing” and “treatment” are not synonymous, as claimed by the Order; the requested amount for disposal is excessive; and there are major health and safety concerns.

- **The findings, conclusions, or conditions objected to or believed to be in error:**

- 1) **The Order's claim that the “processing” of solid waste is equivalent to the “treatment” of biomedical waste is the basis for awarding this license, but this claim directly contradicts Department of Environmental Protection Rules. Therefore, any biomedical waste of non-Maine origin that is treated at AHR cannot be accepted at the Juniper Ridge Landfill.**

Because of the different and distinct problems associated with solid waste and biomedical waste, there are different and distinct regulatory regimes for these two ways of handling solid waste and biomedical waste, which is reflected in separate Department of Environmental Protection Rules applicable to Solid Waste (Solid Waste Management Rules Chapters 400-425) and to Biomedical Waste (Biomedical Waste Management Rules Chapter 900). The fundamental transformation or change in processing solid waste is chemical or physical; there is nothing in the definition of “processing facility” (as defined in Chapter 409) that mentions biological transformation. Conversely, the fundamental transformation in treatment of biomedical waste (as defined in Chapter 900) is biological; there is nothing in the definition of “treatment” that mentions chemical or physical change.

- a) The disposal of untreated biomedical waste is prohibited by Department of Environmental Protection Rules, 06-096 CMR 900. Rule summary: “The disposal of untreated biomedical waste is prohibited in this rule”;
- b) This prohibition exists because untreated biomedical waste “may contain human pathogens of sufficient virulence and in sufficient concentrations that exposure to it by a susceptible host could result in disease”, as defined in Department of Environmental Protection Rules, 06-096 CMR 900.6(C) Biomedical Waste;
- c) Consequently, the purpose of “treatment” is “to change the biological character or composition of biomedical waste so as to eliminate or reduce its potential for causing disease” in order to eliminate, as far as possible, the potential public

health and environmental hazards. This purpose is captured in 06-096 CMR 900.6(VV) Treatment;

- d) The disposal of unprocessed solid waste is restricted, first, by Maine's Solid Waste Management Hierarchy 38 M.R.S.A. §2101-C(24) [www.maine.gov/spo/recycle/docs/wastehierarchytext.doc] which states: "Within this hierarchy, landfills are the last of the various solid waste management options that should be considered." The new recycling rules in 06-096 CMR 409.2(C) also restrict solid waste disposal;
- e) The purpose of "processing" solid waste is 06-096 CMR 409.1(A) "... to reduce the volume or change the chemical or physical characteristics of solid waste...", to decrease the impact of solid waste and preserve the scarce resource of available landfill space in Maine, or "... to render the waste suitable for beneficial use".
- f) Waste can be (1) treated without being processed, (2) processed without being treated, (3) both treated and processed, or (4) neither treated nor processed.

However, section 4 of the Order, arbitrarily and without justification, combines the descriptions "physical, chemical" and "biological", which describe different and distinct types of transformations, in order to state, erroneously, that "processing" and "treatment" are synonymous. This statement leads to the erroneous conclusion of section 4, that: "... the Department of Environmental Protection finds that the residue resulting from the treatment of biomedical waste, as generated by the AHR facility, is a waste generated within the State of Maine... and may be accepted for disposal at the Juniper Ridge Landfill."

Further, disregard of this distinction is clear even earlier in the Order in the language of Sections 1.C ("Waste is accepted for processing from sources within Maine as well as other states and Canada") and 3.A ("Waste Treatment Process"). The prejudicial and tendentious language of the Order assumes that which it is supposed to determine: Whether or not the handling of biomedical waste that occurs at AHR is, indeed, "processing."

Finally, the two citations mentioned in the Order that claim to strengthen the case that "processing" and "treatment" are synonymous, do just the opposite.

The first citation: 'In fact, the word "processing" is used in 06-096 CMR 900.6(W) [in reference to incineration of biomedical waste].' 06-096 CMR 900.6(W) defines incineration as "... a processing method using an engineered apparatus capable of withstanding heat and having as its purpose the efficient thermal oxidation and/or conversion of combustible material into noncombustible residues (ash) and product gases." 06-096 CMR 400.1(PPP) also defines incineration: "'Incineration" means the volume reduction of solid waste by means of controlled combustion, including pyrolysis. This term does not include combustion of solid waste in cone burners or the practice of open burning.' Incineration could be considered "processing," in that there is significant chemical and physical change; in fact, this example, illustrates the distinction between "processing" and "treatment" quite well. But the description of incineration as "processing" is irrelevant since the biomedical waste handling at AHR is a non-incineration procedure.

The second citation 06-096 CMR 900.18(E)(2) (in relation to the design of treatment): "Facility design capacity must consider such items as ... availability of alternate storage, processing, or disposal capability." We read this as suggesting processing as an "alternate" way of handling biomedical waste, as distinguished from "treatment" as defined in 06-096 CMR 900.6(VV).

- a) In the Order, citing 38 M.R.S.A. §1303-C(29), Section 3B "Designation as Special Waste" states that Juniper Ridge Landfill is not supposed to take "biomedical waste" but that the DEP can classify "treated biomedical waste" as "special waste", which JRL can accept with DEP review and approval;
- b) However, since AHR accepts waste from out-of-state generators for treatment, its treated biomedical waste, even if designated as "special waste," is not waste generated in Maine and should not be permitted to be disposed of at the Juniper Ridge Landfill. 38 MRSA §1310-N(11) states "... a solid waste disposal facility owned by the State may not be licensed to accept waste that is not waste generated within the State." Therefore, to make the claim that AHR treated biomedical waste should be accepted at JRL, the DEP has no alternative but to claim that "treatment" is synonymous with "processing" in its attempt to apply the 38 MRSA §1310-N(11) definition of "waste generated within the State" to include "...residue and bypass generated by incineration, processing and recycling facilities within the State ..." As we show above, that claim is not correct.
- c) In fact, there is no reason for JRL to accept biomedical waste at all. There is an existing permitted commercial facility that is willing to accept treated biomedical waste from AHR that is located closer (Waste Management Crossroads Landfill in Norridgewock is both closer to AHR in Pittsfield and more centrally located in Maine).
- d) Finally, we are concerned about the impact of this Order on the State of Maine's ability to regulate landfills in the future. It seems to us that the loose interpretation of the definitions and the lack of standards for "processing" versus "treatment" leaves the door open for virtually anything from anywhere to be brought to JRL. JRL is a finite resource owned by the people of Maine and should be reserved for their use.

**2. The tonnage of treated biomedical waste allowed by the Order is excessive. The excess is due to overestimates of the quantities required to meet the needs of Maine health care facilities, and the inappropriate acceptance in the Order of treated biomedical waste of non-Maine origin.**

- a. Out of state waste should not be coming to JRL. According to the JRL Resolve of September 13, 2003 as amended on April 9, 2004 (Sec. 12, Acceptable Wastes): "... ash from incinerators in Maine, as well as a limited amount of bypass, would be considered waste generated in Maine, but that waste delivered from out of state to another facility (such as a transfer station, or a compost facility if no processing occurs) for transfer to WOTL in its original form would be considered waste generated outside Maine." Subsequently, the Maine Legislature has defined wastes generated within the state 38 MRSA 1310-N: 11. 'Waste generated within the State. Consistent with the Legislature's findings in section 1302, 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 ... ‘

- b. Most of the biomedical waste coming to AHR is of non-Maine origin. Section 4 of the Order acknowledges that less than 35% of the waste treated at AHR is Maine-generated; 65% comes from out-of-state and even out-of-country. Even worse, according to the Order “It is expected that AHR may accept waste from other out-of-state generators in the future.”
- c. There is no reason to expect an increase in Maine-generated biomedical waste. A recent New York Times article [“In a World of Throwaways, Making a Dent in Medical Waste” July 5, 2010] points out that there a trend to less waste as hospitals and other medical facilities understand the financial incentives to less disposal: “Eliminating the squandering of medical supplies and equipment can save on new purchases as well as incineration and landfill fees. Some institutions have turned to interventions like reducing their use of materials, recycling what they do use, and donating leftover but still usable items to developing nations.”
- d. The request for volume based on the possibility of a pandemic outbreak is specious. Were such an event to occur, there are many existing laws and procedures and emergency measures that could be invoked depending on the particular threat. In this regard, therefore, the Order is superfluous. For example, “Spurred by fears of avian influenza (H5N1), the United States embarked on an aggressive policy to put into place a series of plans at the federal, state, and local levels. These pandemic plans address continuity of operations, social distancing strategies, vaccine and antiviral production and distribution, hospital surge capacity, and special considerations for vulnerable populations. In addition to plans, there were accompanying implementation schedules for implementing necessary infrastructure in place to ensure the plans would be useful should a pandemic emerge.” (From Katz R. "Use of revised international health regulations during influenza A (H1N1) epidemic." *Emerg Infect Dis* 15:8 (2009): <http://www.cdc.gov/EID/content/15/8/1165.htm>) This article cites “Pandemic plans for the federal government, along with implementation plans, updates, summaries of progress and specific action plans for each federal agency.” <<http://www.pandemicflu.gov/plan/federal/index.html>> and “Pandemic planning for all of the states.” <<http://www.pandemicflu.gov/plan/states/stateplans.html>>. The latter links to Pandemic Plans - Maine CDC; DHHS <<http://www.maine.gov/dhhs/boh/maineflu/pandemic-plans.shtml>> which, in turn links to “Maine Pandemic Influenza Plan.
- e. The data on AHR output presented at different times to Landfill Advisory Committee meetings is unreliable. As described in the Order, “On November 16, 2009, the generator (AHR), the applicant (SPO), the landfill operator (Casella Waste Systems) and the Department attended a meeting of the Juniper Ridge Landfill Advisory Committee to discuss how the waste is generated, how it would be managed at the landfill and the application review process... On December 10, 2009, Department staff attended a meeting of the Juniper Ridge Landfill Advisory

Committee to discuss licensing criteria for the application and the review process and timelines for the application.” What the Order does not mention is that the data presented on the quantity of treated biomedical waste at the two meetings were inconsistent and contradictory. At the first meeting, the AHR representative said the yearly quantity was 680 tons, with approximately half generated in Maine. This raised concerns among Old Town Landfill Advisory Committee (LAC) members and the public in attendance as to why JRL should need to accept 5000 tons of treated biomedical waste when only 340 tons would be of Maine origin. By the second meeting, the numbers were quite different but the presenters were visibly uncertain as to the source of the numbers, and whether they were based on past quantities, or were future projections. At a minimum, the Order should not be put into effect until the JRL operator is able to provide JRL's owners, the citizens of the State of Maine, with accurate figures on volume in a public forum.

- f. Allowing excessive amounts of treated biomedical waste violates the Maine’s legislature and DEP's commitment to recycling. The excessive licensed amount, together with the economies of scale for AHR and the tipping fees for Casella, provide incentives to violate the statutory Maine’s Solid Waste Management Hierarchy 38 M.R.S.A. §2101-C(24), which states: “Within this hierarchy, landfills are the last of the various solid waste management options that should be considered.” This incentive structure violates DEP's own principles as well.
- 3) **Bringing biomedical waste to JRL, particularly from out of state and from Canada, poses serious health and safety risks that have not been adequately addressed by DEP in the Order.**
- a. More frequent efficacy testing is necessary. The May 2008 DEP Monthly Enforcement Report shows that AHR had numerous violations: “AHR violated terms of its Department-issued License and the Department’s Biomedical Waste Management Rules. AHR failed to operate two Hydroclave units pursuant to the facility’s operation plan, operated the two Hydroclave units without maintaining printed parameter recorders as required, operated a shredder such that it failed to render treated biomedical waste unrecognizable, stored three boxes of biomedical waste in an area not designated for storage or secured from unauthorized personnel, and failed to keep biomedical waste containers securely closed or sealed. Furthermore, despite requirements to maintain stored pathological waste in a frozen state, the facility’s refrigeration unit was operating at 45 degrees F... AHR paid \$17,000 as a civil monetary penalty. AHR also undertook measures to correct the problems and “has had no documented violations... since that date.” However, despite the statement that “medical errors due to faulty handling protocols are beyond the scope of review of the Department” we feel that given AHR’s history, monthly efficacy testing “as a measure of successful disinfection of waste under normal operating procedures at the treatment facility” (Section 3A) is not adequate. Given the serious consequences of ineffective treatment to the health of the people of Maine, we feel more frequent testing is necessary.
  - b. Hospital waste is infectious. As Chief Kirk E. Francis of the Penobscot Nation points out in his December 17, 2009 letter to Gov. Baldacci (cc’ed to David Littell

of DEP) urging denial of the license to bring treated biomedical waste to JRL: “The World Health Organization states that 10% of hospital wastes are infectious... Given the potential for human error and equipment malfunction I am not convinced that the health of the general public and the wildlife in the area are adequately protected.”

- c. Transporting untreated biomedical waste is dangerous. Untreated biomedical waste “may contain human pathogens of sufficient virulence and in sufficient concentrations that exposure to it by a susceptible host could result in disease”, as defined in Department of Environmental Protection Rules, 06-096 CMR 900.6(C) Biomedical Waste. The transport of untreated biomedical waste from out of state and out of country on Maine highways and local roads to Pittsfield exposes the people of Maine to unnecessary and unacceptable risk. The problem is exacerbated by the distances untreated biomedical waste must be transported, and by the quantities of waste.
- d. Mapping of treated biomedical waste locations at JRL is critical for the safety of landfill workers. Section 5 Waste Handling Procedures states that “...efforts would be made to place treated waste in areas where future excavation was not anticipated...” This is an extraordinarily weak standard given the hazards to landfill workers working in areas for which detailed mapped records of the location of treated biomedical waste, particularly sharps, are not available. If this waste is to be brought to JRL, we recommend that maps be made of the location of this waste.
- e. Although we cannot be certain of the circumstances surrounding the timing of the issuing of this Order, we are concerned that the decision to allow treated biomedical waste to come to JRL might have been rushed, as the six-month contract with Crossroads expired on June 30, 2010.

- The remedies sought:

We request an outright denial of the application. The treated biomedical waste does not qualify as “processed” and was thus not initially approved for disposal at Juniper Ridge. We see no need to introduce this new waste stream to the landfill. As mentioned above, there are commercially operated alternatives, permitted to accept out-of-state waste treated biomedical waste. Furthermore, if the “treatment” renders the medical waste harmless, the treated waste should be sent to a waste-to-energy incinerator. This would provide the benefit of the waste being used to produce electricity and also a great reduction in volume of waste – both of which are in compliance with the State’s Solid Waste Management Hierarchy. The ash produced by such incinerators is already permitted at the Juniper Ridge Landfill.

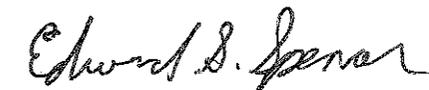
If the Order is not denied outright, we ask that the amount of treated biomedical waste be restricted to that which truly originates in Maine (34.9% of the total waste, according to the Order). Alternatively, the amount of waste allowable at Juniper Ridge could be determined on a source-percentage basis.

We also request testing of every load of treated biomedical waste, if any, destined for Juniper Ridge. We learned through the Beneficial Use / Fuel Substitution license granted to Red Shield Environmental in Old Town that monthly or quarterly testing of waste is not sufficient to protect public health. In that case, by the time the ash for disposal at the landfill was tested by the Department, it was discovered that Hazardous Waste (lead-contaminated ash) had been being deposited in the landfill for months, and that it was impossible or unwise to remove that waste, even though Juniper Ridge is not designed or approved for the disposal of Hazardous Waste. That ash most likely posed much less of a threat to public health than the potential for disposal of improperly treated biomedical waste does.

Lastly, if any of the treated biomedical waste is to be disposed of at the Juniper Ridge Landfill, we request that detailed mapping of the disposal area be a stipulation of any Order, to make worker health and safety a priority. Although the Order references "grinding" of sharps, etc., before disposal, Mr. Tom Gilbert (of Casella, the landfill operator) stated at a meeting of the Old Town Landfill Advisory Committee that Casella would request that the sharps would not be ground but rather left in their original form, in order to make them more readily identifiable by landfill employees. He also mentioned at that meeting that an employee at the Pine Tree Landfill in Hampden, Maine (also operated by Casella) had been injured by a "needle stick" while working at that facility. We feel that accurate and detailed mapping of the site of any treated biomedical waste disposal is essential to protecting human health.

Respectfully submitted,

  
Mary Dolan

  
Edward Spencer

  
Charles Leithiser

302